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## Overview

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## Overview

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The European program *Human Sea* was selected by the European Research Council in August 2013. It is an Advanced Grant 2013 No. 340770 within the Seventh Framework Programme for Research and Development (or FP7). This research programme is planned over five years from 2014 till 2019.

#### *"Making the sea more human"*

The project deems that one of the roles of the law is to civilise the use of techniques. Technological developments have allowed and will allow the extension of human activities at sea. To what extent does economic activity development at sea lead to the transformation of Maritime and Oceanic Law of the Sea? The research programme held two conferences in the framework of the Scientific Days of the University of Nantes, one on June 5 and 6, 2014 called "*Piracy: From the Sea to Cyberspace*". It addressed piracy and linked work from law historians and general historians to current research being conducted by contemporary legal practitioners and geographers regarding maritime piracy off the Horn of Africa and the Gulf of Guinea. Frantz Mynard and Frédéric Davansant organised the event. The impact the risk of violence has on underwriters and legal jurisdiction was contemplated in the follow up to *Piracy* published by *Pédone et Hart* in 2012, and coordinated by Charles Norchi and Gwenaele Proutière-Maulion<sup>2</sup>. Piracy became part of common language to describe the precariousness of large areas, routes, and in the world of internet, cybercrimes. Internationalisation extends beyond the national framework of States and has complicated the control

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1) Colloque "Piraterie : de la mer au cyberspace", 4 and 5 June 2014, [http://www.msh.univ-nantes.fr/63674436/0/fiche\\_\\_\\_actualite/](http://www.msh.univ-nantes.fr/63674436/0/fiche___actualite/)

2) Prof. NORCHI C. H. et PROUTIERE-MAULION Gw. (dir.), *Piracy in comparative perspectives: Problems, Strategies, Law*, Pédone – Hart, Paris/Londres, 2012, <http://www.pedone.info/piracy/piracy.html>



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and enforcement of activities of businesses set up in one country but operating globally. The second conference on June 11 and 12, 2015, called "*New maritime routes: Origins, evolutions and possibilities*" organised by Odile Delfour-Samama, Gwenael Proutière-Maulion and Cédric Leboeuf, developed a multi-disciplinary approach to this multi-faceted phenomena that is as old as maritime navigation but a real challenge of the 21<sup>st</sup> century. Maritime routes evolve, disappear and are created under the influence of external circumstances, in particular those that are political, economic and technical. Routes in use are the result of how economic, geopolitical and technical data has evolved. They are created, adapted and disappear as a result of external circumstances, in particular political and economic. Oceans remain most often deserted outside these maritime routes. Regardless the origin or transformation of the routes, these new maritime routes of communication have shaken up the global economy and relations among maritime operators. The basis of the conference was to analyse the various disciplines (historical, geographical, political and legal) and provide a comprehensive overview of the causes and effects of new routes as a result of the opening of the Poles, the straits, as well as the conventional routes which are used by more than 50,000 ships of over 500 UMS (Universal Measurement System). Discussions addressed risks and threats which are inherent to routes such as pollution of areas with low human presence and maritime piracy. The melting of the polar pack has opened up two new Arctic routes, one near Russia and the other in Canada. It has also created international tensions and threats to the marine environment. These developments need to be taken into account by political and operational stakeholders, even researchers, so that they may reflect on the anthropogenic pressure and ethical nature of the development of new human-based activities at sea.<sup>3</sup> Have oceans been invaded by the 55,000 large merchant vessels that sail its waters? It is precisely the definition of maritime routes that explains the flow of maritime traffic towards the Strait of Malacca, the Bosphorus and the Channel. There is a main longitudinal axis running west-east and east-west between 55th and 30th parallel north and narrower north-south meridians, as well as a few north-east/south-east diagonals<sup>4</sup>. The world's merchant fleet is not spread out on the entirety of the oceans' vastness. In fact, it is concentrated on very specific routes that link the world's most important economic regions and raw material extraction sites to consumer areas. It is thus necessary to secure ports, vessels and exchanges at the international level.

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3) DELFOUR-SAMAMA O., LEBOEUF C. and PROUTIERE-MAULION Gw. dir. (2016), *Nouvelles routes maritimes - Origines, évolutions et perspectives*. Éditions A. PEDONE, Paris, 2016, 269 p. <http://www.pedone.info/792/NRM.html>

4) FRÉMONT A. "L'espace maritime et marchand : pour une problématique", *Espace géographique*, 1996 Volume 25, Number 3, pp. 203-213. [http://www.persee.fr/doc/spgeo\\_0046-2497\\_1996\\_num\\_25\\_3\\_985](http://www.persee.fr/doc/spgeo_0046-2497_1996_num_25_3_985) - FRÉMONT A., "Les routes maritimes : nouvel enjeu des relations internationales ?" *Revue internationale et stratégique*, 2008/1, n°69, pp. 17-30 - GRATALOUP Chr., *Géohistoire de la mondialisation - Le temps long du monde*, U Géographie, A. Colin, Paris, 2015.



## Seafarers: An International Labour Market in Perspective.

The first publication of the Human Sea European Programme *Seafarers: An International Labour Market in Perspective* examines the developments that took place in the marine merchant sector. This sector was the first to be globalised in the second half of the 20<sup>th</sup> century because of the freedom given to vessel registration and the pacification of the oceans. This industry was mostly deregulated despite conventions adopted by the International Maritime Organisation, SOLAS and MARPOL. The sector was also experiencing significant growth in both international merchandise trade and the merchant navy<sup>5</sup>. 7.4 billion tons of merchandise was transported via maritime routes in 2006 in comparison to 550 million tons in 1950. Maritime transport has acted as a laboratory for globalisation since the 70's through free vessel registration. Ships could only be attached to flag States via the implementation of port state controls and the development of minimum standards of international law established by the IMO through the conventions SOLAS, MARPOL and STCW. The port state control was founded on an equal treatment principle and guides signatories of international conventions on how to ensure ships stopping over in their ports, independently of the vessel's flag, comply with the stipulations set forth by said conventions. The International Labour Organisation was involved in the implementation of the port state control via the 1976 Convention 147 on minimum merchant shipping standards. The Paris Memorandum of Understanding (MoU) was created in 1982 and provided robust guidelines and a common database available to all signatories to control ships. The 1974 STCW Convention, subsequently revised in 1995 and 2010, sets standards of training, certification and watch keeping for seafarers. The adoption of the Maritime Labour Convention in Geneva in 2006 and Convention 188 on Fishing in 2007 completes international law of this globalised sector. This means a globalised sector is no longer associated with deregulation. Now that flag States issue social certifications of vessels under the control of port States, it seems to have made the minimum international norms that much more effective. It will eventually be complemented by international negotiations being conducted by social partners in regards to remuneration.

The book considers the changes in work on board merchant ships. This is the first internationalized sector, due to open registry shipping, search of a skilled and competitive labour force. The 2006 ILO Maritime Labour Convention takes a universal dimension and renews the framework of this sector, including a social certification. Control of ships by the port state contributes to the effectiveness of international standards, and their regionalization. The European social law seeks to integrate the international dimension of this sector, to build a harmonized regional market and to treat shipping companies as any other company. The control of manning companies

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5) CHAUMETTE P. (dir.), *Seafarers: An International Labour Market in Perspective - Gens de Mer : un Marché International du Travail*, Gomylex Editorial, Bilbao, 2016, 428 p.

and the link of seafarers to a social protection system are two particularly complex projects, which might lead to unfair competition.

"From a wider international law perspective, the (Maritime Labour) Convention is of interest because it is one of the growing cadre of conventions that are responding to the search for 'effectiveness of international law' and reaches beyond the 'face' the State sovereignty to directly affect the behaviour of private actors. Even more unusually, The MLC, 2006 contains provisions that seek to apply its requirements to non-ratifying States? IN that sense it can be described as a convention that is 'universal' in its reach".<sup>6</sup> "Does this Convention and the way in which it was developed present model of workable process whereby international conventional law can be designed to be (more) effective and, in particular, in such a way as to affect the behaviour of non-State actors directly, while at the same time operating primarily at the level of State responsibility?"<sup>7</sup>.

Research regarding seafarers was continued during a conference organised by Olga Fotinopoulou Basurko on September 13, 2016 in Bilbao within the framework of Maritime Work Watch, Sea Workers' Labour and Social Conditions International Research Network—*Studying Today's challenges and Future Amendments to the Maritime Labour Convention*. It focused on research stemming from the fishing industry and actions of the International Transport Federation (ITF) and port workers<sup>8</sup>. A follow-up working session will be held in Nantes on June 15 and 16, 2017.

## Maritime Areas: Control and Prevention of Illegal Traffics at Sea.

The second publication of the Human Sea European Programme stems from the conference held in Nantes on October 5 and 6, 2015, titled *Maritime Areas: Control and Prevention of Illegal Traffics at Sea*<sup>9</sup>. The Montego Bay Convention also stipulated the creation of Exclusive Economic Zones (EEZ) to regulate fishing and protect fishery resources from excessive appropriation of marine spaces by coastal States. However, the Law of the Sea still focuses on vessels and does not include new sea-going vessels and the workers that man them<sup>10</sup>. Furthermore, high-sea jurisdiction is not clear because vessel registration has allowed some flag States to be complacent.

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6) McCONNELL M.L., DEVLIN D. & DOUMBIA-HENRY Cl., *The Maritime Labour Convention, 2006 – A Legal Primer to an Emerging International Regime*, Martinus Nijhoff Publ., 2011, pp. 32-33.

7) McCONNELL M.L., DEVLIN D. & DOUMBIA-HENRY Cl., p. 569.

8) <http://www.maritimeworkwatch.eu/es/que-es-mww>

9) CHAUMETTE P. (dir.), *Maritime areas: control and prevention of illegal traffics at sea - Espaces marins : Surveillance et prévention des trafics illicites en mer*, Gomylex Editorial, Bilbao, 2016, 316 p.

10) MIRIBEL S., "Qu'est-ce qu'un navire ?", in *Mélanges en l'honneur de Christian SCAPEL*, C. BLOCH dir., PUAM, Aix-en-Provence, 2013, pp. 279-288.



The link between a vessel and its flag State is more or less lax<sup>11</sup>. Internationally wrongful acts imputable to a ship do not make flag States liable in any way. At most, flag States are to respond "without delay" to requests made by States regarding ship registration. In the *Saiga* case, the International Tribunal for the Law of the Sea simply accepted Saint Vincent's claim without verifying the facts, even though the registration certificate had not been renewed when the ship had been seized by Guinea when caught illegally fishing<sup>12</sup>. The development of illegal activities at sea tests the competences of States and their cooperation at regional levels.

In addition to combating arms trafficking, combating human trafficking is another example of illegal activities at sea. The abolitionist movement sought to bring an end to human trafficking. In 1784, Necker believed that only international efforts would bring an end to human trafficking. England abolished human trafficking in 1807 and slavery in 1833. It took advantage of the Napoleonic Wars to seize enemy slave ships along the coast of Africa and monitor neutral ships under the pretext that it was fighting contraband of war<sup>13</sup>. A military court was set up in Sierra Leone to try the offenders<sup>14</sup>. England forced Portugal to end its slave trade with Africa in 1810, and then South America. At the 1815 Vienna Congress, the world powers signed a declaration to end the slave trade without any other actions. From 1816 to 1841, the United Kingdom increased the number of bilateral conventions, stipulating reciprocal rights of access to merchant vessel by warships, the arrest of slave ships and their diversion to Sierra Leone. The right of access came to be during wartime but was extended to periods of peace to combat illegal trafficking. It limited the freedom of the seas and that of maritime trade. Portuguese slave trafficking was tolerated south of the equator between Brazil and Angola until 1830. Spain only officially abolished slave trafficking in 1845. In 1850, the *Royal Navy* bombed and sank slave ships in Brazilian ports. The Brazilian Parliament passed a prohibition law that was much more effective than that of 1831. On December 20, 1841, the main signatories of the 1815 Vienna Congress granted the British the right to combat the slave trade from the Atlantic Ocean to the Indian Ocean. In 1842, the United States of America committed to maintaining an 80-canon fleet to combat the slave trade. On September 25, 1926, the General Assembly of the

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11) KAMTO M., "La nationalité des navires en droit international", in *La Mer et son Droit – Mélanges offerts à L. LUCCHINI et à J.P. QUÉNEUDEC*, Pédone, Paris, 2003, pp. 343-373 - Sur le pavillon des organisations internationales, HINOJO ROJAS M., "La insuficiente regulación de la cuestión del pabellón en la Convención, de las Naciones Unidas sobre el Derecho del Mar de 1982", in SOBRINO HEREDIA J.M., dir., *La contribución de la Convención de las Naciones Unidas sobre el Derecho del Mar a la buena gobernanza de los mares y océanos*, Editoriale Scientifica, Napoli, 2014, pp. 79-97.

12) TIDM, arrêt du 1<sup>er</sup> juillet 1999, n° 2, demande de prompt main levée. KAMTO M., préc. p. 359.

13) PÉTRÉ-GRENOUILLEAU O., *Les traites négrières – Essai d'une histoire globale*, Gallimard, Paris, 2004, p. 263 et s. - DAGET S., *La répression de la traite des Noirs au XIX<sup>ème</sup> siècle*, Paris, Karthala, 1997.

14) WARD W.E.F., *The Royal Navy and the Slavers: the Suppression of the Atlantic Slave Trade*, London, Allen & Unwin, 1969.

United Nations rejected the proposition set forth by the British to assimilate the maritime transport of slaves to an act of piracy. Governments committed to take all the necessary measures to prevent and suppress the transport of slaves on vessels sailing under their flag. An international convention, similar to that signed on June 17, 1925 regarding the international arms trade, was signed.

Marine areas give rise to various illegal activities at sea: piracy and robbery, human trafficking and illegal immigration, drug trafficking, illegal fishing. The United Nations Convention on the Law of the Sea of 1982, Montego Bay, provides various legal regimes of state intervention at sea, resulting by the establishment of cooperation mechanisms. The evolution of the threat and risk monitoring techniques questions historically interstate practices and today, call upon new players and private services. The book contemplates the fight against piracy, against drug trafficking, against human trafficking, as well as against illegal fishing through the different legal regimes.

