

VII Colóquio ordinário da Associação Internacional do Direito do Mar VIIth  
Colloquium of the International Association of the Law of the Sea VIIème  
Colloque ordinaire de l'Association Internationale du Droit de la Mer

**DESAFIOS GLOBAIS E O DIREITO DO MAR  
GLOBAL CHALLENGES AND THE LAW OF THE  
SEA DÉFIS GLOBAUX ET LE DROIT DE LA MER**

**SESSÃO DE ABERTURA \* OPENING SESSION \* SÉANCE D'OUVERTURE**

*20.09.2018 QUINTA-FEIRA \* THURSDAY \* JEUDI*

**Professor Giuseppe Cataldi  
President**

*ASSOCIATION INTERNATIONALE DU DROIT DE LA MER  
INTERNATIONAL ASSOCIATION OF THE LAW OF THE SEA*



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His Excellency Mr. President of the Portuguese Republic, Prof. Marcelo Rebelo de Sousa, Honorable Representative of the host institution “*Oceano Azul Foundation*”, Mr. Tiago da Pitta e Cunha, Honorable Academic Authorities, distinguished Colleagues, dear Members of the “International Association of the Law of the Sea”, dear students, Ladies and Gentlemen,

It is my great pleasure and honor to be here in Lisbon, in this beautiful *Oceanario*, in my capacity as AssIDMer’s President, to welcome you to the VIIth Colloquium of our Association. For the first time, and finally, may I say, AssIDMer lands in Portugal.

Our first ordinary Colloquium in fact took place in Napoli, in 2001, with the title “*The Mediterranean and the Law of the Sea at the Dawn of the 21st Century*”. Then we moved to Spain, first in Cordoba, where the topic was “*Europe and the Sea. Fisheries, Navigation and Marine Environment*”, then two times in La Coruña, discussing “*Maritime Security and Violence at Sea*” and “*The Contribution of the United Nations Convention on the Law of the Sea to good governance of seas and oceans*”. The following Colloquiums were both in Italy again, first in Venice: “*International Law and Maritime Governance. Current*

*Issues and Challenges for Regional Economic Integration Organizations*” and finally in Benevento: “*International Tribunals and Interpretation of the UNCLOS*”. All the proceedings have been published, mainly in the collection of Assidmer’s Papers. Other scientific initiatives were organized, the majority in France. News and references are available on our website (<http://www.assidmer.net>), Twitter (<https://twitter.com/AssIDMer>) and Facebook (<https://facebook.com/AssIDMer>). The Association also has a LinkedIn account (<https://www.linkedin.com/in/assidmer>).

The merit of this lucky move to Portugal is all to be ascribed to the members of the organizing committee, my colleagues and friends Fernando Loureiro Bastos (*Instituto de Ciências Jurídico-Políticas*, University of Lisboa), Tore Henriksen (K.G. Jebsen Centre for the Law of the Sea, UiT the Arctic University of Norway) and especially to the committee’s President, Marta Chantal Ribeiro (Interdisciplinary Centre of Marine and Environmental Research, University of Porto). Our founder and first President, Daniel Vignes, would be happy and proud of this outcome. Dear Fernando, Tore and Marta, please allow me to take this opportunity to extend to you, as well as to our main-sponsors, the *Oceano Azul* Foundation and *Fundação para a Ciências e a Tecnologia*, Assidmer’s deepest appreciation for the generous interest you have taken in our Association.

It is not simply out of courtesy that I underline how important it is for AssIDMer to be here. There is certainly no need for me to remind this audience how the sea has always been fundamental for Portugal, and how Portugal has always been crucial for the sea and for the development of all the sciences of the sea: navigation, discoveries, exploitation of resources, marine geography and cartography, marine research. “*Ó mar salgado, quanto do teu sal são lágrimas de Portugal!*” (O salty sea, how much of your salt are the tears of Portugal!) I always have in my mind the initial verses of this wonderful poem by Pessoa, an author that we in Italy have had the good fortune to appreciate mainly thanks to Antonio Tabucchi, and we must remember that Portugal was the principal architect of the expansion of the geographical space thanks to its overseas enterprises. Well-deserved tribute was paid to Portugal’s contributions, before anyone of us, by Thomas More in his “Utopia” where he speaks of the very learned Portuguese sailor Rafael Hitolodeu, who accompanied Vespucci on three of his four alleged journeys.

