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**OCEAN ENERGY: SEEKING THE BALANCE BETWEEN STATES
(EXCLUSIVE) RIGHTS OF EXPLOITATION AND MARINE
BIODIVERSITY CONSERVATION**

Wellington Boigues Corbalan Tebar.

Master degree in Environmental Law at the University of Lisbon School of Law (Portugal). Professor at the Centro Universitário Antônio Eufrásio de Toledo, Presidente Prudente, São Paulo, Brazil. *Founder Associate Member* of Brazilian Institute for the Law of the Sea (BILOS). Research Member at the Study Center for the Law of the Sea "Vicente Marotta Rangel" of University of São Paulo (CEDMAR-USP), Brazil.

Introduction

- Blue Economy
- Renewable Energies and maritime zones
- Definition of Ocean Energy
- International Legal Framework
- Unclos
- Legal Regime of Maritime Zones
- Duty to Preserve the Environment

OCEAN ENERGY

- Renewable Energy
- Marine Renewable Energy
- Ocean Energy
- Dispute: UNCLOS Provisions
- Extension of the States jurisdiction(al powers)
- Legal Regime of Maritime Zones

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

- Five main legal regimes that govern all aspects concerning marine resources: Territorial Sea, Exclusive Economic Zone, Continental Shelf, Area and High Seas.
- When developing its offshore operations, the State can interfere or affect the rights of third parties (other States)?

1) Territorial Sea

- Full Entitlement
- Right of Innocent Passage

2) Exclusive Economic Zone (EEZ)

- Sovereign Rights (Art.56, §1, “a”)
- Jurisdiction(al Rights) (Art.56, §1, “b”).
- Third genre (*sui generis*): full sovereignty X absence of sovereignty → sovereign and jurisdictional rights
- production of energy from the water, currents and winds (Art.56, §1, “a”)
- Exclusive rights to construct and to authorize and regulate the construction, operation and use of installations and structures for the purposes provided for in article 56 (Art.60, §1, “b”)
- Respect to the rights of third parties (Art.58, §1º)

3) Continental Shelf

- Sovereign Rights (Art.77, §1)
  - Infrastructure will be probably installed in the continental shelf (Art.60): symmetrically extension of States sovereign powers exercised over the EEZ
  - Respect to the rights of third parties (Art.78, §2).
- * **Extended Continental Shelf** (Art.76, §4 to §6): the water column above remains subject to the legal regime of the high seas. So, the outer continental shelf is not fully subject to the States jurisdiction.

4) Area

- Common Heritage of the World (Art.136)
- No State shall claim or exercise sovereignty or *sovereign rights* over any part of the Area or its resources (Art.137, §1)

5) High Seas

- Fundamental Right of Freedom for Flagged vessels (Art.87)
- No State may validly purport to subject any part of the high seas to its sovereignty (Art.89)

OCEAN GOVERNANCE AND MARINE BIODIVERSITY CONSERVATION

- UNCLOS sets general and geographically oriented duties regarding environmental protection
- Tension: General Duties (192 and 194, §5) X rights of exploitation (Art.193) → Challenges for Marine Governance
- Place-based marine management. Approaches: such as: Integrated Coastal Management (ICM) and Ecosystem-Based Management (EBM). Specific tools, such as the implementation of Marine Protected Areas (MPAs) and Ocean Zoning (OZ).
- Long and complex decision making process (sitting and permitting procedure). Two important stages: (1) the environmental impact assessment and the public participation.

ENVIRONMENTAL IMPACT ASSESSMENT AND DECISION MAKING

- Biodiversity: privileged requirement to be considered when carrying out the Environmental Impact Assessment;
- Even in the areas beyond national jurisdiction, the States should comply with the principles of international customary law;
- The Environmental Impact Assessment, if correctly executed, can reduce, diminish or even eliminate the environmental stressors derived from the industrial activity;

- Limited Scientific Knowledge: context characterized by uncertainty
- Implementation of a **multi-phased sitting and permitting procedure** with a carefully and **technically-oriented environmental impact assessment**, which would result to the imposition of **adequate constrictive measures**. These measures could be revised, through time, according to a **standardizing model of information gathering**, regarding the type of industrial activity developed and the seriousness of the risk to it inherent

- **Strategic Environmental Impact Assessment**
  - States Cooperation (specially maritime bordering States)
  - Mapping of the most profitable areas (from an energetic point of view) and, at the same time, and the less vulnerable (from an ecological and financial point of view)
  - Prevention of conflicts among States (Transboundary harms)
  - Anticipation of the effects of Climate Change regarding ocean currents (movement and temperature)

PUBLIC PARTICIPATION AND DECISION MAKING

- Key to legitimate the public decision making process: condition of validity;
- Not binding: decision makers figure the risk out in a different way compared with the public in general;
- In an international perspective: UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters;
- Personal rights for the individuals regarding the participation in public regulation

- socio-ecological dimension of governance regime must be considered in the decision making process;
- The participation of all community (local, regional and international) is welcomed;
- Territorial Sea (as onshore): a wide range of participation
- Other Maritime Zones (effectively offshore): mainly addressed to the fishing community, which requires a particular approach.

Conclusion

- The development of renewable energies, specially the ocean energy, is a recent concern;
- The legal regime, mostly in an international perspective, remains inhomogeneous;
- Regarding ocean energy: (almost) completely lack of international regulation, but a few conditions must be satisfied to its exploitation: (1) respect to the rights of third Parties; (2) complex decision making process (sitting and permitting procedure).