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.”

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

- To better define the functions allotted to the protected areas (research function, conservation function, developing function, to reduce poverty, encouragements of capacities, exclusive conserva-
  tion, activities reorientation).

- 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 identify public policies and tools for coastal and maritime environmental management in Indian Ocean region. The stakes are not only ecolo-

gical 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 citizens or groups inside more democratic relations between State and citizens.

The determining unknowns in success or failure

- On administrative point, the ministerial subdivision, composition, or complementarity in governance public schemes and offices or agencies.

- Influence of the big financials in the definitive process and especially the MPA's financial functioning.

- Capacity of future responsibilities for institutions animating MPA to rest at links sometimes broken or distended with the populations and their partners to define a more convergent strategy and more well-
  balanced cooperations.

- Negative perception (finder in their development) or ambivalent of the presence of the MPAs by the populations because the develop-
  ment of the fisheries activities is perceived as a fundamental element of the social and economic development.

- Capacity of the State to surmount the difficulties of the re-
  cognition and the guarantees of rights of uses – permanent and territorialized – on a space a big part of which could be dedicated to fisheries.

- Acceleration of MPA's creation and their legal connectivities in the context of MPAs in clusters or in networks.

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, Le de la Réunion, Indian Ocean, Senegal, Guinea-Bissau,...) or, positioning on two States (as Inter-

national Marine Parks...), or located beyond national jurisdiction (High Seas), it is possible to outline the fundamentals of a system of governance and of Law of the sea and Law of the States 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, these three parts belong to the same unit of capacities and competences distributed between several or institutions to manage particular territories. MPA are effectively a particular category of territories to protect (Chab- 

boud, Galletti, 2007) without denying the existence of common characteristics between lands protected areas and marine protected-

ed areas (MPA). The conservation policy, bound to the creation of MPA and to the implementation of management tools is the result of history of those of public intervention capacities of the State, of the big tendencies, and of the contingencies like the strength of the fin-

ancciers in sustainable development, but as specific territories, MPA are not enough adapted as tools of public policies and as govern-

ance schemes for marine and coastal ecosystems to restore.

Which contributions and which latent effects of this system of gov-

ernance of a State which wants to be 1) in conformity with interna-

tional Law, and 2) which would like to be supported by recommen-

dations are done and possible on a legal point of view, and that governmen-

t's acta be advisable.

Some works and experiences, regional or global rules are known. The central State (Presidency, Primature, ministries) pulled between two interventions:

- A will to tune together, on a maritime zone, these multiple in-

fluences, general and special administrators, and general and special rules, to preserve several activities (tourism, fisheries, ...)

- A new centralizing temptation, authoritarian, to make of the pe-

rimeter 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 res-

pected?

Others elements are fundamental, as the weakness of number of States in developing countries (incapacities of the capacities of control, of power of implementation, of persuasion, of appropriation, of aspor-

ation, of the rules and the rights). So the allocation of territorial rights to native populations on a MPA is not a sufficient guarantee, but some-

times 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 main admini-

stratives, their representatives and sometimes the authorities decen-

trals; on the other hand, local representatives of the populations and the State or complementarity in governance public schemes and offices or agencies.

Law is now involved to analysis failure of MPA's governance schemes and their implementation. Marine legal load and their solutions start to be discussed within many international forums. Do existing legal instruments provide long-term protection? Are they be adapted? Will it be possible to create new tools to respond to the new scientific stakes and to economical demands. Often, it is re-

mains that the debatable points are not expressed: who will pay for the “no more destruct” expected from native population or stakehold-

ers, who can compensate the native populations for the loss of “no po-

lling”, while waiting for benefits to arrive and to be shared? These are economic questions, but legal economic 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, inventive, fast, of simplified use, or provi-

sional 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 exceed them, isn't it perilous to entrust to the uncertainty of the state of development in terms of conservation, or benefit's division between recipients of development, without control, without responsibility being able to be required?

Ship taking in freight, loading, fishing, with a vessel in the area of Nosy Be, North Madagascar.

Coastal fishing, along Tuléar, Nosy Be, South-West Madagascar.

West of Madagascar, along Nosy Be.

Off of Bordeaux, MPA “Touloune natural reserve of Bouches du Rhône (BNBB)”, South of Carcasson Finns.

Tuléar area in Madagascar for example illustrates the situation, rather usual in other States of Africa, where the governance of the protected zones?

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