The United Nations Convention on the Law of the Sea (UNCLOS) adopted in Montego Bay in 1982 still allows the high sea to be associated to an idea of freedom. However, Article 87 lists the items proposed by the Institute of International Law in Lausanne in 1927 and the 1958 Geneva Convention on the high seas. It includes freedom of navigation, freedom to fly over high seas, freedom to lay submarine cables and pipelines, freedom to construct artificial islands and other installations permitted under international law and freedom of scientific research, subject to Parts VI and XIII<sup>15</sup>. The article is not restrictive. However, the 1972 London Convention and the 1982 Oslo Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircrafts had significantly restricted the freedom to dump waste even without Article 210 of UNCLOS. The Brussels Convention of November 29, 1969 came into effect following the Torrey Canyon oil spill off the eastern part of the Isles of Scilly on March 18, 1967. It consisted of an international convention regarding the intervention on the high seas in cases of oil pollution casualties, affirming the right of coastal States to take measures to prevent, mitigate or eliminate grave and imminent danger of pollution of the sea by oil<sup>16</sup>. It represented a significant departure from the exclusivity granted by the law of the flag State in the interest of the protection of the marine environment. The Protocol of 2 November 1973 extended the right of intervention on the High Seas in cases of pollution by substances other than oil. High-sea jurisdiction is not limited to a ship's registration and the law of the flag State under which it sails. States agree to maintain public order at sea in order to combat human trafficking and the transport of slaves at sea (Article 99 UNCLOS), piracy (Article 100 to 107) and illicit trafficking of narcotic

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15) LUCCHINI L. & VOELCKEL M., *Droit de la mer*, t.1, *La mer et son droit – Les espaces maritimes*, Pédone, Paris, 1990, p. 267-281 – ROTHWELL D.R. & STEPHENS D., *The International Law of the Sea*, Hart, Oxford & Portland, 2010, pp. 154-158.

16) Du PONTAVICE E., *La pollution des mers par les hydrocarbures. A propos de l'affaire du Torrey Canyon*, LGDJ, Paris, 1968 - LUCCHINI L., « La pollution des mers par les hydrocarbures : les conventions de Bruxelles de novembre 1969 », JDI 1970, p. 795.

drugs or psychotropic substances (Article 108) and unauthorized broadcasting (Article 109). Duty to render assistance to any person found at danger at sea, as stipulated in Article 98, corresponds to an active obligation of solidarity that goes beyond a moral, natural and ancient obligation. The UN Convention is conservative in regards to terrorism at sea, the subject of the Rome Convention of 10 March 1988, following the hijacking of the Italian liner *Achille Lauro* in the eastern part of the Mediterranean Sea, which is a multilateral convention for the suppression of unlawful acts against the safety of maritime navigation and protocol for the suppression of unlawful acts against the safety of fixed platforms located on the continental shelf.

If the principle of the law of flag State is the expression at high sea of the sovereignty of States, there can be exceptions to this principle in the event of sufficiently serious infractions and threats<sup>17</sup>. Professor Djamchid MOMTAZ believes the legal framework relating to the prevention and suppression of unlawful acts on the high seas is inefficient because of the tension between global and zonal governance. Global governance strives to fill the gap between an integrated global economy and the continued fragmented world order. In terms of prevention, States are reluctant to allow their ships to be inspected on the high seas and even more reluctant to allow other States to intervene in their territorial waters. In terms of suppression, existing suppression powers and the reluctance of States to exercise their powers weakens global governance<sup>18</sup>. Therefore, only national frameworks and interstate cooperation are in place.

### **Human Sea–Marisk - Economic challenges and new maritime risk management: What is blue growth?**

There are lawful activities being carried out at sea that require security and safety measures. The third publication of the Human Sea European Programme stems from another international conference on October 3 and 4, 2016 in conjunction with the 5<sup>th</sup> International MARISK conference. The objective of the conference was to consider the risks associated to sea-based renewable energies, oil and gas rigs and large vessels. The MARISK conferences were organized by the ENSM (the National Maritime and Naval College of France), which now encompasses the following institutions: École Nationale de la Marine Marchande, École nationale de la Sécurité et de l'Administration de la Mer (ENSAM), École des Affaires Maritimes and the Port of Nantes Saint-Nazaire. Our colleague, Professor Jean-Pierre Beurier, an expert in

17) BEURIER J.P., *Droits Maritimes*, Dalloz Action, Paris, 2006, 1<sup>ère</sup> éd., n° 115.21, 3<sup>ème</sup> éd., 2014, n° 115.21 à 115.27.

18) MOMTAZ D., "Tension entre gouvernance globale et gouvernance zonale dans la prévention et la répression des actes illicites en mer", in SOBRINO HEREDIA J.M., dir., *La contribución de la Convención de las Naciones Unidas sobre el Derecho del Mar a la buena gobernanza de los mares y océanos*, Editoriale Scientifica, Napoli, 2014, pp. 441-453.



the law of the sea and environmental law, was the chair of the scientific committee. It took place in 2005, after the ISPS (International Ship and Port Facility Security) Code went into effect as part of the SOLAS Convention, and subsequently in 2007, 2009 and 2012. Following further research, the final conference of the Human Sea European programme shall take place in Nantes in October 15 and 16, 2018 and it will provide an overview of the evolution of the law of the sea and of maritime law by examining tensions among technological and economic developments and the measures needed to ensure the protection of the marine environment.

Humankind will need to overcome the following challenges in order to achieve Blue Growth: the exploitation of new sea-based energies, further and further and deeper and deeper drilling sites, as well as larger and larger vessels. New economic opportunities are ready to be seized but are not exempt of new risks affecting security, safety and the marine environment. These new challenges are at the core of the Human Sea-Marisk discussions. This event brings together international experts to discuss the latest scientific and technological developments in the port and maritime sector. The maritime, ship and port industry must impose restrictions to protect the environment but it must also be protected against malicious and violent attacks. Security issues are not new but those related to safety are. Players can include public, private and international organisations; States and their administrations; regional organisations; port authorities; economic players; port and port facility management firms; insurance companies; classification societies; security experts and advisers. The participation of these players is usually complementary and non-competitive, but this conciliation should nonetheless be thought through and organised<sup>19</sup>.

## Protection of the marine environment

The biosphere is the only place in the universe where life is possible, at least based on our current knowledge. However, it is threatened by human activities. The biosphere has seen its main elements destroyed, altered and threatened; what's more is that its fundamental balances are at risk of forever being altered. Since the 1960s, humankind has become aware of these dangers and it is only normal that this awareness manifest itself at the international level. Furthermore, international law reacted by enacting several types of regulations. These include conventional regulations, non-binding instruments such as customary norms issued from either the repetition of analogue clauses in treaties or comparable provisions in national legislations<sup>20</sup>. As a result, we can, today, discuss not only the international protection of the environment by law but

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19) CHAUMETTE P. (dir.), *Economic challenge and new maritime risks management: What blue growth? - Challenge économique et maîtrise des nouveaux risques maritimes : Quelle croissance bleue ?*, Gomylex Ed., Bilbao, 2017, 480p.

20) BEURIER J.P., *Droit international de l'environnement*, Ed. A. Pédone, Paris, 5ème éd., 2017.



also of the rights of the environment, progressively recognized as a basic human right<sup>21</sup>.

The Earth is first a blue planet, even if humans cannot live in or on water long term<sup>22</sup>. Oceans play a major role in climatic balances, fish resources and international trade. Offshore gas and oil operations gained momentum because of innovative techniques. The future is without a doubt rooted in renewable marine energy, generated by wind and oceans. Ocean floors house optical cables placed by information and mass communication firms. Humans are more and more found living on coasts and developing various types of commercial activities. Conflicts over marine area use near land have led to such specialized areas such as sea activity planning. The protection of the marine environment is vital to the survival of humankind. Earth fills its oceans. There are currently five plastic continents occupying the Pacific Ocean, known as the "The Great Pacific Garbage Patch", a gyre of marine debris particles in the North Pacific Ocean. The patch is made up of almost a million plastic fragments by km<sup>2</sup> and poses a significant poisonous hazard. The peaceful use of oceans is necessary to the development of maritime activities. Despite the return of violence and piracy at sea, maritime and navel tensions are generally managed peacefully. It is necessary to understand these issues and the range of topics before plunging into further research, innovation, onshore and offshore activities, and maritime activity regulation.

The Earth is round. The Earth is blue. Oceans are made up of salt and rain water. They cover 71% of the Earth's surface. That represents 361 million km<sup>2</sup> and 1.33 billion m<sup>3</sup> of water. Oceans also play a vital role in climatic balance. They absorb two-thirds of the CO<sub>2</sub> produced in the world, which in turn protects the ozone layer and makes Earth liveable. It cools temperatures thanks to condensation which produces rain that falls onto soil; it fills rivers; it ensures land is arable, and rain water ultimately returns to the oceans, ideally not polluted. Both salt and fresh water are essential to life. Life was first born in the oceans and then in the air thanks to the oxygen it contains during the Ice Age. Life then moved on to land approximately 360 million years ago. The first primates are estimated to have lived 55 million years ago. Oceans cannot be inhabited by humans and can be compared to a desert of salt water. This cycle is much more complex than just distinguishing land from sea when describing climate oscillations. Over 5 million years ago, the two American sub-continents joined together and separated the Pacific Ocean from the Atlantic Ocean. It led to the Gulf Stream

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21) KISS A., "Environnement, Droit international, Droits fondamentaux", *Cahiers du Conseil constitutionnel n°15 (Dossier : Constitution et environnement)* - janvier 2004 <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/nouveaux-cahiers-du-conseil/cahier-n-15/environnement-droit-international-droits-fondamentaux.52001.html> - DÉJEANT-PONS M. et PALLEMAERTS M., *Droits de l'homme et environnement, Conseil de l'Europe*, 2002.

22) EUZEN A., GAILL F., LACROIX D. & CURY, PH., *L'océan à découvert*, CNRS Editions, Paris, 2017, 321 p.



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forming in the Atlantic Ocean and the Kuroshio Current in the Pacific Ocean (found between China and Japan). These currents comprised of warmer and colder water are essential to aquatic fauna, fishery resources and maritime navigation<sup>23</sup>.

The recognition of environmental protection as a fundamental right has its origins in the Declaration adopted by the Stockholm Conference on the Human Environment in June 1972. The first principle of the declaration states:

"Man has a fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations [...]."

The content of this principle leads one to believe there is a very strong relationship between the environment and fundamental rights. Terms such as freedom, equality and dignity reflect political and civil law while terms such as adequate conditions of life and well-being reflect economic, social and cultural law.

The first time this right was articulated in an international treaty was in the African Charter of Human and Peoples Rights adopted in 1981. Article 24 states:

"All people shall have the right to a general satisfactory environment favourable to their development."

Article 11 in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, adopted in San Salvador on 17 November, 1988 provides further details. It sets forth the following:

Article 11 - Right to a Healthy Environment:

1. Everyone shall have the right to live in a healthy environment and to have access to basic public services.
2. The States Parties shall promote the protection, preservation and improvement of the environment.

Two other international conventions stipulate State Parties have the obligation of protecting the environment, at least in certain respects. The first, Article 24 in the Convention on the Rights of the Child of 20 November 1989 stipulates State Parties "[...] to combat disease [...], taking into consideration the dangers and risks of environmental pollution". The second, Article 4 in Convention 169 of the International Labour Organization on Indigenous and Tribal Peoples in Independent Countries

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23) ABATE R. S. (dir.), *Climate Change Impacts on Ocean and Coastal Law – US and International Perspectives*, Oxford University Press, 2015. ANDREONE G., CALIGURI A. & CATALDI G., *Droit de la mer et émergences environnementales – Law of the Sea and Environmental Emergencies*, Cahiers de l'Association Internationale du Droit de la Mer – Papers of the International Association of the Law of the Sea, Editoriale Scientifica, Napoli, 2012.



prompts governments to adopt special measures to safeguard the environment of the peoples concerned.

These two aspects of environmental law, human rights and the government's responsibility are either found stipulated jointly or separately in over a hundred national constitutions. It has been questioned if these two provisions are, in fact, not two sides of the same coin, but rather two fundamentally different provisions. The stakes are high—the right to the environment, as a human right, could be interpreted as nothing more than the direct protection of individuals against the deterioration of their environment and neglecting the protection of biological and landscape variety. Allocating responsibility to governments in this area could cover environment as a whole.

The right to the environment has also sparked other debates which could impact the evolution of this subject matter. Three trends emerged consecutively. The first, the oldest and the most generally accepted, is a procedural concept of the human right to the environment. The second seeks to insert environmental concerns in rights already protected by international instruments. The third, still in the trial and error phase, seeks to claim substantive rights that could be linked to environmental protection.

In numerous discussions where the question of if the right to the environment could be recognized as a right attributed to all individuals just like other fundamental rights, the main argument was that the environment could not be defined with sufficient precision and as such, its implementation in judicial proceedings would face substantial difficulties. The response to the first objective can be partly found in various constitutional texts that stipulate this right. It is clear that the term "environment" must be defined, and when necessary, with additional qualifiers. The latter can more or less be developed on humankind and its needs. An interesting position is that of the Peruvian Constitution of 12 July 1979 where Article 123 stipulates that all individuals "have the right to live in a healthy environment, ecologically balanced and appropriate to the development of life and the preservation of the landscape and nature". However, there does not exist a wording that is generally accepted in international law, even if the shared interest of humankind is mentioned in various treaties<sup>24</sup>. The international convention, adopted by the United Nations Economic Commission for Europe regarding information, public participation in decision-making and access to justice in environmental matters on 25 June 1998 in Aarhus (Denmark) codified and complete the regulations herein stated.

Human rights, as a whole, are proclaimed and their respect is guaranteed by a series of international conventions that are either universal or regional. Two of the most recent instruments, mentioned above, contain clauses that explicitly target the

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24) BEURIER J.P., préc. n° 10, p. 29, et n° 303-321, pp. 171-179.

protection of the right to the environment. Older instruments guarantee rights may be invoked in this respect, especially when there are institutions designated to enforcing said rights.

At the United Nations level, the Human Rights Commission, established under the International Covenant on Civil and Political Rights, can receive communications that allow them to defend guaranteed rights. Matters related to the protection of the environment brought before this institution, thus invoked provisions established by the Covenant regarding the right to life and the protection of minorities (Covenant, Article 4 and 27). The right to health, guaranteed by Article 12 in the United Nations Covenant on the Economic, Social and Cultural Rights, has often been evoked as being able to support claims regarding the protection of the environment. However, only the reports issued by the United Nations Human Rights Commission make any such references. The recognition of Human Rights at sea has made substantial progress as a result of the combat against piracy off Somalia<sup>25</sup>.

At the European level, Article 8 (the right to respect for private and family life) and Article 10 (freedom of expression), stipulated in the European Convention for the Protection of Human Rights and Fundamental Freedoms; and Article 1 of its First Protocol (property protection) are the main articles that have been subject to appeals regarding environmental matters before the European Court of Human Rights<sup>26</sup>.

Following the commitments announced by the President of the Fifth Republic of France during the 2002 presidential campaign to integrate the environment into the Constitution, a commission, steered by the Professor Yves Coppens, began working on an Environmental Charter between 2002 and 2003. The Charter was the subject of several consultations and it resulted in a constitutional bill tabled in the National Assembly on 27 June 2003. The bill was included in the preamble of the French Constitution and stipulates the rights and duties defined in the 2003 Environmental Charter, and based on the historical dismissals of the 1789 Declaration and the 1846 Preamble.

