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# Law and State's governance of **protected marine spaces**: between international regulations and national legislations, the enigmatic way of the sustainable development of coastal and maritime territories

Submitted there on themes listed by WIOMSA: "Effectiveness of the conservation initiatives and governance systems."

**B**etween international regulations and national legislations, the marine or coastal protected spaces, protected or not, raise various legal statuses. Being mostly a part of the territory under national jurisdiction, the MPA can also be a part of more complex spaces, legally. Be that as it may, legal frameworks selected for the implementation of MPA connote strongly the political choices of States and inform us about the way they exercise the public action (Féral, 2007).

## Fundamentals of Law of marine spaces and resources from which the States can not derogate

With examples of projected or existing marine protected areas (MPA), in a single State (Madagascar, Île de la Réunion, Indian Ocean, Senegal, Guinea-Bissau...), or positioning on two States (as International Marine Parks...), or located beyond national jurisdiction (High sea MPA...), one can better underline the fundamentals of a system of governance and of Law of the sea and Law of the State from which the States can not derogate. International Law for marine spaces, MPA's governance centralized and territorialized, are not opposed. During MPA's multiplication, those three parts belong to the same unit of capacities and competences distributed between several or single institutions to manage particular territories. MPA are effectively a particular category of territories to protect (Chaboud, Galletti, 2007) without denying the existence of common characteristics between lands protected areas and marine protected areas (MPA). The conservation policy, bound to the creation of MPA and to the implementation of management tools is the result of history: these of public intervention capacities of the State, of the big tendencies, and of the contingencies like the strength of the financiers in sustainable development; but as specific territories, MPA are not enough analysed as tools of public policies and as governance schemes for marine and coastal ecosystems to restore.

Which contributions and which latent effects of this system of governance of a State which wants to be 1) in conformity with international Law, and 2) which would like to be supported by recommendations of the scientific marine research for better deciding? This supposes that international rules be respected and scientific recommendations are done and possible on a legal point of view, and that government's acts be advisable.

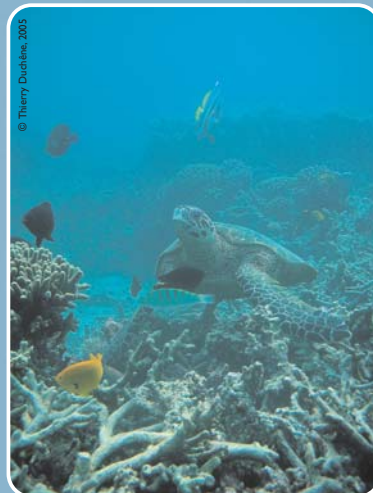
Sometimes, rules of the States, regional or global rules are known. The central State (Presidency, Primature, ministries) pulled between two interventionisms:

- o A will to tune together, on a maritime zone, these multiple influences, general and special administrators, and general and special rules, to preserve several activities (tourism, fisheries, ...).
- o A new centralizing temptation, authoritarian, to make of the perimeter of the MPA a space different from more classic protected spaces.

Depending on whether this or that method is chosen, does the MPA is differently (well/badly) thought of? Do their rules are more respected?

Others elements are fundamental, as the weakness of number of States in developing countries (incapacities of the capacities of control, of penalty, of reclamation, of persuasion, of acceptance, of appropriation, of the rules and the rights). So the allocation of territorial rights to native populations on a MPA is not a sufficient guarantee, but sometimes a solution to act towards sustainable development.

Future marine and coastal areas (Tuléar area in Madagascar for example) illustrate the situation, rather usual in other States of Africa, where the governance of the protected marine areas is the fruit of interactions of "triangular" nature between, on one hand, the State authorities (decision-makers or of management), the speakers and the foreign financiers (governmental or not governmental and sometimes private, with private law status, and often agents of the management), and in a lesser measure the autochthonous populations, their representatives and sometimes the authorities decentralized recently created and operational (cf. also B. Cazalet, 2007).



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Cliffs of Bonifacio, MPA "Réserve naturelle des Bouches de Bonifacio RNBB", South of Corsica, France.



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Nosy tany kely Islet, Nosy Be, North Madagascar.

Nosy tany kely island's reefs, Nosy Be, North Madagascar.

Law is now involved to analyse failure of MPA's governance schemes and their new developments. Moreover, legal gaps and their solutions start to be discussed within many international forums. Do existing legal instruments provide long-term protection? Are they ill-adapted? Will it be possible to create new tools to respond to the new scientific stakes and to economical demands. Often, it is remains that the debatable points are not expressed: who will pay for the "to not destruct" expected from native population or stakeholders, who can compensate the native populations for the loss of "no pillaging" while waiting for benefits to arrive and to be shared? These are economics questions, but economic Law questions either.

## Experimental Law to solve difficulties in marine or coastal zones?

Then one will underline the freedom of action in States in favour of a Law, more experimental, intuitive, fast, of simplified use, or provisional arrangement, to solve difficulties in marine or coastal zones. The slip of a dogmatic Law to an empirical Law is not without risk, even if it answers better sometimes the requirements of sustainable management for fragile, coveted spaces, reserves of development. These Law's forms take part in sustainable development, but don't exhaust them. Isn't it perilous to entrust to them the entirety of the stake of development in terms of conservation, or benefit's division between recipients of development, without control, without responsibility being able to be required?

Coastal fishing, along Tuléar Littoral, South-West Madagascar.



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Ship taking in freight, loading of ship with one man, coastal line of Nosy Be, North Madagascar.



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Improvement of the system of governance related to creation, functioning, and analyze of MPA, is determined by a better knowledge of the processes and experiments.

- o To better define the functions allotted to the protected areas (restoration function, economical function, developing function, to reduce poverty, encouragements of capacities, exclusive conservation, activities reorientation).
- o And to support, consequently, on such public policy and such private mobilization.

In a context of urgency to act reminded by international Law, and of human pressures on the coastal spaces, the comparison better identifies public policies and tools for coastal and marine environment's management in Indian Ocean region. The stakes are not only ecological conservation or restoration, they could be as well a change on sea products mass markets or international markets (food, tourism...), but questions of rights which must be claimed by private citizen or groups inside more democratic relations between State and citizens.

## The determining unknowns in success or failure

- o On administrative point, the ministerial subdivision, competition, or complementarity in governance public schemes and offices or agencies.
- o Influence of the big financiers in the definitive process and especially the MPA's financial functioning.
- o Capacity of future responsables for institutions animating MPA to retie links sometimes broken or distended with the populations and their partners to define a more convergent strategy and more well-balanced cooperations.
- o Negative perception (hinder in their development) or ambivalent of the presence of the MPA by the populations because the development of the fisheries activities is perceived as a fundamental element of the social and economic development.
- o Capacity of the State to surmount the difficulties of the recognition and the guarantee of rights of uses – permanent and territorialized – on a space a big part of which could be dedicated to fisheries.
- o Acceleration of MPA's creation and their legal connectivities in the context of MPAs in clusters or in networks.

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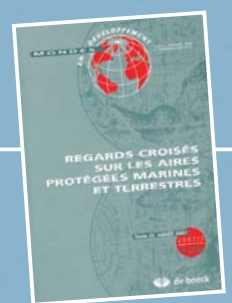
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