

8. The international law of the sea in 2017

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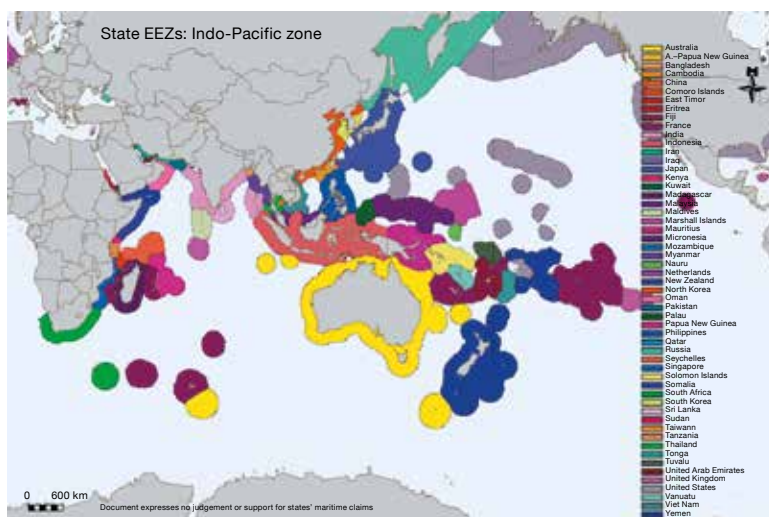
What is the law of the sea?

What definitions of the 'Law of the Sea' should we adopt, if we take the term 'sea' to mean the stretches of salt water that communicate freely and naturally around the world? According to Belgian legal expert Jean Salmon, it means all rules of international law relating to the delineation and legal status of maritime spaces and to the activity regime within the marine environment. However, for Polish legal

expert Jan Łopuski, the Law of the Sea is of a more strategic nature: it regulates the relationships between states concerning the use of the sea and the exercise of their powers over maritime spaces. As a branch of international law, it brings states and international organizations face to face. It differs from maritime law, which is defined as all the legal rules for private interests operating at sea.

The Law of the Sea has a territorial aspect: it defines the usable spaces and attempts to organize

the secure distribution of different parties' rights over these spaces. The map of maritime zones defined by the United Nations Convention on the Law of the Sea (UNCLOS), common law or international rulings marks out established spaces. These include internal waters, territorial waters, contiguous zones, exclusive economic zones (EEZs), continental plates, the high seas, the international seabed, and their subdivisions (fishing zones), or special legal spaces (islands, bays, straits, international canals, archipelagic waters...). The Law of the Sea also has a functional aspect: it indicates how usages should be allocated (transit passages, vessel circulation, fisheries and economic exploitation of maritime spaces or resources). It sets out who has access, exploitation and trade rights for these spaces and resources, but it also reminds users of the obligation to protect certain ecological services rendered. On this point, the service provided by fishing resources has been almost the sole focus of attention, except for the fight against pollution, as shown in the text of UNCLOS, which entered into force on 16 November 1994. Today, the challenge is to ensure that this text produces responses to issues regarding the ecology of ecosystems, their conservation and their exploitation.



Not all of the maritime delimitations shown are recognized by international agreements, and some of them are subject to disputes between states. This document is without prejudice to Member States' sovereignty, and expresses no support for any claim.

Simplified representation of marine water zones covered by the national EEZs. Map created using ThemaMap. © F. GALLETTI and G. DOMALAIN, IRD, 2015. ■

An environmentalist turn

The new Law of the Sea (post-1982), was discussed and compiled with a dual objective: to organize the economic development of states and to resolve interstate conflicts. It is not only concerned with exploitation, but also with conservation and that enigmatic aspiration: sustainability. This reveals that the Law of the Sea and marine environmental law are separate, raising questions about their coordination.

Environmental law approaches the sea with the aim of protecting the natural environment. Although controlling pollution remains at the forefront, this law has recently developed to protect sections of the coast or of coastal zones. It is better known for its protection of (certain) species than for its protection of spaces. Its applications remain notoriously insufficient on the coast, and even more so in the EEZs, while the Law of the Sea gives the state great powers to act regarding its internal waters and its territorial waters. This allows the multiplication of instruments for ensuring that biological diversity stays healthy enough to maintain itself and support exploitation. One such instrument is the establishment of marine protected areas (cf. VII.11).

This brings us to the issue of preserving the biological capacity of environments in waters outside of national jurisdiction (over 200 nautical miles from the coast), and in the benthic zone (over 200 or over 350 nautical miles, depending on the location). This is an important issue, given the depletion of natural biological

resources and minerals, and the increased consumption needs. In these waters, the ecosystems are geographically distant from the coasts, which adds to their difficult legal situation. Matters such as the capacity of the Law of the Sea to establish (or simply not oppose) crucial protections for the operation of marine ecological networks or corridors required by migratory or not entirely sedentary species illustrate the level of thought and intelligent development required.

The existing legal framework

Zones outside of national jurisdiction are referred to as the ‘high seas’ (for the water column alone). They are subject to great freedom of use (fisheries, shipping, navigation, laying of cables...). However, fishing freedom is tempered to varying degrees by the existence of regional fisheries management organizations, which can influence the individualistic fishing behaviour of certain states.

The ocean floor (beyond the legally defined continental

plates) is considered an ‘international deep-sea zone’. Access to its mineral resources is regulated by the International Seabed Authority (ISA). The ISA’s initial task was to issue exploration licences for mining activities, but it has also added requirements to evaluate the environmental consequences of these activities for the geological and biological sites that the licenses cover.

There is a clear need for legal reform beyond zones of jurisdiction. From 2018, this reform should lead to a binding UN text covering six key points: the legal authorization of zonal management instruments, including marine protected areas; access to the marine genetic resource; illegal, unreported and unregulated fishing; environmental impact studies; transfer of knowledge on marine technologies; and finally, the sharing of the benefits and advantages (monetary/non-monetary) of marine resource exploitation. If this agreement comes to fruition, the necessary framework for legal cooperation will require more than just instruments for protecting marine zones, applied in national waters by a state which is more diligent than others.

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Acknowledgements

We have received a great deal of support, without which we could never have produced this book. We would like to thank the chairman and members of the AllEnvi research alliance for their backing of the project, and the executive secretariat of AllEnvi for their assistance, the CNRS Ecology and Environment Institute for their precious support and the scientific communities at the various research performing organizations involved.

The publication's coordinators also express their warmest thanks to the members of the editorial committee for all their hard work and responsiveness, and to all the contributors for their enthusiasm in sharing their knowledge, even within some very tight deadlines! The English version could not have been produced without the efficiency and meticulousness of the translators. The coordinators would also like to thank CNRS Éditions who have provided their support throughout the publication process. Finally, this book could not have been published without the energy and professionalism of Elsa Godet, who threw herself into the challenge of producing the book in both languages.

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Editorial and graphic design:
Elsa Godet (www.sciencegraphique.com)

Translation:
Morris Traduction (www.andrewmorris.fr) and Daphne Goodfellow
p. 166 Graham MacLachlan (Mactrad)

© CNRS Éditions, Paris, 2017
ISBN: 978-2-271-11907-0