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25) PAPANICOLOPULU I., "International Judges and the Protection of Human Rights at Sea", in *International Courts and the Development of International Law – Essays in Honour of Tullio Treves*, BOSCHIERO N. et al., Springer, 2013, pp. 535-544 - MONTAS A., "La lutte contre la criminalité en mer à l'épreuve de la Cour Européenne des Droits de l'Homme", chap. 14, in *La criminalité en mer - Crimes at sea*, K. N. TRAPP et E. PASTAVRIDIS (dir.), Académie de Droit international de La Haye – Boston, Martinus Nijhoff Publishers, Leiden, 2014 – "Les migrants maritimes devant la Cour européenne des droits de l'Homme", *Maritime areas: Control and prevention of illegal traffics at sea - Espaces maritimes : Surveillance et prévention des trafics illicites en mer*, CHAUMETTE P. (dir.), Gomylex, Bilbao, 2016, pp.151-160.

26) MARTIN J.-Chr. & MALJEAN-DUBOIS S., « La Cour européenne des Droits de l'Homme et le droit à un environnement sain », Séminaire UNITAR/ENM Prévention des risques et responsabilité pénale en matière de dommage environnemental : une approche internationale, européenne et nationale, 22 octobre 2008 (publié sur le site de l'UNITAR en 2011 : <http://stream.unitar.org/ilp/pdf.html>).  
<https://halshs.archives-ouvertes.fr/halshs-00734256/document>



The Environmental Charter is comprised of 10 articles and Article 1 proclaims "the right of everyone, individually or in association with others, to enjoy a healthy and ecologically balanced environment<sup>27</sup>".

Human activities at sea have significant adverse effects on the marine environment, rich in biodiversity but fragile. In particular, the ocean is the spillway for all human waste generated on land such as plastic and heavy metals. The five continents of plastic identified at sea, notably the "The Great Pacific Garbage Patch", made up of almost a million of plastic pieces per km<sup>2</sup>, is hazardous, but it is not the result of human activity at sea. It rather derives from onshore discharges released by rivers<sup>28</sup>. Part XII in the 1982 United Nations Convention on the Law of the Sea, also called the Montego Bay Convention, addresses the protection and preservation of the marine environment. It stipulates States shall develop, individually or jointly as appropriate, integrated sustainable development management policies aimed at protecting the marine environment<sup>29</sup>.

The 1972 United Nation Conference in Stockholm was followed by further efforts to implement a global approach. Regional conventions were developed to target specific ecosystems and taking into account region-specific hazards, allowing riparian states to impose a binding framework. There isn't one ocean but diversified seas. The Helsinki Convention on the Protection of the Baltic Sea Area of 22 March 1974 initiated this regional approach. When revised on 9 April 1992, the precautionary principle and the "polluter pays" principle were introduced. The 1992 OSPAR Convention for the Protection of the Marine Environment of the North-East Atlantic established the OSPAR Commission. Since 2010, the Convention has adopted protection measures aimed at high sea biodiversity and marine areas (Mont Milne). The Barcelona Convention of 16 February 1995 for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, a semi-closed sea, was amended on 10

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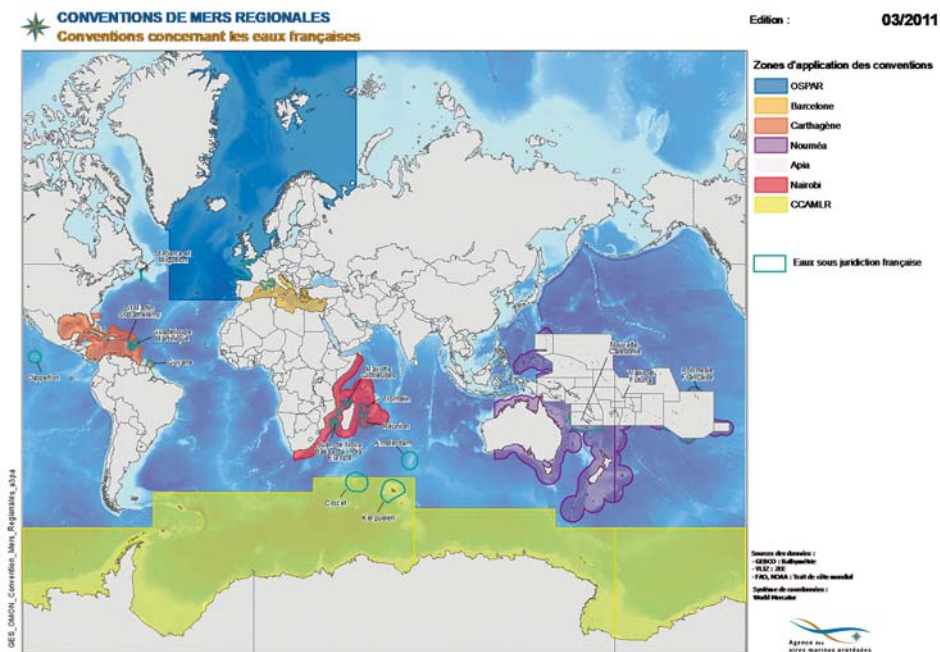
27) MATHIEU B., "Observations sur la portée normative de la Charte de l'environnement", Cahiers du Conseil constitutionnel n° 15 (Dossier : Constitution et environnement) - janvier 2004 - <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/nouveaux-cahiers-du-conseil/cahier-n-15/observations-sur-la-portee-normative-de-la-charte-de-l-environnement.52000.html> - "Juin 2014 : La Charte de l'environnement de 2004", <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/a-la-une/juin-2014-la-charte-de-l-environnement-de-2004.141685.html>

L'arrêt d'Assemblée du 3 octobre 2008 constitue la première décision du Conseil d'Etat annulant un décret pour méconnaissance de la Charte de l'environnement de 2004. <http://www.conseil-etat.fr/Actualites/Communiqués/Le-Conseil-d-Etat-consacre-la-valeur-constitutionnelle-de-la-charte-de-l-environnement>

28) Sur la diversité des pollutions marines, BEURIER J.P., préc. n° 371-375, pp. 211-213.

29) GAUTIER Ph., "Les vertus pratiques des obligations générales relatives à l'environnement dans la Convention des Nations Unies sur le droit de la mer", in *International Courts and the Development of International Law – Essays in Honour of Tullio Treves*, BOSCHIERO N. et al., Springer, 2013, pp. 365-382; Nilufer ORAL, "Implementing Part XII of the UN Law of the Sea Convention and the Role of International Courts", pp. 403-423 ; PINESCHI L., "The Duty of Environmental Impact Assessment in the First ITLOS Chamber's Advisory Opinion: Toward the Supremacy of the General Rule to Protect and Preserve the Marine Environment as a Common Value?", pp. 425-439.

June 1995. The Convention and its protocols constitute a system that other regional conventions strive to implement, strongly backed by the United Nations Environment Program. There are now 12 international regional conventions that cover the Persian Gulf, the Red Sea, the Aden Gulf, western and central Africa, the Caribbean, the South-east Pacific Ocean, Eastern Africa, the North-west Pacific, the North-east Pacific, South Pacific, eastern Asia and the Black Sea<sup>30</sup>.



- Baltic Sea (Helsinki Convention, 22 March 1974/1992)
- Mediterranean (Barcelona Convention, 16 February 1976/1995)
- North East Atlantic (OSPAR 1992/2010)
- Caribbean (Cartagena Convention, Colombia, 24 March 1983)
- South Pacific (Noumea Convention, 24 November 1986  
and Apia Convention, New Zealand, 12 June 1976)
- East Africa (Nairobi Convention, June 21, 1985)
- Antarctica (CCAMLR Convention of Canberra, Australia, 20 May 1980)

The 1982 United Nations Convention on the Law of the Sea more particularly developed the rights and the responsibilities of coastal States. It includes expanding the area of waters under their sovereignty (Article 21) and the creation of the Exclusive Economic Zone under their jurisdiction (Article 56).

30) Sur les conventions régionales de protection de l'environnement marin, v. BEURIER J.P., préc. n° 422- 455, pp. 239-256. BEURIER J.P. (dir.), *Droits Maritimes*, Dalloz Action, Paris, 3<sup>ème</sup> éd., 2014, spécialement, Livre 8 La protection de l'environnement marin, p. 1121 et s.



The additional protocol of the 1976 Barcelona Convention, signed in Geneva on 3 April 1982 addresses specially protected areas in the Mediterranean. Areas located in zones under riparian State sovereignty, the Parties to this protocol shall maintain and/or restore animal and plant to satisfactory levels in areas of scientific, historic or cultural interest; adopt comparable regulations in terms of navigation, operation and environmental protection. It is necessary to further develop scientific research so as to gain a better understanding of the marine environment, and increase public information and cooperation among riparian States. Scientific monitoring of specially protected areas was made mandatory. This Protocol was replaced by the 10 June 1995 Protocol which governs protected marine areas in coastal and high sea waters, and wetlands<sup>31</sup>. When an area has a particular value, States can create "Specially Protected Areas of Mediterranean Importance (SPAMI)"<sup>32</sup>.

The notion of protected marine areas was generalized by the Convention on Biological Diversity (CDB), an international treaty adopted during the Earth Summit in Rio de Janeiro in 1992. It has three main objectives including: the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from genetic resources. The convention recommends the adoption of specific measures to protect specially threatened coastal and marine areas—this is what most regional conventions on marine environment protection advocate for in the creation of such protection areas. Marine Protected Areas (MPA) are areas at sea that have been defined in order to achieve the long term conservation of nature. The Environmental Code of France recognizes fifteen (15) types of Marine Protected Areas<sup>33</sup>. New categories can be recognized by ministerial decree. Most Marine Protected Areas allow reconciling protection measures and sustainable development of activities. Governance methods involve users, elected officials and experts in the

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31) BEURIER J.P. (dir.), *Droits Maritimes*, Dalloz Action, Paris, 3<sup>ème</sup> éd., 2014, spécialement n° 813.45, p. 1152.

32) SCOVAZZI, "Marine specially protected areas and present International Law of the Sea", in *Nouvelles technologies et droit de l'environnement marin*, Kluwer Law, 2000, p. 179 ; "Le protocole Méditerranée sur les aires spécialement protégées", *Annuaire de Droit Maritime et Océanique*, université de Nantes, t. XXI, 2003, p. 350 et s.

33) Au titre du code de l'environnement (article L. 334-1), la France dispose de neuf catégories d'aires marines protégées, qui répondent chacune à des objectifs propres tout en étant complémentaires. Il s'agit : des parcs nationaux, des parcs naturels régionaux, des réserves naturelles, des aires de protection de biotope, des sites Natura 2000, ayant une partie maritime, des parties du domaine public maritime confiées au Conservatoire du littoral, des parcs naturels marins, des zones de conservation halieutiques, des réserves nationales de chasse et de faune sauvage ayant une partie maritime.

C'est ainsi une diversité de concepts et régimes, très large à laquelle il faut ajouter des AMP « internationales » telles que : les réserves de biosphère (UNESCO), les Biens inscrits sur la liste du Patrimoine mondial, (UNESCO), les zones humide d'importance internationale (convention RAMSAR), les aires spécialement protégées du traité de l'Antarctique, les zones marines protégées de la convention Oslo-Paris (convention OSPAR), les aires spécialement protégées d'importance méditerranéenne (convention de Barcelone), les aires spécialement protégées de la convention de Carthage (exemple : sanctuaire Agoa), les zones marines protégées de la convention de Nairobi.



management of a classified marine area. The French Biodiversity Agency supports MPA managers. It manages or co-manages certain MAPs such as natural marine parks, Natura 2000 areas, the specially protected area Agoa in the French Antilles for the protection of marine mammals as per the declaration put forward by France in 2010, and recognized by the 2012 Specially Protected Areas and Wildlife protocol and the Cartagena Protocol on specially protected areas and species, to protect the natural reserve of Belle Henriette (Vendée) between Tranche-sur-mer and Faut-sur-Mer, and the natural reserve of Iroise dans le Finistère.

Marine protected areas need to be seen as sustainable marine and coastal environment management tools. By involving all actors, these defined areas were created to achieve the long term conservation of nature, inclusive of structured economic development. As a result, management measures were defined and implemented. If the protection of species or habitats listed in documents is common to all MPAs, they each pursue a specific objective. The size of marine protected areas depends on why it was first created. The mode of governance, especially who is selected as a stakeholder in the decision-taking process, is based on the local content of the project<sup>34</sup>.

In this publication, **Racha SALLEMI**, geographer at the University of Manouba (Tunisia), associate at the National Museum of Natural History in Paris, wishes to "Sanctuarise to preserve" and analyses "the scope of marine protected areas with regard to fragmented environmental governance".

Sanctuarist logics translating the installation of more or less complete restrictions of the access to natural resources were for a long time dominated the vision of the experts charged with politics of protection and of conservation of coastal and marine ecosystems. Also, let us meet in this context relations sometimes tightened between ecology and geography. It is to note in this respect that ecology and geography strive towards two opposite intellectual poles, the one "pessimistic and biocentric", other "optimistic and anthropocentric" and therefore the thick relations between these two disciplines explain the weakness of the contributions of the advances of ecosystemic ecology at the level of geography. If this disciplinary divergence into the context of the institutional taking care of coastal region and of marine areas is then transposed, they find that then a surprisingly similar diagram with on the one hand the management of biodiversity which remains the prerogative of almost exclusively protectionist institutions. Across, they find "the development of coastal region", which as development policy of States, jostles positions "sanctuaristes" and procreates controversial relations between two politics exercised within the same State locating them so between the search of "biological order" and the fright of "social riot" that this

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34) DELFOUR-SAMAMA O., « Les aires marines protégées, outil de conservation de la biodiversité en haute mer », *Neptunus*, revue électronique, Centre de Droit Maritime et Océanique, Université de Nantes, Vol. 19, 2013/1 <http://www.cdm.univ-nantes.fr>



contribution tries to highlight across a theoretical analysis of the mechanisms of the environmental governance in Tunisia.

**Danilo GARCIA-CACERES**, Doctor of Judicial Science (S.J.D.), University of Paris 1 Panthéon-Sorbonne, lecturer and researcher at the Central University of Ecuador, presents and analyses "The international legal framework of marine environment protection and conservation". Analysing the protection and conservation of the marine environment entails clearly defining each of those terms. In fact, although indifferently mentioned in international instruments or during rounds of diplomatic negotiations leading the pace of geopolitical activities, the notions of environment protection and preservation are not provided with the same objectives. One leans towards an "eco-centric" or "conservationist" approach, while the other leans towards a more "preservationist" approach, "refocusing" the desired outcome of negotiations on environmental matters. In addition to the divergence in philosophy of law, one must add the political factor, namely active cooperation among Parties and the enforceability of the international or regional legal documents resulting from negotiations. This study analyses the current legal framework of marine environment protection and conservation, addressing in particular how various regional and international texts have and continue to focus on the protection, conservation and cooperation of States to achieve improved marine environmental management. The aim shall then to discuss the obligation of prevention, both the cause and effect in the evolution of international regulations.