Throughout its History, Portugal has always been a protagonist in the evolution of the Law of the Sea. Sometimes in spite of itself, as in the case of the 200-mile extension of the national fishing zones.

That’s why I can say that we feel at home here!

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I would now like to say a few brief words on the topic of this Colloquium: GLOBAL CHALLENGES AND THE LAW OF THE SEA. Just some general observations, before moving on to the interesting interventions as scheduled in the Program:

1. **The maritime issues that we are going to discuss show the vitality of the Law of the Sea.** For a long time, it was wrongly believed that with the entry into force of UNCLOS, research and debate on the Law of the Sea, so intense during the years of the Third United Nations Conference on the Law of the Sea, were old-fashioned, out of date, the codification having provided all the necessary answers. If we go through recent books, articles and proceedings on the Law of the Sea, we can see that the younger generations of European internationalists seem to have long forgotten the subject. They appear to have left it to their older Professors, preferring more fashionable themes, such as environmental law, human rights and international criminal law. On the contrary, practice has shown the inaccuracy of the assumptions underlying this behavior **and it is therefore appropriate that even younger generations of researchers continue to deal with and study this area of International Law. I believe it is a comforting sign of a change of attitude that we have been able to obtain quality contributions to this Colloquium from young researchers as well.**
2. **There is, however, one element that can be considered common to many current issues of the Law of the Sea: the rapid aging of international legal instruments available.** First of all, we still have the habit of talking about UNCLOS as the "new Law of the Sea", even though it was opened for signature nearly forty years ago, while during this same period the structure and the very composition of the international community have undergone profound changes. Events following phenomena that have marked an era, such as the fall of the Berlin Wall, the existence of new technological instruments in what is called "globalization", the birth of the World Trade Organization, an increased sensitivity to the demands of the individual vis-à-vis States and multinational companies, the events of 11 September 2001, disasters such as Chernobyl or Fukushima, the so called "Arab Spring" and the consequent migration issues: all these occurrences necessarily determined the birth and development of a series of new and unforeseen problems which must be addressed by legal instruments forged in and for a different historical-political context. It is worth noting, for example, that biological diversity, and therefore the need for its protection, is absent in UNCLOS which takes into consideration the "conservation of biological resources" for the sole purpose of ensuring its optimal use based on the criterion of maximum sustainable exploitation (maximum sustainable yield - UNCLOS, arts. 61 and 62). The notion of biodiversity has been included in the international legal system since the last decade of the twentieth century, with the adoption of the UN Convention on Biological Diversity (UN, 1992).

3. **A free and open maritime order based on the rule of law is a cornerstone for the stability and prosperity of the international community. It is therefore crucially important that freedom of navigation, connectivity among regions and cooperation on capacity building is ensured among all coastal States.** The different nature of criminal activities at sea, indeed, calls for a diversified response and a comprehensive analysis of all its aspects. The continued instability in several areas of the Middle East, Africa and Asia has resulted in an unprecedented displacement of people at a global level and an increased influx of migrants and refugees in Europe, especially through its South-eastern and Mediterranean borders. The management of the migration crisis is a complex process that requires significant capacities and cooperation/coordination amongst several stakeholders (humanitarian aid and civil protection actors, EU and UN agencies, NGOs involved on day-to-day management of the migration crisis, national authorities).
4. **Unfortunately, we are currently witnessing an exacerbation of interstate conflicts. In Europe, sovereign tendencies and the crisis of multilateralism are tangible evidence, but elsewhere too we are not witnessing any steps forward on the path of cooperation. The question of the South China Sea is the best (but not the only) example. Unilateralist interpretations of institutions such as the EEZ or the right of innocent passage are increasing, as are, unfortunately, unilateral initiatives that are contrary to UNCLOS as well as the United Nations Charter and international customary law.** Once again, the hope is that cooperation, especially through joint initiatives for the exploitation of living or mineral wealth, can be affirmed for the benefit of local communities as well as of the entire international community. For example, we must ask whether the delimitation of marine spaces is always necessary or if, in the interest of coastal communities, another option could be more appropriate as a first choice, namely the joint exploitation of resources or, if this is difficult, cooperation on specific issues such as the protection of the marine environment, marine scientific research, the fight against terrorism, without prejudice to their respective claims. Delimitation does not make much sense, in other words, when it comes to delimiting resources rather than communities. Unfortunately, the desire to assert sovereign power imposes other priorities. The old unilateralist ethics of the "creeping jurisdiction" that historically underlies the Law of the Sea must today give way to the demands of co-operation imperatives that are functionally necessary for the common interests of the international community, including: optimal management of resources, safeguarding navigation and international trade, preservation and protection of the marine environment, management of migratory flows, fight against piracy, terrorism and transnational crime.
5. **Protection of marine resources is an emerging key priority at global level, with food security in much of the developing as well as developed world dependent on stopping the decline in fish stocks driven by overfishing and**

