

Spain and the Law of the Sea: 20 years under LOSC

A selection of Spanish bibliography on the law of the sea and LOSC

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Three young colleagues of the **Asociación Española de Profesores de Derecho Internacional y Relaciones Internacionales (AEPDIRI)** were invited by the Editorial Board of the SYbIL to collect and comment the most relevant contributions of Spanish authors to the law of the sea, to complement the analysis of Spain's practice over the last 20 years and before included in this volume of the Yearbook. General aspects of the law of the sea, the impact of LOSC on Spanish practice as well as the relevance of this practice on the general rules of the law of the sea may be revisited from a Spanish perspective in the more than 150 contributions collected and reviewed by Marta, Ana María and Beatriz. Their more than considerable work will help those to want to have a clear and complete vision of Spanish literature on the law of the sea.

This contribution tries to be a live section of the Agora. Therefore, new papers published by Spanish authors will be added in due time as well as others, already collected, will be completed.

(A) GENERAL CONTRIBUTIONS

González Giménez, J., 'La evolución del Derecho del mar desde el punto de vista de un mar semicerrado como el Mediterráneo', 14 *Revista electrónica de estudios internacionales* (2007) [ISSN-e: 1697-5197]: Part IX of the UNCLOS is expressly dedicated to closed or semi-enclosed seas, which, far from establishing a special legal regime for this type of seas, is limited, in the only two articles it contains, to defining what for the purposes of this Convention is understood as a closed or semi-closed sea and to suggest the way of cooperation between the coastal States of these seas as the solution to the specific problems that arise in them. Whether or not this limited and controversial regulation of closed or semi-enclosed seas is appropriate and if the Mediterranean, in particular, finds in this current legal framework useful answers to the many challenges that its complex physical configuration poses are, all of them, issues that we will be addressing throughout this work.

Pueyo Losa, J. A. (Dir.), Correia Brito, W. A. (Dir.), Ponte Iglesias, M. T. (Coord.) and Vale Pereira, M. A. (Coord.), *La gobernanza de los mares y océanos: nuevas realidades, nuevos desafíos* (Andavira Editora, Santiago de Compostela, 2012) [ISBN: 9788484086871].

Pueyo Losa, J. A. and Jorge Urbina, J., *La cooperación internacional en la ordenación de los mares y océanos* (Iustel, Madrid, 2009) [ISBN: 9788498900613]: The Law of the Sea is one of the most dynamic and changing sectors of the international legal order. This is due to the very characteristics and peculiarities of the marine environment, which not only constitutes a vast natural space, but also an economic and political space, that is, a source of power and wealth. Hence the diversity and heterogeneity of the state interests that converge in it. These factors hinder the international management of the seas and oceans and make this normative sector a complex and potentially conflicting reality, as reflected in the 1982

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United Nations Convention on the Law of the Sea. From this perspective, this book analyzes the role of international cooperation to face the problems that arise in the international maritime field in matters as the management and conservation of fishery resources, the protection and preservation of the marine environment or prevention of certain illegal activities at sea. In all these cases, it is noted that collaboration between States remains a basic instrument for achieving peaceful and lasting solutions to the challenge of ensuring the orderly and sustainable management of maritime spaces.

Sobrino Heredia, J. M. (Coord.), *Mares y océanos en un mundo en cambio: tendencias jurídicas, actores y factores* (Tirant lo Blanch, Valencia, 2007) [ISBN: 978484567691]: This work includes those papers and communications that feed the debate of the XXI Seminar of the AEPDIRI. Its publication is an excellent culmination of that meeting. With it opens up more interested, allows a more detailed and calm knowledge of the value of contributions and ensures a future projection of this important collective intellectual effort. It will be a work of obligatory knowledge for all those interested in the issues that affect the sea and the oceans and a valuable tool for reflection and debate on the future of international studies in the new framework of European higher studies.

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 / La contribution de la convention des Nations Unies sur le droit de la mer à la bonne gouvernance des mers et des océans / The contribution of the United Nations Convention on the Law of the Sea to good governance of the oceans and seas* (Editoriale Scientifica, Napoli, 2014) [ISBN: 978-88-6342-638-0]: This book contains the updated reports and papers presented at the IVth Ordinary Symposium of the International Association of the Law of the Sea entitled “The Contribution of the United Nations Convention on the Law of the Sea to the good governance of the seas and oceans” at the University of A Coruña (Spain) on 13 and 14 December 2012.