The need to protect the marine environment and sustainable development gave rise to the evolution of the existing notions, in particular that of the Blue Economy, which results from the work of Gunter PAULI : "The Blue Economy respond to basic needs of all with what you have, introducing innovations inspired by nature, generating multiple benefits, including jobs and social capital, offering more with less"<sup>35</sup>. The first international congress on Blue Economy was held in Madrid in 2013 and advocated for an economy, emulating natural ecosystems to solve economic, social and ecological crisis. On the occasion of the 10<sup>th</sup> European Maritime Day in 2017, the European Commissioner for Environment, Maritime Affairs and Fisheries, Karmenu VELLA, introduced to blue growth (to the Commission), stipulated that Corporate Social Responsibility (CSR) is a key to ensure the sustainable ocean management. Unlocking the full potential of blue growth is dependent on the multiplication of efforts in favour of innovation. The seas and oceans can absolutely generate employment and fuel prosperity but only if they are healthy, safe and managed in a sustainable manner. In order to advance key maritime sectors, such as renewable energies, aquaculture, tourism and marine biotechnologies, the Commission states it is necessary to improve oceanic knowledge, planning and safety. It also states more support is needed and can be achieved by unblocking European funds and improving cooperation among countries, regions and firms. This logic supports the European Union's "Blue Growth"

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35) <http://www.theblueeconomy.org> *The Blue Economy*. Paradigm Publishers, 2010,

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strategy, which combines economic growth and sustainable ecosystems in one coherent policy<sup>36</sup>.

**Ysaac Chavely MBILE NGUEMA**, Doctor in international relations at the University of Yaoundé II – Soa (Cameroun), studies "The efficiency of the African maritime policy in regards to the Blue Economy".

The internationalization of the concept of the blue economy and its appropriation by African states have radically changed their perception of the sea. Today, the sea is considered as a pillar of sustainable economic growth and the well-being of African populations. The ambitions of developing the blue economy and building continental maritime integration expressed in the 2050 African Integrated Maritime Strategy (AIM 2050) and the Lomé charter, the foundations of what is referred to here as African maritime "policy", are a mark of this new era of the maritime history of the continent. The key to achieving the goals we see is the full commitment of African states to promote the blue economy. The purpose of this reflection is to show that the effectiveness of the African maritime "policy" depends on the degree of individual, collective and concrete commitment of African states to enhance the sea. They are then the masters of success or the causes of failure.

**Loïc PEYEN**, Doctor in law at the University of Reunion in France, explores the "exploitation of marine genetic resources beyond jurisdictions towards a new horizon?"<sup>37</sup>.

It appears today that few rules govern the exploitation of marine genetic resources in areas beyond national jurisdiction. This situation is clear both in the high seas and in the international seabed areas, where insufficiencies are important. This current state of law isn't acceptable for many reasons and highlights the need for a new legal status for these marine genetic resources.

The status quo, and therefore the uncertainty of the regime applicable to marine genetic resources on the high seas, was no longer acceptable or feasible. The common interest of these genetic resources must be recognized one way or another in order to limit potential appropriations and exclusive uses. Since 2006, Marie BOURREL and Alexandre LEBRUN have studied the legal framework of marine genetic resources on the high seas. It is necessary to establish the legal framework of marine genetic resources as soon as possible and the most precisely possible because, aside from intrinsic characteristics regarding the status of these resources, their extraction can

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36) [https://ec.europa.eu/maritimeaffairs/policy/blue\\_growth\\_fr](https://ec.europa.eu/maritimeaffairs/policy/blue_growth_fr) Communication de la Commission au Parlement Européen, au Conseil, au Comité Économique et Social Européen et au Comité des régions, *La croissance bleue: des possibilités de croissance durable dans les secteurs marin et maritime* /\* COM/2012/0494 final \*/

37) PEYEN L., *Droit et biopiraterie. Contribution à l'étude du partage des ressources naturelles*, Thèse Droit, université de La Réunion, sous la direction de E. NAIM-GESBERT, 30 mai 2017.



affect areas both located within and outside national jurisdiction. This raises practical difficulties that law must address. The intervention of international law is equally motivated by the fact that the appropriation of living organisms cannot be effectively regulated at the international level, and much more since A.D.P.I.C came into effect, which constitutes the legal framework for the harmonization of industrial property rights. The harmonisation of intellectual property laws is the result of the opening of the world economy and the international development of companies. These companies prefer, for obvious reasons, to operate within a homogenous framework that allows keeping transaction costs low, in particular those related to legal disputes. If technologies are subject to patent law and more generally, intellectual property law, access to technology must be insured in terms that recognize and respect these rights adequately and effectively. It is recommended to ensure the protection of marine genetic resources and their habitats, while ensuring scientific research, exploration, preservation and sustainable use of genetic resources, and ensuring the sustainable use of these resources by industrialised countries equipped with the techniques and developing countries equipped with the resources. However, it is necessary to develop specific principles need in order to attain this objective. These principles would be complementary to the United Nations Law of the Sea Convention, adopted in Montego Bay, and the Biological Diversity Convention. The International Seabed Authority could adopt regulations regarding marine genetic resources, in addition to regulations regarding polymetallic nodules and mineral resources, should this authority be granted to them. In fact, it could adopt provisions on genetic resources of an Area and its waters, while ensuring bio-prospecting activities and genetic resource operation complies with general environment protection obligations.

## Offshore platforms and exploitation of the continental shelf

Oil and gas exploration and exploitation at sea have undergone significant developments in the last decades. Almost a third of the oil and a fourth of natural gas are extracted from sub-sea reservoirs. The recent drop in the price of oil barrels has considerably slowed down investments. Firms are making efforts to cut costs. ENI began production at the Nooros field, discovered in July 2015, off the coast of Egypt. Zohr gas field will begin production in July 2017. The eastern part of the Mediterranean Sea looks promising for the development of sea-based energies. The following accidents showed how ecological risks can result in significant damages: Montara in Australia (2009), Deep Water Horizon in the U.S.A. (2010), Penglai in China (2011), Elgin in the United Kingdom (2012) and Kulluk in the U.S.A. (2012). These accidents revived the need for an international framework<sup>38</sup>. It also brought forth the gap in

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38) ROCHETTE J., "Activités pétrolières et gazières en offshore et protection de l'environnement", in *Le contentieux extractif*, NGWANZA A. & LHUILLIER G. (dir.), ICC, Paris, Chambre de Commerce Internationale, 2015, pp. 125-136.

international conventions that recognised oil tankers but not offshore facilities<sup>39</sup>. At the end of the 1970's, the International Maritime Committee (IMC) requested that the International Maritime Organisation (IMO) elaborate a draft convention regarding offshore mobile units. The draft was reviewed in 1990. In 1996, the Canadian Maritime Law Association published a discussion paper, which was revised in 2000. In 2004, the IMC working group identified that there is little support for this initiative. Several international agreements regarding regional seas take into account the risks generated by offshore activities and determine the prevention regulations<sup>40</sup>.

Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations is the first regional approach<sup>41</sup>. The directive is applicable *ratione loci* to territorial sea, the Exclusive Economic Zone or the continental shelf of the Member State within the meaning of the United Nations Convention on the Law of the Sea (Article 2 § 2). It does not include operations conducted in inland waters of Member States or those conducted at high seas. By way of prevention, Member States must oblige operators to ensure all the necessary measures have been adopted to prevent the occurrence of major accidents during gas and oil operations at sea. In the event of a mayor accident, Member States shall also ensure that operators take all suitable measures to limit its consequences on human health and the environment. In addition, offshore oil and gas operations are to be carried out on the basis of systematic risk management so that the residual risks of major accidents to persons, the environment and offshore installations are acceptable (Article 3). French Law No. 2015-1567 of 2 December 2015 modified its Mining Code as a result of Directive 2013/30/EU of 12 June 2013 on safety of offshore oil and gas operations and Directive 2004/35/EC. The Directive presents gaps in regards to safety measures imposed on operators, especially regarding decommissioning. It does not include European controls, which are left to Member States. It does not give any accountability to European operators with facilities in non-member States.

39) CAMERON P. (2012), "Liability for catastrophic risk in the oil and gas industry", *International Energy Law Review*, Volume 6, pp. 207-219 – SCOVAZZI T. (2012), "Maritime accidents with particular emphasis on liability and compensation for damage from the exploitation of mineral resources of the seabed", In de Guttry A. et al. (Eds), *International disaster response law*, Asser Press, The Hague (The Netherlands), 2012. pp. 287-320.

40) ROCHETTE J. & CHABASON L., "L'approche régionale de préservation du milieu marin : l'expérience des mers régionales", in *Regards sur la Terre 2011*, JACQUET P., PACHAURI R. & TUBIANA L., Armand Colin, Paris 2011, pp. 111-121 – ROCHETTE J., WEMAËRE M., CHABASON L. & CALLET S., *En finir avec le bleu pétrole : pour une meilleure régulation des activités pétrolières et gazières offshore*, Studies N° 01/2014. Iddri, Paris, 2014. 40p. "Seeing beyond the horizon for deepwater oil and gas: strengthening the international regulation of offshore exploration and exploitation", IDDRI, Study N°01/14, 36 p. [http://www.iddri.org/Publications/Collections/Analyses/Study0114\\_JR%20et%20al\\_offshore\\_FR.pdf](http://www.iddri.org/Publications/Collections/Analyses/Study0114_JR%20et%20al_offshore_FR.pdf)

41) THIEFFRY P., « Un régime « Seveso » pour les accidents majeurs liés aux opérations pétrolières et gazières en mer (Directive 2013/30 du 12 juin 2013, relative à la sécurité des opérations pétrolières et gazières en mer et modifiant la directive 2004/35/CE) », *Rev. Trimestrielle de Droit Européen*, Dalloz, 2014 p. 553 et s. – CHAUMETTE P., « Opérations pétrolières et gazières en mer – Adaptation du code minier français au droit de l'Union européenne », <https://humansea.hypotheses.org/405>



The French law No. 2017-1839 of 30 December 2017 put an end to research and hydrocarbon exploitation and stipulates several provisions regarding energy and the environment. Based on the general introduction of the bill, France's energy policy seeks to promote the development of renewable energies and reduce the consumption of fossil energy, including liquid and gaseous hydrocarbons, and contribute to the fight against climate change to keep global warming below 1.5/2°C. This policy also aims to ensure energy supply security and competitive energy prices. In order to achieve these objectives, the bulk of already-identified world hydrocarbons will need to remain underground. Today's exploration will only lead to the production of hydrocarbons in fifteen to twenty years. Therefore, a proactive energy policy, which has been in place for several years, and aims to remain in effect, will lead to a significant reduction of hydrocarbons in our energy mix by 2040-2050. Moreover, when the currently exploited deposits are depleted (decline from 5 to 10% per year<sup>42</sup>) and no new exploration permits are issued, it will lead to a progressive extinction of the national production of residual hydrocarbons. It is already at very low levels, representing less than 1% of our consumption. Efforts supporting energy transition also strive to reduce national production at a faster pace than the natural decline of deposits, while continuing to develop renewable energies and significantly lower fossil fuel consumption.

In this respect, it is not advisable to continue hydrocarbon exploration to discover more reserves in the decades to come. This is why it was decided to no longer issue new hydrocarbon exploration permits on national territory.

In doing so, this law constitutes a very important action, both in its adoption but also because of its exemplary scope and impetus to fight climate change—a key element in protecting the environment, human and biodiversity health, and environmental protection, as per stipulated in the Environmental Charter adopted in 2005. Global warming affects all areas of the world. Ice melts, rising sea levels, changes in precipitation patterns, more frequent extreme weather conditions impact the environment (e.g. droughts and flooding) which in turn impacts agriculture, human health and wildlife<sup>43</sup>.

Chapter I and Chapter VII of the Law brings into force Axe 9 of the Government's Climate Plan, adopted on 6 July 2017, to leave hydrocarbons in the ground. Chapters II to V of the bill include the following provisions that aim at better protecting energy consumers:

- It authorises the government to legislate by decree provisions regarding the security of natural gas supply to French consumers, and in particular, the

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42) Source : projections de production après analyse des données fournies par les opérateurs, Direction générale de l'énergie et du climat, Ministère de la Transition Ecologique et de l'Energie.

43) Les Conséquences du réchauffement climatique, site de la Commission Européenne : [https://ec.europa.eu/clima/change/consequences\\_fr](https://ec.europa.eu/clima/change/consequences_fr)

adoption of regulations on underground gas storage infrastructures to ensure the availability of gas during the winter season, while controlling the cost of said security for consumers.

- It defines the Energy Regulatory Commission's jurisdiction in terms of client management service remuneration collected by energy providers on behalf of distribution network managers so that this remuneration is transparently set by all suppliers and does not engage any additional costs for consumers.
- It ensures the transposition of provisions of the European Directive (EU) 2015/1513 of the European Parliament and of the Council of 9 September 2015, amending Directive 98/70/ED relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources which falls under the Law, and which ensures the quality of biofuels; the reduction of its carbon footprint and the adoption of sustainability criteria.

In summary, the new law is applicable to all areas that fall under the jurisdiction of the Republic of France (both on land and sea) and subject to recognized laws and powers, devolved to overseas communities by applicable regimes:

- It is applicable to overseas departments including: Saint-Pierre and Miquelon; the territory of Wallis and Futuna Islands; the French Southern and Antarctic Lands (as stipulated in Article 8); and uniquely on land in Saint Barthelemy and Saint Martin
- It is not applicable to either New Caledonia or French Polynesia, both on land and sea.

The Law of 13 December 2000 on overseas departments stipulates the transfer of specific mining powers at sea to overseas regions. Its implementation requires a decree which is currently being drafted (the government's draft decree was reviewed by the Council of State's Department of Public Works in 2017). The document, once published, will not question the adoption of this bill, once in effect.

Given the geological characteristics of overseas territory subsurfaces and the potential of hydrocarbons at sea, territories impacted by the bill include Guyana, Saint-Pierre-et-Miquelon and the Scattered Islands in the Mozambique Channel. The potential of Guyana's hydrocarbon inventory allowed demonstrating at this stage, the presence of hydrocarbons without however confirming the commercial nature of this discovery. Ongoing exploration (within the framework of the "Maritime Guinea" permit) will allow completing the inventory phase by 2019. The possibility of an offshore oil field in Guinean waters has not yet been confirmed. If we base it on the Jubilee Oil Field in Ghana (sometimes put forward as a geological model to apply to the Guinean offshore oil field), production could ascend to 80,000 to 100,000 barrels/day during a period of twelve years. This figure is just a comparison and not an assessment of the potential offshore exploitation in Guinea.



