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

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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, §1^o)

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).