Yturriaga Barberán, J. A., *Ámbitos de jurisdicción en la Convención de las Naciones Unidas sobre el Derecho del Mar: una perspectiva española* (Ministerio de Asuntos Exteriores, Madrid, 1996) [ISBN: 13:9788487661723]: This book describes in a comprehensive and detailed manner the development of the III United Nations Conference on the Law of the Sea and contains chapters related to the Parties to the United Nations Convention on the Law of the Sea dedicated to the Territorial Sea and the Contiguous Zone, to the Straits used for international navigation, to the Islands and Archipelagos, and to the Protection and preservation of the marine environment.

Yturriaga Barberán, J. A., *Tendencias y perspectivas actuales del Derecho del Mar* (Escuela Diplomática, Madrid, 2007) [ISBN: 100808159].

(B) LOSC NEGOTIATIONS

Casado Raigón, R., ‘La convención de las Naciones Unidas sobre el derecho del mar y su pretensión de universalidad y generalidad’, 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 / La contribution de la convention des Nations Unies sur le droit de la mer à la bonne gouvernance des mers et des océans / The contribution of the United Nations Convention on the Law of the Sea to good governance of the oceans and seas* (Editoriale Scientifica, Napoli, 2014) Vol. I, 9-20. [ISBN: 978-88-6342-638-0]: The UNCLOS has been a success in itself. Beyond concrete achievements, such as submitting the law of the sea to compulsory dispute settlement mechanisms (despite its many limitations), it is the whole of the Convention that must be valued.

Cervera Pery, J. R., *El derecho del mar: evolución contenido, perspectivas de bulas papales al Convenio de Jamaica* (Naval, Madrid, 1992) [ISBN: 84-7341-072-6]: The Third United Nations Conference on the Law of the Sea was the most relevant event in the history of International Maritime Law in the 1970s, which was still prolonged in the early 1980s with the signing of the Jamaica Agreement. Based on the much debated

Convention, but without losing sight of its background and the evolutionary process that could make it a reality, the author of this book traces the most direct overview of the Law of the Sea as it is shown today, full of questions not solved. The author of this book recounts and analyzes, without falling pretentiously or dogmatically, all this new doctrinal framework whose repercussion will be very important for the maritime interests of Spain.

- Espaliú Berdúd, C., 'Profecías de tiempos de la Convención de las Naciones Unidas sobre el Derecho del Mar acerca de los medios jurisdiccionales de arreglo pacífico de controversias', *El arreglo pacífico de las controversias internacionales: XXIV Jornadas de la Asociación Española de Profesores de Derecho internacional y Relaciones internacionales (AEPDIRI)*, Córdoba, 20-22 de octubre 2011 (Tirant lo Blanch, Valencia, 2013) 331-342, [ISBN: 978-84-9033-521-5]: A few months before celebrating the anniversary of the birth of the United Nations Convention on the Law of the Sea (UNCLOS), that is an occasion to give away the prophecies that were issued in the future about the jurisdictional means of peaceful settlement of the controversies derived from its interpretation and application foreseen by the UNCLOS and see if it has been fulfilled in reality.
- García García Revillo, M., 'IX United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (IX UNICPOLOS)', 1(1) *Aegean Rev Law Sea* (2010) 1-165 [DOI: 10.1007/s12180-009-0005-3]: Within the legal framework described below, the IX UNICPOLOS, that is, the IX Open-ended Informal Consultative Process on Oceans and the Law of the Sea, was held in Room 1 of the United Nations Headquarters in New York, from June 23 to 27, 2008.
- Pastor Ridruejo, J. A., 'Consideraciones sobre la III Conferencia de las Naciones Unidas sobre el Derecho del Mar', 3 *Anuario español de derecho internacional* (1976) 281-296 [ISSN: 0212-0747]: The Third United Nations Conference on the Law of the Sea is presented to us as one of the most original and committed negotiations in the history of the Law of the Peoples. And also, as the most symptomatic negotiation of those that the international community has undertaken in our days. Being, in short, a very specific chapter of the new International Economic Order, its success or failure will constitute the test of what to expect from the desired construction of the latter.
- Pastor Ridruejo, J. A., 'Los Estados industrializados medios, nuevo grupo de intereses en la III Conferencia de las Naciones Unidas sobre el Derecho del Mar', 1(4) *Revista de Estudios Internacionales* (1980) 915-933 [ISSN: 0210-9794]: Despite the undoubted progress made in the summer of 1980, the negotiations of the Conference on the complex issues assigned to the First Commission have not ended completely. Some of the issues that fall within the mandate of the Commission have yet to be resolved, among them and most especially the establishment of the Preparatory Commission of the Authority and the accommodation of the entry into force of the Convention to the possibilities of constituting the Council. It is likely that the Group of the Western European average industrialized states will try to take advantage of this opportunity to raise their claims once again. And the final outcome of the negotiations, which in the autumn of 1980 is finally seen to be relatively close, will shed definitive light on the real capacity of pressure of the Group.
- Pastor Ridruejo, J. A., 'La Convención de 1982 sobre el Derecho del mar y los intereses de España', en *Cursos de derecho internacional de Vitoria-Gasteiz* (Vitoria-Gasteizko nazioarteko zuzenbide ikastaroak 1983) 69-104 [ISBN: 84-7585-007-3]: In the present course the author intends to interpret the keys of the abstention of Spain and also provides elements of judgment regarding the attitude of the Spanish Government against the signing of the Convention and the Cortes in the event that the question were raised of the authorization of the consent of Spain to be bound by it. In essence, it tries to offer valuations of the Convention in the interests of Spain.
- Poch y Gutiérrez de Caviedes, A., (Coord.), *La actual revisión del Derecho del Mar. Una perspectiva española* (Instituto de Estudios Políticos, Madrid, 1974) [ISBN: 8425904366]: In this work it has been tried to carry out an examination of the current process of revision of the Law of the Sea from the perspective of the interests of Spain in this review process. It constitutes, therefore, an appreciation, from the angle of