In Saint-Pierre-et-Miquelon, hydrocarbon research is much more advanced than in Guinea and resources are not fully known. In the absence of a valid exploration permit, resource inventory would not have been pursued.

The status of the inventory of hydrocarbon resources is also in its very early stages off the Scattered Islands in the Mozambique Channel. Only one exploration permit is currently valid off Juan de Nova Islands. The stoppage of the issuance of new research permits will not allow completing the inventory of resources in this area. A specific tax on exploration, production and works in this area had been implemented by the Administration of the French Southern and Antarctic Territories. It is unclear how much revenue would have been generated in the absence of characterisation of deposits.

This law is highly symbolic. Its impact is low—there are no oil platforms on the French continental shelf, nor on the mainland, nor overseas. There are no known offshore oil reserves where operation is prohibited. French oil production is on land and barely corresponds to 1% of consumption. It is necessary to drop from 1% to 0%. Patrick Pouyanné, CEO of Total said the following regarding the bill, "If I cannot explore in France, I'll explore elsewhere".

The symbolic force of this law can therefore not be ignored. Once more, France wants to set an example and create a catalyst effect. Before France's summit celebrating the second anniversary of the Paris Agreement on 12 December 2017, over 80 economists from 20 countries demanded an end be put to investments in fossil fuels.

*"We call for an immediate end to investments in new fossil fuel production and infrastructure, and encourage a dramatic increase in investments in renewable energy,"* wrote the Americans Jeffrey Sachs and James Galbraith; the Frenchman Patrick Criqui; the British Tim Jackson (University of Surrey) and Charles Palmer (London School of Economics); the Swede, Thomas Sterner; the Japanese, Takeshi Mizuguchi and Shuzo Nishioka; and the former Minister of Finance of Greece, Yanis Varoufakis. *"The French President and other leaders have already expresses the need for a dramatic increase in financial support for climate changes, but they did not mention the other part of the equation: Financing that continues to be granted to new oil, gas, and coal infrastructure and production projects, reads the text.*

French President Emmanuel Macron organised a summit on climate change on 12 December 2017, in Paris, and invited political and business leaders. Greenhouse emissions, at the root of unprecedented climate change, are 75% of the times linked to fossil fuel emissions. According to scientific research, we would need to reduce reserve exploitation, if the world wants to remain below the critical global warming threshold of 2°C. "The investment community has the power to create the conditions necessary to make this change possible", stated the signatories and called to "build a healthy economy while protecting energy industry workers and communities, while





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taking into consideration the limitations of a ravaged planet. They went on to say it was time world economic stakeholders turn to safe renewable energies and development institutions, both in the public and private realm, have an imminent responsibility and the moral obligation to pave the way towards an inevitable transition and its corresponding opportunities<sup>44</sup>.

The European project Human Sea held a seminar on 28 June 2017 in Nantes (France), on oil and gas offshore exploration and exploitation.

**Georgios CHRYSOCHOU**, Hellenic Naval Academy- International Law Section Head at the Hellenic Ministry of Defence, and **Dimitrios DALAKLIS**, associated professor at the World Maritime University (Sweden) examines "Offshore Energy Exploration Activities and the Exclusive Economic Zone Regime: A Case Study of the Eastern Mediterranean Basin".

The concept of Exclusive Economic Zone (EEZ) has been described as a "peaceful revolution" in international law and as the most significant development in the Law of the Sea, since Grotius wrote his famous work "*Mare Liberum*". With the establishment of the EEZ, the conflict between Grotius (*Mare Liberum*) and Selden (*Mare Clausum*) seems to have been won by the latter. Although this is true -and it expresses the victory of the extension of coastal jurisdiction to maritime areas at the expense of its free use and exploitation by all states- yet, what is most important is that the rational and functional use of the sea by all its users should prevail, in conformity with the 1982 Law of the Sea Convention (LOSC) provisions. This stands true since the promotion of international co-operation to achieve a more rational exploitation of the wealth of the oceans is paramount for the global community. The establishment of the EEZ has resulted in a drastic reduction of the area covered by the high seas. Thus, around 95% of world fishing areas and more than 80% of the known underwater oil reserves have come under the exclusive control of coastal states. Interestingly enough, among the rights of coastal states within their EEZs is the issue of offshore energy activities, which has traditionally created tension between neighbouring states regarding the delimitation of that zone. Consequently, a problematic relation between these energy exploration activities and the legal regime of the EEZ is identified; maritime delimitation issues between adjacent states can also negatively influence the use of certain maritime energy supply routes.

The Eastern Mediterranean Basin stands as a perfect example (case study) of the aforementioned consideration, since it holds a paramount role in the contemporary

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44) [http://www.lemonde.fr/planete/article/2017/12/07/l-appel-d-economistes-contre-les-energies-fossiles\\_5225982\\_3244.html](http://www.lemonde.fr/planete/article/2017/12/07/l-appel-d-economistes-contre-les-energies-fossiles_5225982_3244.html) Jean Jouzel (climatologue, ancien vice-président du Groupe d'experts intergouvernemental sur l'évolution du climat) et Pierre Larrourou (ingénieur), [http://www.lemonde.fr/idees/article/2017/12/06/nous-citoyens-d-europe-n-acceptons-pas-que-l-humanite-se-dirige-sans-reagir-vers-le-chaos-climatique\\_5225228\\_3232.html](http://www.lemonde.fr/idees/article/2017/12/06/nous-citoyens-d-europe-n-acceptons-pas-que-l-humanite-se-dirige-sans-reagir-vers-le-chaos-climatique_5225228_3232.html)



global maritime transport system. At the same time its South-eastern part has a huge geo-economic potential for Europe's energy security. Through the specific region and of course via the Aegean Sea, enormous quantities of oil are delivered from the Black Sea (Russia) and the Persian Gulf towards the Western World. However, in the light of energy rivalries and possible forms of co-operation among the respective regional and international actors, relevant issues of maritime delimitation among the neighbouring countries acquire an important security dimension. In this context, it is rather disappointing that the countries in the region, trapped in old antagonistic relations have not yet developed a comprehensive energy cooperative policy that takes into account both the region's current geopolitical posture and their economic growth as a whole. Joined energy synergies in the whole Eastern Mediterranean would certainly contribute to a peaceful future for the region and if managed in the right way, they could initiate important partnerships, which could provide a solid basis for long-term cooperation and economic development.

Therefore, the neighbouring states of the Eastern Med Sea, especially Cyprus, Israel, Greece and Turkey, should seek to maximize their role as alternative energy suppliers of the European Union. This prospect, with the expected future outcome of providing the first non-Russian gas of the so-called southern European energy corridor, imposes considerable benefits, particularly in relation to potential European funding for a pipeline construction (Eastern Med Pipeline), which will transfer to Central and Western Europe large amounts of natural gas. For the time being, it is a self-explanatory fact that the energy resources near Cyprus could be exploited for the energy security of EU as a whole. Apart from certain European countries, other important protagonists of the international arena are also part of this complex equation, with all those that participate in the on-going conflict in Syria standing out.

Nonetheless, linked to the geopolitical dimension there is one more essential parameter: the International Law of the Sea. LOSC provides the necessary framework to define the limits of maritime boundaries between adjacent states, since it is the core document of international conventional and customary law, which regulates issues related to the establishment and delimitation of EEZs. Needless to point out, there are certain obstacles to be resolved so that offshore energy activities in the South-eastern Med Sea will be harmonized with the EEZ legal regime and vice-versa. For the moment, the question of delimitation of maritime zone boundaries in South-eastern Med remains a point of friction for many of the states involved in; considering that not all the neighbouring states are signatory parties to LOSC further complicates the whole situation. The analysis taking place aims to help to better understand that under the requirements of international law, resolving the maritime delimitation issues of the area with regard to the EEZ regime will be a decisive factor, rendering Europe able to use the energy reserves of the specific region for the purpose of diversifying its energy supply sources. As it derives from the abovementioned rationale, the purpose is to highlight the problematic relation between the legal regime of the EEZ, especially its aspect of the delimitation and functional issues, and the geopolitical profile of the

offshore energy activities over this maritime zone, through the case-study of the Eastern Mediterranean Basin.

**Pierre VOLONDAT** addresses the European security challenge of offshore oil and gas activities by means of the adoption and implementation of the Directive 2013/30 of 12 June 2013. Offshore oil and gas facility management and security are all the most necessary by the European oil sector and maturing neighbours. This maturity brings forward two conclusions. Firstly, aging oil deposits drive industry leaders to become less interested in deposits with lower returns. These deposits are often taken over by less wealthy firms who don't necessarily dispose of adequate pollution prevention equipment. Secondly, aging deposits cause firms to find new deposits. Since resources are exhaustible, the European oil sector must inevitably turn to deeper areas, which sometimes present extreme weather conditions. The European Union is committed to protecting the marine environment. The adoption of Offshore Directive 2013/30/EU is the result of Europe's reaction following the accident in the Gulf of Mexico in April 2010. The adoption of this directive can be seen as a testament of a new dynamic in international offshore legislation because the most recent and complete text, adopted in Europe, was the 1994 Barcelona Convention on the protection of the Mediterranean Sea. Effective prevention is the result of continuous monitoring. The question of an international convention specific to gas and oil activities is still being debated.

The Directive only establishes a prevention framework and does not outline specific prevention measures. In fact, some sponsors regret the lack of any legal scope of the stipulated provisions. The Directive's lack of scope and commitment is most notable in the absence of a full liability regime and technical prevention measures that go beyond the creation and transmission of documents. The three-year long endeavour to create the Directive produced an unspecific prevention framework that allows firms to self-regulate<sup>45</sup> their business activities. Self-regulation must be conscientiously conducted in order to ensure effective prevention measures are in place. In fact, industrial players also impact the effectiveness of prevention measures by collaborating with States, but also by implementing internal technical regulations.

**Florian THOMAS** addresses the duty of surveillance of the offshore business network<sup>46</sup>. Offshore oil and gas activities are defined by coastal States but are transnational because several firms, from the wider network, operate on the production site. These firms are interrelated to each other because of contractual obligations such as corporate social responsibility (CSR). The legal significance of corporate social responsibility is unclear. The duty of surveillance, developed by national laws

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45) J. JUSTE-RUIZ, « La directive européenne sur la sécurité des opérations pétrolières et gazières en mer », *Revue juridique de l'environnement* 2014/1, N° 39, p. 43

46) FI. THOMAS, *Les relations de travail offshore - Contribution à l'étude du pluralisme juridique*, Thèse Droit, université de Nantes, 5 février 2018.



and corporate social responsibility regulations, is a hybrid liability instrument for operations. The main offshore oil field operator is responsible for assessing the structure put in place by subcontractors and subsidiaries to ensure it respects the initial contract agreed upon with the host State. The operator is granted the authorisation to explore and exploit the area, and as such, its activities are of general interest. It is equally an economic organisation that is disassociated, from a legal standpoint, from its subsidiaries, which entered the initial agreement, perform the activities and are legally bound to other operators for this respect. The duty of surveillance was first implemented as a corporate social responsibility tool. It was first developed within voluntary and self-governed corporate codes. We can do so by considering "legalising" corporate social responsibility by referencing traditional State structures. This means establishing a clear legal basis that would make non-binding regulations, binding. We can also consider applying a hybrid model when developing tools of accountability<sup>47</sup> and the duty of care would be written here. The legal duty of care structures the law of torts in the framework of transnational corporations<sup>48</sup>. Modern day's industrial risks have large-scale environmental impacts and as such, require the civil liability regime to be revisited. Technical advancements have already paved the way and will lead to preventive duty—not only focused on repairing already caused damage but also preventing such serious and irreversible damages, where repairing loses all meaning. This raises the question of risk accountability and assessment within the liability regime.

The law proposal aimed to establish a duty of care for firms, their subsidiaries and other business partners, who would be sanctioned by presumptive tortious liability of third parties. The law only introduces procedural and documentary duties, as such; non-compliance could engender individual corporate liability as a result of its own negligence.

**Raphael Magno VIANNA GONÇALVES**, Lawyer in Brazil, PhD in Law at the University of Paris 1 Panthéon-Sorbonne, addresses civil liability for offshore oil spill caused by oil tankers and offshore facilities in Brazil "Offshore Oil Spill and punitive damages in Brazil". It will be analysed the legality of punitive damages awards taken by Brazilian courts in addition to compensatory damages. In the Brazilian legal system, the general regime of civil liability for environmental damages results from article 225, § 3 of the Federal Constitution: "*Behaviours and activities considered harmful to the environment shall subject offenders, individuals or legal entities, to criminal and administrative sanctions, besides the obligation to repair the damages caused*". The

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47) J.Ph. ROBÉ, A. Lyon-Caen & S. VERNAC (dir.), *Multinationals and the Constitutionalization of the World Power System*, Routledge, 2016.

48) Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre - G. VINEY et A. DANIS-FATOME, « La responsabilité civile dans la loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre », *Recueil Dalloz*, 2017, p. 1610- T. SACHS, « La loi sur le devoir de vigilance des sociétés mères et sociétés donneuses d'ordre : les ingrédients d'une corégulation », *Revue de droit du travail*, 2017, p. 380.



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civil liability for environmental damage in Brazil is governed by the National Environmental Policy Act of 1981. The goal of the 1981 Act, among other objectives, is the imposition, upon the polluter and the predator, of the obligation to compensate damages and restore the place in which environmental degradation has occurred.

It is therefore clear that the Brazilian legal system, by providing for the obligation to recover the environment or to compensate the damage caused, favours recovery instead of compensation, even if there is the possibility of coexistence between recovery and compensation. The application of punitive damages by Brazilian courts is a very complex subject, notably due to the fact that there is no legal provision authorizing this kind of condemnation. It should be noted that the Brazilian legislation does not provide for this possibility, although the jurisprudence demonstrates that Brazilian courts have been applying this type of punishment. The theory of punitive damage, based on the common law system, advocates that civil conviction, beyond repairing the damage done to the victim, must also deter the perpetrators from committing similar acts (theory of the value of discouragement) and punishes them for antisocial behaviour. The application of punitive damages in Brazil is quite contradictory, since Brazilian legal system adopts the principle of full compensation (based on the abnormally dangerous activity doctrine) to refuse the application of the limitation of liability, but dismisses this same principle to apply punitive damages.

**Kristoffer SVENDSEN**, PhD in Law from the University of the Arctic (Norway), discusses "Civil Liability for Exploration and Exploitation of Offshore Oil and Gas in the Arctic: the situation in the Barents Sea". This chapter shows that there is an inconsistency in the enforcement of compensation claims from Russian injured parties, injured on the Russian side of the Norwegian-Russian sea border by a Norwegian oil company on the Norwegian side of the sea border. This inconsistency puts Russian injured parties in a position where Russian injured parties cannot legally enforce compensation claims against Norwegian oil companies (harm-doers) outside of the Russian jurisdiction.