**climate change. It is estimated that about one-fifth of all fish taken from our oceans have been fished illegally or lack any control, as a result of a widespread illegal, unregulated and unreported (IUU) fishing.** The economic development and welfare of island and coastal nations world-wide is threatened both by IUU fisheries and illegal trafficking of every sort. Illegal fishing also exacerbates the problem of overfishing, because IUU vessels operate in marine protected areas where a total fishing ban has been imposed. Indeed, as in marine nursery areas, within Marine Protected Areas (MPAs) fishing activities are banned all year-round. In the past decade Satellite-based maritime surveillance has proven its potential to contribute efficiently to maritime surveillance, but there is much scope for improvement in its integration in Law Enforcement sectors, such as IUU Fishing and monitoring of illegal fishing vessels.

6. **The degradation of the marine environment also presents crucial security challenges in terms of disruption of national economies, potential displacement of people and degeneration of national identities, loss of lives.** The rising of sea levels, sea water acidification and global warming require scientific research and capacity building, effective and robust regulations/legislation, tailored incentives, education and communication plans as well as the creation of robust partnerships among academia, industry, public institutions and regulatory bodies. Advanced monitoring systems are crucial to understand the dynamic of the planet and the changes that are taking place.
7. **The deep sea represents the world’s largest environment; nevertheless, and though largely unexplored, it provides for one of the highest levels of biodiversity on our planet and for a wide variety of ecosystem services. Some of these ecosystem services are unique, irreplaceable, and play a key role in sustaining human well-being.** Unfortunately, due to the technological development and the depletion of shallow-water resources, deep sea ecosystems are increasingly exploited and, unexpectedly, greatly affected by anthropogenic stressors and climate changes. In addition, once impacted, the costs for the restoration of deep-sea ecosystems are much higher than those estimated for shallow-water ones.

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**These are only some of the “Global Challenges” presently at stake. Indeed, while the present global socio-economic situation and its ongoing trends do not allow for inefficiencies and fragmented approaches, and even though in recent years the dialogue between scholars and decision-makers has significantly progressed, there are still numerous barriers and bottlenecks that need to be progressively removed, notably cultural differences and institutional barriers.** In general, scientists construct theories and refine conceptual models over time based on rigorous

methodological approaches to withstand the highest degrees of public scrutiny and criticism, while in the world of decision-making, science is just one point of view, and frequently not the most influential, and there is the need of immediate decisions. But the time has come for overcoming these barriers. It would have several and very relevant added values: speed up the process, streamline resources, promote socio-economic development, assure use and advancement of knowledge, encourage and make more robust decisions, provide more resources to research and innovation. Stakeholders and civil society will benefit greatly from such cooperation. **The International Association for the Law of the Sea (AssIDMer) was established, in 2001, exactly for this purpose. The idea is to promote research activities on issues relating to the law of the sea by academics, civil servants and legal practitioners.** The objective is to set up an independent institution in order to develop a dynamic legal community of lawyers involved in matters regarding the Law of the Sea and enhance cooperative links among experts all around the globe. In expanding its efforts to contribute to the development of the international Law of the Sea, AssIDMer values research, publications and symposia like the important one we are opening today.

Therefore, let me close once again with Pessoa: “That you should be ours, oh sea! Worth it? Everything is worth it If the soul is not small” (“Para que fosses nosso, ó mar! Valeu a pena? Tudo vale a pena se a alma não é pequena”).