one of the participating States, of a general process, of fundamental importance to the international community as a whole. Its purpose is to facilitate a better understanding of this process, and of the dominant trends and orientations in it, by Spanish readers, showing the background and the development of work carried out in this area, as well as the main problems. Also, on the other hand, to facilitate a fair assessment of Spanish interests in the Law of the Sea, and of the lines of action undertaken in the process of their revision, based on the attitudes adopted by the representatives of Spain and the relevant Spanish practice on the questions of the Law of the Sea.

(C) THE IMPACT OF THE RATIFICATION IN SPAIN

- Jiménez Piernas, C., *La revisión del estatuto territorial del Estado por el nuevo Derecho del Mar (el caso de los Estados Archipelágicos)* (Instituto de Cultura Juan Gil-Albert, Alicante, 1990) [ISBN: 84-7784-049-0]: It proposes a revision of the traditional concept of territory, as well as an update on certain aspects of the acquisition and exercise of sovereignty in International Law, in light of the creation of new institutions of the Law of the Sea. This proposal is based in a purely interdisciplinary inquiry, very useful to evoke the diversity of cultural perspectives in the perception and representation of space, which constitutes the prius logical of the revision of the geocentric concept of territory.
- Jiménez Piernas, C., 'Competencia territorial del Estado y problemas de aplicación del Derecho del mar: práctica española', 12 *Anuario Hispano-Luso-Americano de Derecho Internacional* (1995) 233-278 [ISSN: 0570-4316]: This article offers a summary of the legislative practice and the internal jurisprudence of Spain up to that date, with regard to the legal regime of the territorial sea and the exclusive economic zone (right of innocent passage, right of persecution, right of visit, jurisdiction of the riparian for the protection and preservation of the marine environment in the exclusive economic zone, and prohibition of the use of armed force by the riparian to exercise their rights in the exclusive economic zone).
- Jiménez Piernas, C., 'La ratificación por España de la Convención de 1982 sobre el Derecho del mar y del Acuerdo de 1994 sobre la aplicación de la Parte XI: nuevos riesgos de la codificación del Derecho Internacional', 53(1) *Revista Española de Derecho Internacional* (2001) 105-124 [ISSN: 0034-9380]: The Third U.N. Conference on the Law of the Sea has closed untruly a process of codification that had begun in 1969 and formally concluded in 1982 by the adoption of the Convention on the Law of the Sea. In fact, this process finished without any consensus on the institutions and the legal regime for the management of the resources located in the «Zone». Furthermore certain States have encouraged to reopen other problems which seemed resolved by this Convention, like the regime of cooperation for the conservation and management, at the High Sea contiguous to the Exclusive Economic Zone, of straddling fish stocks and highly migratory fish stocks. This has raised a clear instability and legal uncertainty in the Law of the Sea of our days, to the prejudice of many States; these States took part actively and with good faith in this codification process. This situation benefits at the same time the richest States (which forced the adoption of the 1994 Agreement on the implementation of Part XI) and those States with long coastlines (which caused the 1995 Agreement relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks). For many reasons, Spain is left among the most prejudiced coastal States. Nonetheless this reality has not moved our legislators to define their position when they ratified the 1982 Convention or the 1994 Agreement on Part XI. These texts have passed Parliament through a simple administrative procedure without raising any debate, showing that there is a lack of a properly and long lasting Spanish State policy in the marine field.
- Riquelme Cortado, R. M., 'Reflexiones sobre la firma y la ratificación de la Convención de las Naciones Unidas sobre el Derecho del Mar (1982): a propósito de la firma por España', 8 *Anuario español de derecho internacional* (1985) 185-210 [ISSN: 0212-0747]: Like the vast majority of the States invited to participate in the Third United Nations Conference on the Law of the Sea, Spain has also joined the list of the signatories of the 1982 Convention of Jamaica on December 4, 1984. This event, together with the fact