The chapter shows that there are small hurdles to jump for a Russian harmed party to get access to Norwegian courts *Lex loci damni* is the principle enacted in Chapter 7, with a unilateral extension of protection in delict law to Norwegian interests harmed in Russia, which is not extended to Russian injured parties harmed within the Russian jurisdiction, for situations where the source of harm is located on the Norwegian side of the Barents Sea. This privilege has resulted in discrimination against only Russian interests, which in some situations do not enjoy delict law protection under Chapter 7. A Russian injured party forced to pursue a legal claim against a Norwegian licensee without assets in Russia may receive no compensation, because there is no agreement about recognition and enforcement of foreign court judgments between Norway and Russia. The best of reasons argues for a legislative amendment by the Norwegian Parliament to allow also Russian injured parties to pursue compensation claims against Norwegian licensees inflicting pollution damage in Russia from oil spills on the Norwegian Continental shelf. This ability to forum shop could have preventive and



restorative functions. Such a choice could have a positive effect on limiting cross-border pollution, from which the neighbouring country will have difficulty protecting itself.

**Béatrice SCHÜTTE**, PhD in Law from the University of Aarhus (Denmark), examines "Exploration and Exploitation of Offshore oil and gas - What future for civil liability in the EU". For the petroleum companies, the exploration and exploitation of offshore oil and gas remains an important business. Offshore source production is even likely to increase in the future. Despite a number of accidents causing environmental pollution and harm to people, no overarching civil liability framework is yet in force for the EU. Based on the idea that liability rules can help to increase the level of environmental protection, this paper presents and compares regulatory frameworks on pollution and liability, among them International Conventions, EU Frameworks and selected national laws of EU Member States. The result of the analysis is intended as a starting point for reflections as to what a harmonised civil liability framework could look like. Given the manifold forms of impact on the delicate marine environment, these activities must be thoroughly regulated in order to preserve the oceans for future generations.

In order to provide potential victims of pollution resulting from exploration and exploitation of offshore oil and gas with adequate protection, the rules on civil liability should be harmonised on European level. Considering the problem of transboundary pollution, it is not fair to have people in the same maritime region exposed to the same risks but they may not be able to recover the same amount of damages, depending on the law applicable according to private international law. In addition to that, a duty to establish such a framework is enacted in several international conventions. Pure economic loss should be recoverable if it is not too remote. The burden of proof concerning the economic loss should rest upon the claimant in order to not open the floodgates. For instance, a fisherman claiming the loss of his earnings as fish stocks died from pollution must prove that his fishing area is affected, and he must demonstrate his regular earnings from fisheries. One may also consider limiting the indemnification for pure economic loss to a certain period of time, for instance maximum six months or one year.

Within the framework of *Arctic Frontiers 2018 – Connecting the Arctic*<sup>49</sup>, the Human Sea Program organised a seminar in Tromsø (Norway) on "*Liability and Compensation for Transboundary Petroleum Damage from Offshore Installations*", on 23 January, 2018, and moderated by the Professor Erik RØSÆG from the University of Oslo.

"Petroleum is a commodity that will not disappear in the distant future. This session focuses on one specific risk of exploring and producing petroleum offshore, namely a petroleum spill. Offshore petroleum spills can cause severe damage to people, property,

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49) <https://www.arcticfrontiers.com/>



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the environment, and communities. Who pays for that? The question becomes more complicated when an oil company causes an oil spill in one country and the damage is inflicted in the neighbouring country. How is transboundary petroleum damage treated in the law and how can the situation be improved?"

## **The European dimension of maritime safety and security – Legal and operational aspects of the action at sea.**

The Human Sea Program organised a second seminar on 26 October, 2017 in Nantes (France) on the "The European Maritime Safety and Security Approach – Operational and legal requirements at sea". The objective of this seminar was to analyse the international nature of the EU's and member States actions at sea; sovereignty and resource protection challenges, by looking at treaty obligations and actions of European maritime agencies.

In the last 25 years, almost 40,000 migrants died from either drowning or exhaustion on European borders. 6,000 of those migrants died in 2016, the deadliest year ever recorded. The refugee crisis that has rattled Europe since 2015, has highlighted political institutions inability in providing satisfactory responses to various migrant profiles. As a result of contradictory globalisations, migratory flows have increased around the world. Even though borders are closed and walls are being erected, the difference between migrant and refugee are blurred, departure countries become transit and/or host countries, and vice versa. As a result, the content of citizenship is much more diversified; the expression of the right to mobility of people has arisen around the world. "It is a real world problem, one that has a long time been forgotten—migrations transform and impact international relations, and redefine state sovereignty. They also highlight the urgent need for a new type of diplomacy that is integrated in global and regional governance"<sup>50</sup>.

Since 2000, more than 46,000 people have crossed the Mediterranean Sea and have died at sea, trying to reach Europe. This phenomenon has only worsened in the last years. 2016 resulted in the deadliest in the Mediterranean Sea's history, 5,079 deaths were recorded of the 363,348 people who entered Europe by sea. This figure does not account for boats which disappeared without leaving a trace. Since the 2016 agreement between the European Union and Turkey, the central Mediterranean axis between Libya and Italy has become the first route migrants chose to reach Europe. It is the deadliest migratory axis in the world because of the distance needed to be covered and the dangerousness of crossing in boats that are inept for high

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50) C. WIHTOL de WENDEN, *La question migratoire au XXIème siècle – Migrants, réfugiés et relations internationales*, Les Presses de Sciences PO, Paris 3<sup>ème</sup> éd., 2017 – R. MUNCK (ed.), *Globalisation and migration. New issues, New politics*, London, Routledge, 2009.

seas. 90% of deaths recorded in the Mediterranean take place in the Strait of Sicily, off the coast of Libya<sup>51</sup>.

### ***Interactions between International law and European law***

The European Union is not an ordinary and trivial international organisation. Its relations with international law and its place within the international community are historic and permanent.

The European Union has a broad range of jurisdiction and as a result it participates in the development and implementation of international law, claiming its presence through its behaviour<sup>52</sup>. The European Union is a specific subject matter of international law that inserts itself in the international legal order and develops interactions<sup>53</sup>.

**Serge BESLIER**<sup>54</sup> suggests it is necessary to consider the development of the law of the sea by the United Nations and the relations with the European Union (EU) so that two original systems of governance —that share a common goal— may converge.

The first addresses collective management by all States in a space not appropriated in the United Nations intergovernmental logic. The second is based on a supranational system comprised of sovereign delegations, varying in size. Both are seeking a global and/or coherent management of oceans.

The United Nations and the European Union share a common element, they were both founded to replace legal relations and balance powers among nations. The United Nations has been relatively successful, while the European Union has been able to achieve lasting peace among member States. While the international society remains governed by force structures, even it does not result in the systematic use of armed

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51) SOS Méditerranée, France, rapport d'activité 2017, [http://www.sosmediterranee.fr/medias/rapport\\_activite\\_2016.pdf](http://www.sosmediterranee.fr/medias/rapport_activite_2016.pdf) - P. CHAUMETTE, « Détournement de la convention SAR ? Sauvetage en mer, code italien de déontologie des ONG et garde-côtes libyens », 28 août 2017, carnet de recherche programme européen ERC Human Sea n° 340770, <http://humansea.hypotheses.org/889> ; « Piraterie en Méditerranée et action médiatique ? Les dérives du navire C-Star », 25 août 2017, <http://humansea.hypotheses.org/878>

52) NEFRAMI E., *L'action extérieure de l'Union européenne*, LGDJ, Paris, 2010, FENET A. (dir.), *Droit des relations extérieures de l'Union européenne*, Litec, Paris, 2006 – LAMBLIN-GOURDIN A.S. et MONDIELLI E., *Le droit des relations extérieures de l'Union européenne après le Traité de Lisbonne*, Bruylant, 2013 – DASHWOOD A. & MARESCEAU M (eds), *Law and Practice of EU External Relations*, University of Cambridge, 2008 – CREMONA M. & DE WITTE B. (eds), *European Union Foreign Relations Law : Constitutional Fundamentals*, Hart, 2008.

53) BENLOLO-CARABOT M., CANDSA U. & CUJO E. (dir.), *Union européenne et Droit international, en l'honneur de Patrick DAILLIER*, Ed. Pédone, 2012.

54) Serge BESLIER, Honorary Director of the European Commission and Chief, Administrator of Maritime Affairs (UE Retired).



forms, the enactment of binding legal regulations, sometimes even to an extreme, are at the heart of the European structure.

In terms of maritime security, Philippe BOISSON, PhD in Law<sup>55</sup> and author of the what is considered the "bible" of maritime security, observed that the European Union's maritime security packages, founded on the Erika oil tanker disaster of December 1999 and the Prestige oil tanker disaster of November 2002, form "a coherent set of measures comprised of interdependent elements", that go beyond a mere reaction to a specific incident at sea<sup>56</sup>. In 2007, Philippe BOISSON reflected upon the efficiency of this regional policy and concluded that the European Union had contributed to expediting the international and national normative process, regarding member States<sup>57</sup>. By means of the European integration, the European Union influences international maritime law<sup>58</sup> and harmonises national legislation of member States. European jurisdiction requires member States to hold joint positions within international institutions. The European Union requires member States to enact implementation regulations and controls, complementary to those set out by international standards. The European Union adapts to the international competition in the field of maritime transport, more so than it does so in terms of its domestic market. Philippe BOISSON clearly demonstrates in a fully documented manner, the future of European maritime security law based on relationships with international institutions and integrated implementation<sup>59</sup>. On 7 December 2017, the Employment and Social Affairs Council adopted the agreement concluded among European maritime social partners on the revision of Directive 2009/13/EC regarding the implementation of the 2014 amendments made to the 2006 ILO Maritime Labour Convention. Shipowners shall provide seafarers with up to two months of financial security in the event they are abandoned in a foreign port. The Convention equally sets out shipowners are responsible for providing financial compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard<sup>60</sup>.

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55) *La sécurité en mer*, Thèse droit, Université de Lille, décembre 1979.

56) BOISSON Ph., « L'adoption du 3<sup>ème</sup> paquet ne vient pas modifier les équilibres fondamentaux du système de la sécurité maritime », *Droit Maritime Français*, 2009, n° 705, pp. 579-587.

57) BOISSON Ph., "La politique européenne de la sécurité maritime, source d'efficacité ?", in *L'Union européenne et la mer- Vers une politique de l'Union européenne ?*, A. CUDENNEC et G. GUEGUEN-HALLOUET (dir.), Pédone, 2007, pp. 329-336.

58) A. DEVOUCHE, "L'Union Européenne et le droit du travail maritime : De l'adoption à l'application de la CTM 2006", in *La mise en œuvre de la Convention du Travail Maritime de l'OIT : Espoirs et défis*, A. CHARBONNEAU (dir.), Rev. COMPTRASEC, Bordeaux, 2013, n° 2, pp. 58-64 - S. GAMBARDELLA, "L'Union Européenne et le droit international du travail des gens de mer", in *Seafarer's: An International Labour Market in Perspective / Gens de Mer : un Marché International du Travail*, P. CHAUMETTE (dir.), Gomylex Ed., Bilbao, 2016, pp. 353-392.

59) BELLOYER-ROILLE A., *Le transport maritime et les politiques de sécurité de l'Union européenne*, Apogée, Rennes, 2000 - LANGLAIS P., *Sécurité maritime et droit de l'Union européenne – Étude d'une contribution réciproque*, Thèse droit, université de Paris II Panthéon-Assas, 2016, à paraître Bruylant, *Sécurité maritime et intégration européenne*, 2018.

60) CHARBONNEAU A. & CHAUMETTE P., « Premiers amendements à la convention du travail maritime

European directives regarding the maritime transport of passengers went beyond international requirements. The "communitarisation" of international regulations ensures the harmonisation of implementations by member States. The risk of fragmentation of international regulations remains—banning measures targeting specific ships from European ports could lead to these ships being redirected to areas that are far less coordinated. For example, in February 2006, the passenger ferry al-Salem sank in the Red Sea which resulted in over a thousand victims. The vessel was built in 1970 by an Italian company and named Boccacio. It was sold in 1998 to an Egyptian company and it sailed under Panamanian flag between Saudi Arabia and Egypt.

Serge BESLIER's contribution to the subject studies the implementation of the 1995 United Nations Law of the Sea (UNCLOS) agreement relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks<sup>61</sup>; the United Nations Fishing Agreement (UNFA); and the draft agreement relating to the conservation and sustainable management of biological marine resources that go beyond national jurisdictions. It is necessary to illustrate the drafting process of international agreements at the United Nations and highlighting the role the European Union plays. This comparison also allows understanding the growing influence non-governmental organisations (NGO) have on the international stage. In 2002, two NGOs, WWF and Greenpeace, launched a media campaign against deep-sea fishing. The FAO reacted slowly, mainly because of budgetary issues—NGOs wanted a more policy-driven forum, the United Nations General Assembly. Between 2004 and 2006, the European Union acted as the mediator in order to find a balance between the requested moratorium and maintaining the freedom of fishing status quo<sup>62</sup>.

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de l'OIT de 2006 - Garanties financières en matière d'abandon des gens de mer et de responsabilité des armateurs en cas de décès ou de lésions corporelles », *Droit social* 2014, n° 10, pp. 802-810. Pour des raisons historiques, nous sommes très attachés à ces amendements, CHAUMETTE P., « De l'abandon de marins – Vers une garantie internationale de paiement des créances salariales ? », *Dr. Social* 1999, pp. 872-877 - « Des Résolutions A 930 (22) et A 931 (22) de 2001 de l'Assemblée de l'OMI aux réformes du droit français quant aux garanties de paiement des créances salariales », *Annuaire de Droit Maritime et Océanique*, T. XXII, Université de Nantes, 2004, pp. 239-263 - « Quelle garantie du paiement des salaires dans une activité internationale ? », *Annuaire de Droit Maritime et Océanique*, Université de Nantes, T. XXV, 2007, pp. 125-139 - CHARBONNEAU A., *Marché international du travail maritime. Un encadrement juridique en formation*, Aix-Marseille, PUAM, collection Berthold Goldman, 2009 – Denis NIFONTOV, "Seafarer Abandonment Insurance: A System of Financial Security for Seafarers", LAVELLE J., *The Maritime Labour Convention 2006 – International Labour Law Redefined*, Informa Law, Routledge, 2014, pp. 117-134 - VICENTE PALACIO A., "Control by the Port State and Flag State, and Amendments to the MLC 2006 to protect workers in cases of Abandonment", in *New Trends in Maritime Law*, O. FOTINOPOULOU BASURKO & J.M. MARTIN OSANTE (dir.), Aranzadi, Cizur Menor, 2017, pp. 205-218 - FOTINOPOULOU BASURKO O., "Protecting seafarers in cases of outstanding wage claims resulting from abandonment of vessels and crews", in *New Trends in Maritime Law*, ibidem, pp. 243-280.

