

10 things you need to know about State ocean jurisdiction

By Patrick Vrancken

1. There is no part of the ocean that is actually “beyond national jurisdiction”.

At any place in the ocean, there is always at least one State which may or must exercise its ocean jurisdiction, i.e. its authority under international law to be involved directly in a concrete situation arising at that place.

For example, the State of which individuals have the nationality has the jurisdiction to make it an offence under its domestic law for those individuals to engage in specific activities in the International Seabed Area, such as, for instance, harvesting mineral or genetic resources of the Area in violation of international law.

Another example is that a State of which a vessel flies the flag has the jurisdiction to regulate the working conditions on that vessel while it sails on the high seas.¹

¹ P Vrancken, State Ocean Jurisdiction (2023) 11-12, 131-132 and 150-151, open access at <https://www.routledge.com/State-Ocean-Jurisdiction/Vrancken/p/book/9781032461373>.

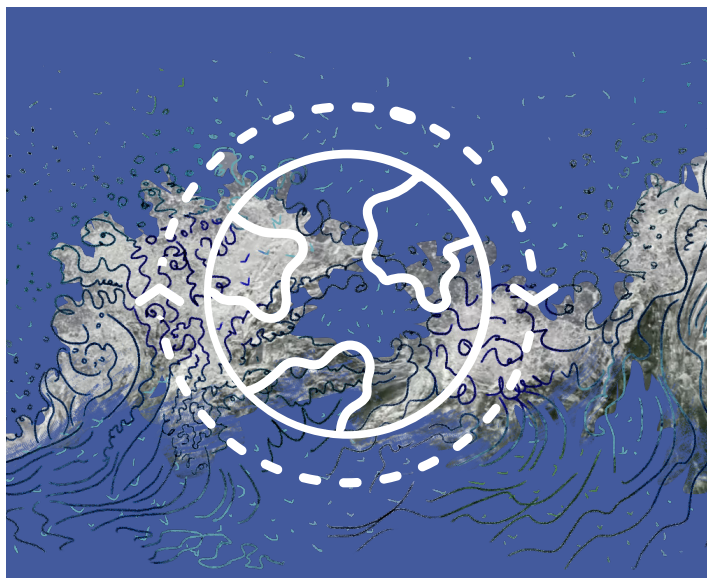


Illustration by Margherita Brunori

IN SHORT: 10 KEY MESSAGES

- There is no part of the ocean that is actually “beyond national jurisdiction”.
- A State’s ocean jurisdiction can be either legislative, executive or adjudicative, and these jurisdictions are intricately related.
- State ocean jurisdiction is linked to governance on land.
- Territoriality has a much greater role to play on land than in the ocean, where several other grounds of jurisdiction exist.
- A coastal State has a range of ocean jurisdictions, including its coastal zone jurisdictions.
- The extents of the various grounds of jurisdiction differ.
- The extents of the various ocean jurisdictions overlap in many situations.
- Most States do not make full use of the authority that international law confers on them to be involved in ocean governance.
- In many instances, a State has the option of delegating the exercise of its ocean jurisdiction to one or more other States.
- International law is placing an increasing number of limits to the purpose for which States may or must exercise their ocean jurisdictions.

2. A State's ocean jurisdiction can be either legislative, executive or adjudicative, and these jurisdictions are intricately related.

Legislative jurisdiction involves mainly making, amending and repealing general rules of law.

Executive jurisdiction involves mainly putting into effect, monitoring and enforcing general rules of law.

Adjudicative jurisdiction involves mainly settling disputes on legal issues.

When a State has legislative jurisdiction, it does not necessarily also have executive jurisdiction and/or adjudicative jurisdiction. When a State has the three jurisdictions, failure to exercise one of them has an impact on the others. For instance, the courts of a State are unable to rule against an individual who is responsible for dumping plastic at sea, in the exercise of the State's adjudicative jurisdiction, when that State has not made it a rule not to dump plastic at sea, in the exercise of the State's legislative jurisdiction.²

3. State ocean jurisdiction is linked to governance on land.

Many acts performed by States in the exercise of their ocean jurisdictions are performed on land: for instance, a State's domestic rules on noise pollution at sea are made by the same body that makes the rules on noise pollution on land, so that there is a strong link between governance at sea and governance on land.

It is difficult, therefore, to justify States abiding by different minimum standards on land and at sea, for instance regarding public participation in legislative processes. Those processes take



Illustration by Margherita Brunori

place primarily, if not exclusively, on land, where the public is based, irrespective of whether the outcomes of those processes have an impact on land and/or at sea.³

4. Territoriality has a much greater role to play on land than in the ocean, where several other grounds of jurisdiction exist.