that the authorization of our Government to sign the Convention has been accompanied by a series of interpretative declarations, is sufficient reason to describe and, if possible, to question, the keys that have surrounded the Spanish firm of this, for obvious reasons, a very important multilateral treaty, in the general context of States —and state entities— that, finally, have also signed it and, where appropriate, ratified it as well as enunciating its consequences.

Riquelme Cortado, R. M., *España ante la Convención sobre el Derecho del Mar: las declaraciones formuladas* (Universidad de Murcia, Murcia, 1990) [ISBN: 84-7684-964-8]: The United Nations Convention on the Law of the Sea prohibits the submission of reservations to the articles (article 309) but, on the contrary, admits the presentation of declarations (article 310). In this regard, Spain signed the Convention accompanied by nine interpretative declarations of some of its articles: the first one with an almost political character and the remaining eight interpreting different provisions. The present work is the first published work dedicated to its detailed examination. Thus, after a first chapter devoted to the review of the provisions of UNCLOS regarding the presentation of reservations and declarations, the work identifies, classifies and addresses the content and implications of the different declarations made by Spain, paying special attention to those related to the passage in transit through the international straits and those related to the risk of marine pollution of the strait (of Gibraltar).

(D) LOSC, SPAIN AND THE EUROPEAN UNION

Carreño Gualde, V., 'TJCE - Sentencia de 30.05.2006, Comisión/Irlanda, C-459/03, MOX - La Competencia exclusiva del TJCE y la Parte XII de la Convención de las Naciones Unidas sobre el Derecho del Mar', 26 *Revista de Derecho Comunitario Europeo* (2007) 185-202 [ISSN: 1138-4026]: In the here analyzed and commented Sentence of the ECJ the determination of exclusive jurisdiction of the Court of Justice in relation to the interpretation and application of the dispositions contained in a Mixed Agreement: the United Nations Convention on the Law of the Sea: Part XII (Protection and Preservation of the Marine Environment). Through this determination, the Court considers that Ireland has failed, as alleged the Commissions in its action for failure of obligations imposed by article 292 of EC Treaty, by putting the dispute relative to the violation on the part of the United Kingdom of Part XII of the Convention through industrial activities developed by the MOX plant under a Court constituted by arbitration according to Annexed VII of this conventional instrument, that is to say, outside the communitarian legal frame, ignoring the ECJ exclusive jurisdiction. In its decision, the Courts concludes that we are facing a controversy in relation with interpretation or application of Community Law. From this point of view, the conclusion affirms that European Community has exercised its shared competence in the matter object of the dispute, the protection of marine environment against pollution, as a result of his participation in the Convention on the Law of the Sea. Consequently, this dispute is included in the field of the exclusive and obligatory jurisdiction of the Court of Justice, and no other international jurisdictional organ could take part in its resolution.