61) MOMTAZ D., « L'accord relatif à la conservation et à la gestion des stocks de poissons chevauchants et de grands migrateurs », *Annuaire Français de Droit International*, 1995, vol. 41, pp. 676-699.

62) BESLIER S., « Gouvernance de la haute mer. Vers un accord d'application pour la conservation et la gestion durable de la biodiversité marine au-delà de la juridiction nationale ». *Annuaire du Droit de la Mer*,

The resolution, adopted in June 2015 by the United Nations General Assembly, paved the way for a third agreement implementing the United Nations Convention on the Law of the Sea. This agreement completed the Convention by introducing a high seas governance model based on an integrated management of marine ecosystems and granting marine resources a legal status. The preparatory work, conducted by the informal working group and the preparatory committee, who only had met for the first time in 2016, which led to the adoption of this resolution, demonstrates that the two years granted to the committee to reach a consensus would not be too long to overcome the differences separating States participating in the negotiation. It was necessary to reach a consensus before the General Assembly could request a diplomatic conference to draft this agreement. Unable to achieve the desired moratorium, the two NGOs rallied behind the European Union's initiative on the sustainable use of marine biological diversity, and the conservation and management of living resources in the high seas. Is it necessary to specifically consider fishing in this project or should one focus on the exploitation of genetic resources?

**Danilo GARCÍA-CÁCERES**, Doctor of Judicial Science (S.J.D.), University of Paris 1, Panthéon-Sorbonne, lecturer & researcher at the Central University of Ecuador, examines "The European Union's actions at sea and the protection of human rights. *The international community, as a whole, and States have the legal obligation to protect and promote human rights to contribute directly in the European Union's action at sea. The European Union respects fundamental rights as general principles of law and it is visible in its humanitarian commitments. The European Union's actions at sea represent an even greater humanitarian challenge. The European refugee relocation system struggled to get implemented because several member States failed to adopt it. On 1 February 2018, the European agency, Frontex, launched Operation Themis in the Mediterranean and Adriatic seas. It follows Operation Triton.*

The European Union asserted its foreign policy and common security policy thanks to EU NAVFOR Somalia, also known as Operation Atalanta, a counter-piracy military operation off the coast of Somalia<sup>63</sup>. In 2012, the EU launched EUCAP Nestor, a program which contributes to the establishment and capacity building of maritime civilian law enforcement capability in the Horn of Africa and the West Indian Ocean.

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Pédone, 2015, tome XX, p. 507 et s – MORIN M., « La résolution annuelle sur la pêche de l'Assemblée générale des Nations Unies », *Annuaire de Droit Maritime et Océanique*, université de Nantes, t. XXXIII, 2015, pp. 263-279.

63) PROUTIERE-MAULION Gw., « De la capacité de l'UE entant qu'acteur régional à développer une action à vocation universelle – De la lutte contre la piraterie à la lutte contre les trafiquants et passeurs dans le cadre de l'immigration clandestine », in *Maritime areas : control and prevention of illegal traffics at sea / Espaces marins : surveillance et prévention des trafics illicites en mer*, P. CHAUMETTE (dir.), Gomylex Ed., Bilbao, 2016, pp. 161-177 – GUILFOYLE D., *Modern Piracy. Legal Challenges and Responses*, Edward Edgar Publ., 2013 – NORCHI C.H. & PROUTIERE-MAULION Gw., *Piracy In comparative perspective: problems, strategies, law*, Pédone – Hart, 2012.



The EU has an active role in Operation Ocean Shield, NATO's counter-piracy contribution, there are Russian and Chinese forces operating out of Djibouti as well as the armed forces of India<sup>64</sup>. In 2013, the EU announced the development of a new operation to reinforce security in the Gulf of Guinea (CRIMGO). Can this global-regional approach be reproduced to address the migratory movements seen since 2015, in particular via the Mediterranean Sea? The European Union faced an unprecedented crisis and it let Italy and then Greece to tackle it on their own. Then, other member States closed their land borders. In June 2015, the EU finally launched EU NAVFOR MED and Operation Sophia to dismantle the network of migrant traffickers and smugglers, and prevent the loss of life at sea<sup>65</sup>. This military operation is supplemented by the presence of the EU in the Mediterranean Sea as part of operations conducted by the European agency FRONTEX, Triton and Poseidon. On 9 October 2015, the United Nations Security Council adopted Resolution 2240 (2015), authorising Member States to seize vessels that were confirmed as being used for migrant smuggling of human trafficking from Libya<sup>66</sup>.

As noted by Kiara NERI<sup>67</sup>, the United Nations collective security system is, in theory, ineffective to address illegal activities performed by private individuals.

**Federica MUSSO**, PhD in Law, University of Macerata (Italy), presents "The European Union's military commitment to fight migrant trafficking at sea and the United Nations Security Council's role". In order to fight against migrant smugglers in the Mediterranean, the European Union launched Operation Sophia. The mandate outlines military measures that could result in the use of force. The United Nations Security Council, exercising its power in the maintenance of international peace and security, authorised the partial implementation of the Operation and expressed itself in an

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64) LE GOFF R., *La protection des navires soumis au risque de piraterie*, Thèse droit, université de Nantes, 2016.

65) MANIATIS A., "Maritime migrant smuggling", *Annuaire de Droit Maritime et Océanique*, université de Nantes, t. XXXIV, 2016, pp. 11-19 - COPPENS J., "Interception of Migrant Boats at Sea", in MORENO-LAX V., PAPA STRAVRIDIS E. (eds.), *'Boat Refugees' and Migrants at Sea: A Comprehensive Approach*, Brill-Nijhoff, 2016, p. 213 et s. - TEPHANY Y., « Sauvetage et migration maritime » *Carnet de recherche Human Sea*, 30 octobre 2015, <http://humansea.hypotheses.org/369> - CHAUMETTE P., « Détournement de la Convention SAR ? Sauvetage en mer, code italien de déontologie des ONG et gardes-côtes libyens », *Carnet de recherche Human Sea*, 28 août 2017, <http://humansea.hypotheses.org/889>

66) Résolution 2259 (2015) du Conseil de sécurité du 23 décembre 2015, [http://www.un.org/fr/documents/view\\_doc.asp?symbol=S/RES/2259\(2015\)](http://www.un.org/fr/documents/view_doc.asp?symbol=S/RES/2259(2015)) - Communiqué de presse de l'ONU, <https://www.un.org/press/fr/2017/cs13015.doc.htm> Conseil de sécurité, Résolution 2380 du 5 octobre 2017 - BEVILACQUA G., "Exploring the Ambiguity of Operation Sophia Between Military and Search and Rescue Activities", in ANDREONE G. (ed.), *The Future of the Law of the Sea*, Springer, 2017, p. 165 et s. - MIRON A., "L'ordre juridique de l'UE et l'ordre juridique des NU : les résolutions du Conseil de sécurité dans l'ordre juridique de l'UE", in BENLOLO-CARABOT M., CANDSA U. & CUJO E. (dir.), *Union européenne et Droit international, en l'honneur de Patrick DAILLIER*, Ed. Pédone, 2012, pp. 689-717.

67) NERI K., *L'emploi de la force en mer*, Bruylant, 2013, p. 230 et s.



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atypical manner—migrant trafficking off the coast of Libya was not explicitly classed as a threat against international peace and the classic articulation of "all necessary measures" was replaced by "all the means resulting from specific circumstances". The Security Council's cautious approach in the determination of circumstances justifying the use of force or the authorisation of coercive powers can be explained by the situation the Council was facing, clamping down on unlawful activities, conducted at sea and involving migrants. It was necessary to find a balance between the law of the sea, human rights and collective security. The Security Council used its power to resort to military measures and used Chapter VII as the legal basis for its actions. However, it failed to perform the qualification operation in accordance with the terms set out in Article 39, stating that migrant trafficking presents a danger to human life and States must use their powers, under the law of the sea, and are authorised to resort to coercive measures, implying the use of force at high sea, in lieu of the failed state of Libya.

Federica MUSSO points out that the European Union's militarised participation to tackle the migratory crisis in the Mediterranean, preceded the activation of the United Nations collective security system, and in particular, the Security Council resolution, requesting UN member States to fight migrant trafficking, contrary to what took place with Operation Atalanta, relating to the fighting piracy in the Horn of Africa<sup>68</sup>. The Security Council tried to not offend Libyan authorities and destabilise the efforts to build a true state authority.

Afterwards, Italy was able to almost put an end to unlawful maritime trafficking with these powers. However, the migrant situation is catastrophic in Libya and the crossing to Spain is far from being safe<sup>69</sup>. The Italian Admiral, Commander of Operation Sophia, Enrico Credendino declared on 22 November 2017 that they had have arrested 119 presumed smugglers, destroyed vessels, trained 201 coastguards and had rescued almost 42,000 people at sea. He says the objective of providing coastguard training to 400 individuals is to equip Libya with the skills necessary to correctly work at sea and this is why the EU, the UNHCR and the IOM trains these team to respect human rights and international humanitarian law regulations. He also pointed out that maritime operations had become more difficult because it was not only coast guards who were patrolling the water but also militias impersonating the coast guard by dressing and using the same boats, making it difficult to set them apart.

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68) TANCREDI A., "Di pirati e Stati falliti: il Consiglio di sicurezza autorizza il ricorso alla forza nelle acque territoriali della Somalia", *Rivista di Diritto Internazionale*, 2008, pp. 937-966 - TREVES T., "Piracy, Law of the Sea, and Use of Force: Developments off the Coast of Somalia", *European Journal of International Law*, 2009, pp. 399-414.

69) CHAUMETTE P., « Détournement de la Convention SAR ? Sauvetage en mer, code italien de déontologie des ONG et garde-côtes libyens », *Carnet de recherche Human Sea*, 28 août 2017, <http://humansea.hypotheses.org/889>



In July 2017, the European Council renewed Operation Sophia until December 2018.

**Chahira BOUTAYEB**, Lecturer & HDR at the University Paris 1 Panthéon-Sorbonne, considers «The irresistible construction of a maritime safety area». As regards maritime security, EU action has increased since the 1980's and 1990's. Also its content became more dense: the safety of persons and of ships, the maritime borders of the Member States and the protection of the marine environment. The protection of the maritime borders is subjected to contemporary challenges, based on geopolitical changes and the influx of immigrants. The European Commission (EC) proposed the creation of a European body of frontier guards and coast guards, which should be provided with the right of intervention in case the respective Member State is not able to deal with the migratory pressure. In December 2015, the European Commission issued a number of proposals. The idea is to be part of a logic of significant reinforcement of the security framework. Indeed, it involves strengthening Frontex's mandate, for example by allowing it to directly acquire equipment, by substantially increasing its human and financial resources, and by developing its role in operations back. The new European Border and Coast Guard Agency will act in a supporting role for the Member States in need, as well as in a coordinating role in the overall management of Europe's external borders. The balance prevailing between the different lines of action of the EU is delicate, with the inherent risk of a change in security concerning the protection of the maritime borders.

### ***What challenges for a new European maritime governance?***

**Peter LANGLAIS**, PhD in Law from the University Paris 2 Panthéon-Assas, presents and analyses, "The European Maritime Security Agency: Between mission diversification and reinforcing measures, the limits of European maritime integration". The creation of a specialised Agency allows a clear identification of a European policy, by giving it institutional visibility and appropriate expertise. It results from a compromise between the impetus for integration brought by pragmatism on the one hand, and the existential reluctance of national authorities to entrust powers to new entities, which might escape their control on the other hand. EMSA is no exception; the internal institutional complexity of the national maritime administrations as well as the human, economic and environmental stakes of maritime safety issue make it a special theatre of these tensions. Its creation in response to the sinking of the *Erika*, then the expansion of its missions and the consolidation of its resources, went balanced by a strengthened control of the national authorities on its activities. With limited autonomy, the Agency appears to be an interface of cooperation between the national maritime administrations and between them and the institutions of the European Union. If EMSA could originally be seen as the spearhead of an emerging European maritime administration, this tends now to be based on a three-pole structure where Frontex may become the keystone, in response to the migratory crisis.

Maritime security law is disaster and prevention law<sup>70</sup>. The sinking of the Titanic on 15 April 1912 led to the creation and the adoption of the international Convention for the Safety of Life at Sea (SOLAS) in 1914 by the United Kingdom, France and the U.S.A.<sup>71</sup>. International maritime security law is characterised by four pillars. The first three pillars were adopted within the framework of the MLC, in London; the SOLAS Convention; the 1973 MARPOL Convention for the Prevention of Pollution from Ships, as modified by its 1978 protocol; the STCW Convention (International Convention on Standards of Training, Certification and Watchkeeping for Seafarers), adopted in 1978 and revised in 1995 and then in 2010. The fourth pillar of International Maritime Law is provided by the Maritime Labour Convention, adopted by 2006 by ILO in Geneva, and introduced in August 2013, ratified by 84 States in 2017, which represents 91% of the world fleet. This is an international convention of universal scope<sup>72</sup>.

The European policy on maritime security was first deployed in 1978 to ensure the cohesion of the internal market and fair competition<sup>73</sup>. Following the Amoco Cadiz oil spill in March 1978, Council Recommendation 78/584/CEE of 26 June 1978 requested member States to ratify the 1974 SOLAS Convention and its 178 protocol; the 1973 MARPOL Convention and its 1978 protocol; Convention 147 of the 1976 ILO concerning minimum standards in merchant ships; and Council Recommendation 79/487/CEE of 15 May 1979 concerning the ratification of the 1978 STCW Convention by member States. The European Community did not consider unilateral measures, similarly to the 1900 Oil Pollution Act introduced by the U.S.A. following the 1989 Exxon Valdez oil spill in Alaska. This was also the case following the 1999 Erika oil spillage and the 2002 Prestige oil spillage. However, the European Union put significant pressure to eliminate single-hull oil tankers and succeeded in pushing its agenda onto International Maritime Organisation.

The 1992 Maastricht Treaty opened the qualified majority rule in the area of transportation and Community powers in environmental protection. The Council issued a Commission communication on 25 January 1993 regarding common maritime security policy. The European competence asserted itself, paving the way for the communitisation of international regulations<sup>74</sup>. The creation of the European Maritime

70) BEURIER J.P., « La sécurité maritime et la protection de l'environnement : évolutions et limites », *Droit Maritime Français*, 2004, n° 645, pp. 99-112.

71) BOISSON Ph., *Politiques et Droit de la sécurité maritime*, Bureau Veritas, Paris, 1998, pp. 32-36.