On land, whether a State has jurisdiction over a matter depends almost exclusively on whether the matter arose within the territory of that State. Because relatively very small parts of the ocean are within the territories of coastal States and the international community cannot allow the ocean to be a lawless space, State ocean jurisdiction must be based on other grounds than territoriality, such as the registration of a vessel. For instance, territoriality is not a ground of jurisdiction to proclaim and enforce marine protected areas in a State's exclusive economic zone (EEZ) and on the high seas because neither the EEZs nor the high seas are part of the territory of any State.⁴

5. A coastal State has a range of ocean jurisdictions, including its coastal zone jurisdictions.

The term "coastal State jurisdiction" encompasses several different spatially bound jurisdictions, and those jurisdictions are not the only ones that a coastal State has. Each State may theoretically rely on several grounds of ocean jurisdiction. Which ground is actually available in any specific concrete situation depends on the facts of that situation.

For instance, a coastal State not only has the authority to enforce its fisheries legislation in its EEZ, but it also has the authority to regulate fishing on the high seas by vessels flying its flag.⁵

2 P Vrancken State Ocean Jurisdiction (2023) 22-59.



Photo: Nessim Stevenson

3 P Vrancken State Ocean Jurisdiction (2023) 265-266.

4 P Vrancken State Ocean Jurisdiction (2023), at 64-66 and 102-111.

5 P Vrancken State Ocean Jurisdiction (2023), at 67-69, 110-111, 131 and 165-166.

6. The extents of the various grounds of jurisdiction differ.

What a State may do on one ground of jurisdiction, it does not necessarily have authority to do it on another ground.

For instance, a coastal State has the authority to arrest a foreign national while that person undertakes unlawful sonar surveys on a foreign vessel in its territorial sea, but the same State does not have the authority to arrest one of its own nationals while that person does the same thing on a foreign vessel in the EEZ of another State.⁶

7. The extents of the various ocean jurisdictions overlap in many situations.

For instance, not only does the coastal State in the territorial sea of which fishing takes place, have the jurisdiction to make it an offence to fish during a specific period or with a specific equipment, but also the flag State of the vessel concerned and the State(s) of nationality of the individuals involved.⁷

8. Most States do not make full use of the authority that international law confers on them to be involved in ocean governance.

Separately from the issue of whether States comply with their duties to exercise their authority under international law, States are allowed to exercise their ocean jurisdictions in a wide range of cases and they often do not make use of all the opportunities available to them to contribute to sustainable ocean governance.

For example, nothing stands in the way of a State making it an offence in its own domestic law for its nationals to violate the domestic fisheries law of another State when those nationals are within the EEZ of that State.⁸

9. In many instances, a State has the option of delegating the exercise of its ocean jurisdiction to one or more other States.

The huge size of the ocean, the high number of role players as well as capacity constraints make it very difficult, if not often impossible, for States to perform (especially) their executive jurisdiction whenever and wherever they are expected to do so. A way to address this problem is for States to delegate their jurisdictions to each other. For instance, two adjacent States may agree to allow their respective fisheries enforcement vessels to patrol their two EEZs and enforce their respective fisheries legislation. This means that they can pool their respective resources together and enhance one another's efforts to ensure sustainable fisheries in vast areas of the ocean.⁹

10. International law is placing an increasing number of limits to the purpose for which States may or must exercise their ocean jurisdictions.

States have less and less freedom in the exercise of their ocean jurisdictions. From the fast-increasing number of specific obligations which States must fulfil, one can see emerging general parameters within which States may or must exercise their jurisdictions. Those parameters include, for instance, the avoidance of harm to humans, culture and the environment.¹⁰ The parameters must be taken into account, for instance, when States grapple with the need for transformative change in the way the oceans are governed,¹¹ and when they deal with the causes and human-right impacts of climate change.¹²

6 P Vrancken State Ocean Jurisdiction (2023), at 135-137, 141-148, 165-170 and 175-177.

7 P Vrancken State Ocean Jurisdiction (2023), at 129-132, 135-137 and 139-155.

8 P Vrancken, State Ocean Jurisdiction (2023), at 150-151, 165-170 and 175-177.

9 P Vrancken, State Ocean Jurisdiction (2023), at 122-124, 165-170 and 198-199.

10 P Vrancken, State Ocean Jurisdiction (2023), at 216-262.

11 Hub-led special issue "The ocean, sustainable development and human rights" in (2022) 31(3) Review of Comparative, International, and European Environmental Law at <https://onlinelibrary.wiley.com/toc/20500394/2022/31/3>.

12 Hub-led special issue "Ocean-based climate action and human rights" in (2023) 38(3) International Journal of Marine and Coastal Law at <https://brill.com/view/journals/estu/aop/issue.xml>



Illustration by Margherita Brunori