Fernández Alles, J. J., Fernández Alles, M. T., 'El Derecho europeo sobre las autopistas del mar y su incorporación al ordenamiento español (2010-2013)', 49 *Revista Española de Derecho Europeo* (2014) 55-89 [ISSN: 1579-6302]: This paper describes and analyzes the process of legal development and implementation of European law of the motorways of the sea in Spain: legislative, procedural, organizational and competence issues, where we can find the activity of economic promotion of European Union and a regime of public service (concessions and authorizations), as well as a system of national parliamentary approval. During the period 2010-2013, the Commission has processed authorizations and direct aids over motorways of the sea to allow implementation of the Motorway of the Sea of Western Europe, for transport between the ports of Gijón (2011) and Vigo (2013) to Nantes-Saint Nazaire. To accomplish the incorporation of European law on the motorway of the sea, Ports and Merchant Marine Act (2011), the parliamentary approval and aid concessions of Marco Polo Programme have led to progressively develop of a portuary coordination system, highly efficient, for the enforcement of the

European principles of free competition, environmental protection and economic integration, with the main objective of achieving a common maritime space in the European Union.

Gutiérrez Castillo, V. L., “La ordenación del espacio marítimo y la gobernanza sostenible en la Unión Europea”, 35 *Revista General de Derecho Europeo* (2015) [ISSN-e: 16969634]: The Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishes a framework for maritime spatial planning aimed at promoting the sustainable growth of maritime economies, the sustainable development of marine areas and the sustainable use of marine resources. Within the Integrated Maritime Policy of the European Union, this new framework provides for the establishment and implementation by Member States of maritime spatial planning, taking into account land-sea interactions and enhanced cross-border cooperation. This work examines in detail this important Directive, showing that, although it does not inaugurate maritime space planning processes, it does represent a further step in the creation of an effective framework for the management of maritime space.

Sobrino Heredia, J. M., ‘La acción de la Unión Europea en materia de seguridad marítima’, 55(1) *Revista Española de Derecho Internacional* (2003) 79-116 [ISSN: 0034-9380]: The European Union, in a short period of time, has adopted a real legislative repertoire regarding maritime safety. Its effectiveness depends to a large extent on the application made by the Member States and on the consistency between those norms and in relation to international ones. For this reason, the first part of this work examines how the EU has been developing a complex normative body, mainly as a reaction to the gravity of the marine disasters that occurred in front of its coasts. Next, in its second part, the paper analyses what areas have been privileged by this legislative action, and, if the interrelation and coherence between them allows us to start talking about a Community Maritime Safety Policy. A proper EU maritime safety legislation would not only benefit the EU but would offer added value to international action and to the work of international organizations in this sector.

Sobrino Heredia, J. M., ‘La Politique maritime intégrée de l’UE et les bassins maritimes européens’, 1 *Paix et sécurité internationales: revue maroco-espagnole de droit international et relations internationales* (2013) 13-32 [ISSN: 1114-7326]: Since 2007 the EU is trying to implement an integrated maritime policy which covers areas as diverse as fishing, navigation and ports, marine environment, marine research, energy production, ship-building industry, maritime security, tourism and employment, coastal developments and external relations concerning maritime affairs. The aim of our work is to present, first, the legal pillars of this new policy, and then, show regional approach about European sea basins.

(E) SPAIN AND THE BODIES ESTABLISHED BY THE CONVENTION

Aznar Gómez, M. J., ‘El Tribunal Internacional del Derecho del Mar’, in Vázquez, E. M., Adam, M. D. and Cornago, N., *El arreglo pacífico de las controversias internacionales: XXIV Jornadas de la Asociación Española de Profesores de Derecho internacional y Relaciones internacionales (AEPDIRI)*, Córdoba, 20-22 de octubre (Tirant lo Blanch, Valencia, 2013) 371-412 [ISBN: 978-84-9033-521-5]: This contribution supposes a series of general reflections on the Court following its own denomination as a scheme: thus, in a part I will analyze some questions referred to the Court as a judicial organ. In a second part, I will focus on the role of the International Court of Human Rights as an international tribunal and its role as an international dispute settlement body. Finally, the third part will focus on its specific character of the law of the sea court, analyzing some of its most recent jurisprudential contributions to this sector of our legal system and international law in general.