72) M. McCONNELL, D. DEVLIN & Cl. DOUMBIA-HENRY, *The Maritime Labour Convention*, Martinus Nijhoff Publishers, 2011 – McCONNELL M.L., "The Maritime Labour Convention, 2006—reflections on challenges for flag State implementation", *World Maritime University, Malmoe, WMU J Marit. Affairs* 2011, n° 10, pp. 127–141 - CHAUMETTE P. (coord.), *Seafarer's: An International Labour Market in Perspective / Gens de Mer : un Marché International du Travail*, Gomylex Ed., Bilbao, 2016.

73) LANGLAIS P., *Sécurité maritime et droit de l'Union européenne – Étude d'une contribution réciproque*, Thèse droit, université de Paris II Panthéon-Assas, 2016, publiée aux éditions Bruylant, *Sécurité maritime et intégration européenne*, 2018.

74) BELLOYER-ROILLE A., *Le transport maritime et les politiques de sécurité de l'Union européenne*,

Security Agency in 2002, in Lisbon, was a major step forward, as was the European Parliament Directive 2009/21/EC of 23 April 2009 on compliance with flag State requirements<sup>75</sup>. When the ship social certification requirement was added to the Directive, adopted from the 2006 ILO Maritime Labour<sup>76</sup>, some landlocked EU member states failed to develop a maritime legislation on vessel registration because they first need to put in place a competent maritime authority. These decisions support the analysis put forward by our colleague Moira McCONNELL, who believes that the ILO Convention could reduce the number of complacent number of member States<sup>77</sup>.

Under the influence of the European integration, the EU influences international maritime law<sup>78</sup> and harmonises State member national legislations. European authorities require member States to maintain common positions within international institutions. The EU also requires member States to comply with complementary implementation and control regulations. The EU adapts itself to international competition in the area of maritime transport, more than it does via its domestic market. The European Maritime Security Agency has seen its powers grow in terms of maritime security and its coast guard obligations.

In **France**, CIMER (the interdepartmental committee on oceans) created the coast guard role on 8 December 2009 to implement a comprehensive body, equipped to face the maritime challenges of our century. While maintaining the expertise of existing administrations at sea, the creation of this body was the only action taken vis-à-vis the Government's priorities at sea. This body acts within the strategic national framework for oceans and seas ("*Livre Bleu*" du 8 December 2009).

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Apogée, Rennes, 2000 - ZAMORA ROSELLO M.R., *La seguridad marítima – problemática y alternativas institucionales*, Thèse droit, Universidad de Málaga, 2008 – P. CHAUMETTE, *Droits Maritimes*, J.P. BEURIER (dir.), Dalloz Action, 3<sup>ème</sup> éd., 2014, chap. 214.

75) NESTEROWICZ M., « Le rôle de l'Agence européenne pour la Sécurité Maritime (EMSA) : Une perspective juridique sur l'application de la législation communautaire en matière de sécurité maritime », in *L'Union européenne et la mer- Vers une politique de l'Union européenne ?*, A. CUDENNEC et G. GUEGUEN-HALLOUET (dir.), Pédone, 2007, pp. 199-204.

76) Directive 2013/54/UE du Parlement européen et du Conseil du 20 novembre 2013 relative à certaines responsabilités de l'État du pavillon en ce qui concerne le respect et la mise en application de la convention du travail maritime, 2006.

77) McCONNELL M., "A delicate balance: The seafarers' employment agreement, the system of the maritime Labour Convention, 2006 and the role of Flag States", in *Seafarer's: An International Labour Market in Perspective / Gens de Mer : un Marché International du Travail*, CHAUMETTE P. (coord.), Gomylex Ed., Bilbao, 2016, pp. 119-173.

78) A. DEVOUCHE, "L'Union Européenne et le droit du travail maritime : De l'adoption à l'application de la CTM 2006", in *La mise en œuvre de la Convention du Travail Maritime de l'OIT : Espoirs et défis*, A. CHARBONNEAU (dir.), Rev. COMPTRASEC, Bordeaux, 2013, n° 2, pp. 58-64 - S. GAMBARDELLA, "L'Union Européenne et le droit international du travail des gens de mer", in *Seafarer's: An International Labour Market in Perspective / Gens de Mer : un Marché International du Travail*, P. CHAUMETTE (dir.), Gomylex Ed., Bilbao, 2016, pp. 353-392.



The coast guard role ensures maritime administration actions are coherent and provides and provides more international visibility on matters of the sea, where States should not be confining themselves to their borders. The coast guard department reports into the Prime Minister and is implemented by the Secretary-General of Maritime Affairs (Decree of 22 July 2010). COFGC is the coast guard operational centre, an interdepartmental centre, which reports into the Secretary-General of Maritime Affairs. COFGC was implemented on 20 September 2010 and it is comprised of approximately fifteen agents from seven different departments: the National Marine, National Armed Forces, Coast Guard, Customs, National Police, Civil Security and Maritime Affairs. The purpose of its creation is to reinforce the interdepartmental organisation's actions and presence at sea; and improve inter-departmental coordination and performance while better positioning the body to be included in the European organization.

Its mission is to:

- Establish and maintain optimal maritime conditions, designated to inform the Prime Minister and the government by issuing the daily maritime reports (referred to BQSM in France).
- Disseminate maritime information to governmental and interdepartmental crisis management centres.
- Establish itself as the centre of reference for international and European exchanges with other maritime centres.
- Conduct analyses to strengthen and adapt the coast guard, and in turn contribute to the development of France's maritime policy.

**FRONTEX** (European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union), established by EC Regulation No. 2007/2004 of the European Council on 26 October 2004<sup>79</sup>, tried to do so but it was overwhelmed by the scale of migration and the number of incoming refugees. The European Union studied the issue which led to the overhaul of the Border Code in order to tackle the situation in a more efficient manner and aid Member States, who were directly affected by the migratory crisis such as Greece and Italy. The reform was necessary not only to address available resources but also the powers of the Code. In this respect, the European Coast Guard project, with its wider scope of powers, was presented on 15 December 2015<sup>80</sup> and it became Regulation (EU) 2016/1624 of the European Parliament and Council of 14 September 2016, on the European Border and Coast Guard.

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79) Règlement n° CE/2007/2004 du 26 octobre 2004 portant création d'une Agence européenne pour la gestion de la coopération opérationnelle aux frontières extérieures des États membres de l'Union Européenne.

80) Commission Européenne, 2015. Communication de la Commission au Parlement Européen et au Conseil, *Un corps européen de garde-frontières et de garde-côtes et une gestion efficace des frontières extérieures de l'Europe* [en ligne]. 15 décembre 2015

It is vital for the EU to control its external borders and its maritime space<sup>81</sup> - "The EU and its Member States have a strategic interest in identifying and addressing security matters regarding the sea and maritime border management, pertaining to their territory but also of the wider global domain". In view of the various issues, the EU opts for a multi-agency approach in order to increase efficiency when managing maritime issues<sup>82</sup>. FRONTEX must intervene at sea while respecting international law, the UN Convention on the Law of the Sea, free access to high seas, flag State prerogatives, the 1979 Hamburg Convention on maritime search and rescue. The Security Council authorised Member States to intercept vessels off the coast of Libya, suspected of migrant and human trafficking<sup>83</sup>.

The Council's decision of 26 April 2010 and the Regulation of 15 May 2014 set out the legal framework of operations in high seas by Member States and coordinated by Frontex. They are not in conflict with UNCLOS provisions because they both contain the flag State authorisation regulation, except for stateless vessels and in the event of search and rescue missions.

Operational progress is relative and monitoring efforts are reinforced. The European Border and Coast Guard Agency (Frontex) can operate on Member State borders without having been granted authorisation. Frontex oscillates between communitisation and inter-governmentability. Its powers were expanded when dealing with foreign States, thus reinforcing border control externalisation. The border and coast guards supplied by Frontex to the European Corps are either their own experts or national experts seconded by Member States. Frontex continues to fight terrorism and cross-border crimes. The logic of surveillance contributes to information sharing with other European agencies and national administrations such as Europol, Eurojust, the European Fishery Agency and the European Maritime Security Agency.

The AECF functions at the highest level of excellence and transparency with the objective of fostering the necessary trust and cooperation of all involved parties, and in turn ensure the effective and efficient development of its activities. European Union

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81) Conseil de l'Union Européenne, 2014. *Stratégie de sûreté maritime de l'Union européenne*. 24 juin 2014.

82) G. BALAN, " Le projet d'Agence Européenne de Gardes - Côtes et l'Agence Européenne de contrôle des Pêches ", 21 avril 2016, Billet du carnet de recherche Human Sea, ERC Advanced Grant n° 340770, <http://humansea.hypotheses.org/477> - " Union Européenne et frontières maritimes – Une volonté de gestion des frontières extérieures de l'UE aux multiples facettes ", 7 septembre 2016, <http://humansea.hypotheses.org/627> N. FABRIZI-RACINE, " Frontex, nouvelle Agence européenne de garde-frontières et de garde-côtes : Des données et des hommes ", *La Revue des droits de l'homme* [En ligne], Actualités Droits-Libertés, mis en ligne le 21 mars 2017, consulté le 19 décembre 2017. URL : <http://revdh.revues.org/3037> ; DOI : 10.4000/revdh.3037

83) Communiqué de presse de l'ONU: <https://www.un.org/press/fr/2017/cs13015.doc.htm> Conseil de sécurité NU, Résolution 2380 du 5 octobre 2017 : [http://www.un.org/fr/documents/view\\_doc.asp?symbol=S/RES/2380\(2017\)](http://www.un.org/fr/documents/view_doc.asp?symbol=S/RES/2380(2017))

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governments agreed to establish an agency within the framework of the 2002 reform which would inject a culture of respect for fishery regulations throughout Europe. In April 2005, these governments adopted Council Regulation No. 768/2005. The agency is responsible for coordinating and cooperating national control and inspection activities so that common fishery policy regulations are respected and efficiently implemented. Until 2002, the CFP had been inefficient and not tackled overfishing and control measures had not been systematically implemented by EU Member States. Fishermen felt that they were not being treated on a level-playing field when working in EU waters, and sometimes felt discriminated against. The fishing industry requested that control and execution requirements be reinforced in order to provide a level-playing field at the EU level. At the institutional level, the Commission did not have the right to perform task on the behalf of EU Member States, not did it have the means to do so. The Agency must ensure the uniform and effective enforcement of CFP regulations in collaboration with EU Member State specialised national services.

On 30 November, EFCA-AECP co-hosted in Madrid the second annual meeting of the Coast Guard Functions Implementing Group, co-chaired with the European Border and Coast Guard Agency (Frontex). During the meeting the agencies presented the activities carried out in the framework of the support to the coast guard functions. The meeting was also an important moment to discuss the projects that will be developed to provide assistance to Member States.

**Vytautas LUKAS**, Head of Coast Guard Sector a.i. European Border and Coast Guard Agency (FRONTEX), explores "Frontex role in the development of European cooperation on Coast Guard Functions", the evolution of Coast Guard Functions cooperation in the European Union, with particular emphasis on the efforts made by specific EU Agencies dealing with many Coast Guard issues related to maritime domain: FRONTEX, EFCA and EMSA. Mainly focusing on Frontex' involvement in this development, the paper outlines the evolution of cooperation during the implementation of a Pilot Project, which focused on four main areas: information-sharing, surveillance services, capacity building and capacity sharing. Finally, the article deals with the evolution of Multipurpose Operations as a concrete area in which Coast Guard Functions cooperation has been tested, and will inevitably be enhanced and elaborated in the future.

**Gaëtan BALAN**, PhD in Law (candidate) of the Human Sea Program at the University of Nantes (France) looks at the evolution of Frontex "The role of coast guards in the European Union: an interagency implementation". Different actors fulfil the role of the coast guards in Member States, ordinarily entrusted to the police force, the armed forces, Maritime Affairs or a similar agency to that of the American Coast Guard. Three buckets of missions were identified: rescue and assistance at sea, regulation of maritime activities and risk prevention at sea. This presentation studies the European reality of coast guard missions in the fight against drug trafficking by sea, IUU fisheries, migrant trafficking by sea and maritime terrorism. These risks are a reality the European Union faces today and as such, gave rise to the implementation of recent European

reforms on coast guards in the European Union. It was jointly tasked out to Frontex—as its primary mission—, EMSA and AECF to enforce in the European maritime space. This triptych coordinates with Member States to ensure the safety and security of European Union maritime areas. This reality warrants further examination through the construction of a European legal framework and the reform of Frontex, before concretely implementing the role of coast guards by European Union agencies.

The deployment of coast guards by the European Union gave rise to the reform of interagency powers. The Fisheries Agency mandates, similarly to those of the European Maritime Security Agency's, have been expanded to specifically mention the role of coast guards and their scope of authority. The coast guard role characterises the search for a synergy, which is supported by several stakeholders. The European Coast and Border Guard Agency will need to evolve over time, just like the European Union and Member States to better protect the maritime space in light of all the challenges they face.

The evolution of Frontex's powers led **Carole BILLET**, university lecturer at the University of Nantes (France) to question "What are Frontex's responsibilities?" The transformation of Frontex as a result to Regulation (EU) No. 2016/1624 of the Parliament and the Council on 14 September 2016 allowed to assign shared responsibility of the new agency and national authorities responsible for border management<sup>84</sup>. Clarifying the role of this reformed agency seems to be the necessary corollary to strengthen its powers and approaches. The evolution of "accountability" provisions pertaining to Frontex was considered as part of the clarification of statuses of all EU decentralised agencies in the institutional context. The Agency's responsibilities seem to be multifaceted and the English regulation makes a distinction between the terms *accountability* and *responsibility*.

The first form of responsibility is the Agency's general responsibility policy in regards to EU institutions, which it takes on solely when accountable for the missions it takes on. This responsibility is extended in the new regulation in line with the increased powers it has. The second form is the responsibility towards individuals which is both civil and criminal. It is also shared when activities are executed in collaboration with Member States. This is a significant innovation of the regulation. Article 72 of the Regulation stipulates a complaints-handling process to address any human rights violations. The EU Court of Justice has the jurisdiction to hear cases regarding compensation for damages caused by the Agency. The conditions governing liability seem to be rigorous.

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<sup>84</sup>) Celle-ci reste communément appelée « Frontex » conformément aux précisions sur ce point dans le Règlement, voir le considérant 11 du règlement (UE), 2016/1624.



*PATRICK CHAUMETTE*

We are still searching for the key to understand the complexity of the law of the sea in the international, national and regional divisions. Maritime environment protection is now not the decorum but the engine, the condition and the matrix of this complexity. It seems clear to us in this publication, constructed in three volumes. The second volume focuses on the exploitation of offshore gas and petrol, and fossil fuels and how we need to stop using them to mitigate climate change. France can easily prohibit its search and exploit because it does not have such resources, but this is much more complicated for Eastern Mediterranean states and Norway. Can this exploitation help the transition or delay the latter? Russia and the U.S.A. seem like States that have not bypassed industrial logic. Third, we look at how regional dimensions consider maritime security, human rights at sea and the new European coast guard and border agency. The diversity of issues is as present as legal complexity.