García García-Revilla, M., ‘España y la jurisdicción del Tribunal Internacional del Derecho del Mar: la declaración de 19 de julio de 2002’, 58(1) *Revista Española de Derecho Internacional* (2006) 289-308 [ISSN: 0034-9380]: The object of this paper is the study of the jurisdiction of the International Tribunal of the Law of the Sea with respect to Spain, especially after the declaration of submission to its jurisdiction made by our country on July 19, 2002. By virtue of being part of the United Nations Convention on the

Law of the Sea of December 10, 1982 (UNCLOS), the ITLOS has regard to the Spanish State, without the need for an express declaration, both voluntary and mandatory jurisdiction, although in this case only with respect to a very small number of disputes. This limited scope of compulsory jurisdiction was extended by our country through this declaration, made in accordance with Article 287 UNCLOS, which replaced the one made by Spain at the time of ratification, on January 15, 1997. On the other hand, the Spanish State is party to other treaties on the subject that also include the ITLOS as a means of settlement and, even, in some cases, as a forum of compulsory jurisdiction. In any case, it must be borne in mind that, as a member of the European Community (EC), Spain has transferred to this international integration organization competences on matters regulated by both UNCLOS and international treaties, which could affect considerably to its ability to litigate internationally for disputes concerning its interpretation and application and *ratione personae* competence.

García García-Revilla, M., 'La Unión Europea y el Tribunal Internacional del Derecho del Mar', in Vázquez, E. M., Adam, M. D. and Cornago, N., *El arreglo pacífico de las controversias internacionales: XXIV Jornadas de la Asociación Española de Profesores de Derecho internacional y Relaciones internacionales (AEPDIRI), Córdoba, 20-22 de octubre (Tirant lo Blanch, Valencia, 2013) 413-444* [ISBN: 978-84-9033-521-5]: The purpose of this paper is to analyze the most outstanding current aspects in the relationship between the European Union (EU) and the International Tribunal for the Law of the Sea (hereinafter also ITLOS). More specifically, this work is confined to issues that concern the composition of the Court to judge the European Union, on the one hand, and the jurisdiction of this international judicial body to deal with matters to which the European Union is a party, for the other.

García García-Revilla, M., *The contentious and advisory jurisdiction of the International Tribunal for the Law of the Sea* (Brill, Leiden, 2015) [ISBN: 978004200982]: The author offers an in-depth examination of all relevant facets of the jurisdiction of this important international judicial institution. Created by the United Nations Convention on the Law of the Sea, ITLOS plays an essential role not only in respect to the interpretation of this major international treaty but also to the contemporary law of the sea in general. The book covers both the contentious (*ratione materiae*, *ratione personae*, mainline, incidental, compulsory, not compulsory) and the advisory jurisdiction of ITLOS, which are analysed not only from a theoretical perspective but also in light of the own Tribunal's jurisprudence.

(E) MARITIME ZONES AND SPACES

(1) General aspects

Meseguer Sánchez, J. L., *Los Espacios marítimos en el nuevo derecho del mar* (Marcial Pons, Madrid, 1999) [ISBN: 9788472486775]: In this work, the Law of the Sea is studied from the historical perspective of its formation and secular evolution, as well as the radical transformation of this branch of International Law due, fundamentally, to the change of political circumstances and of original defense for the economic ones that they constitute the *ratio essendi* of the new Law of the Sea. The first part is devoted to the historical, doctrinal and political background that affect the formation of the Law of the Sea. The second part is devoted to surface maritime spaces from the classical perspective of the duality between territorial sea and high seas, without prejudice to introduce those new expanses born of the legal vitality of the seas and oceans. Finally, the third part is dedicated to the study of the juridical regime of maritime depth spaces that truly constitute the revolution of classical international law conceived as surface right based on the *ius communicationis* of Francisco de Vitoria.

(2) Internal waters, bays, ports, territorial sea and archipelagic waters

Acosta, M. Á., 'Un caso paradigmático de co-partición de aguas portuarias: el régimen de navegación en los

puertos de Melilla y Beni Enzar', in Heredia, J. M. (Dir.), [ISBN: 978-88-6342-638-0] *La contribución de la Convención de las Naciones Unidas sobre el Derecho del Mar a la buena gobernanza de los mares y océanos / La contribution de la convention des Nations Unies sur le droit de la mer à la bonne gouvernance des mers et des océans / The contribution of the United Nations Convention on the Law of the Sea to good governance of the oceans and seas* (Editoriale Scientifica, Napoli, 2014) Vol. I, 703-713 [ISBN: 978-88-6342-638-0].

Díez-Hochleitner, J., 'Régimen de la navegación de los buques de guerra extranjeros en el mar territorial español y de sus escalas en puertos', 38(2) *Revista Española de Derecho Internacional* (1986) 543-570 [ISSN: 0034-9380]: This article explores the Spanish regime on navigation of foreign warships through the territorial sea and their calls at Spanish ports. It starts by analysing Order 25/1985 of the Ministry of Defence, regulating this issue. It then studies its ties with Act 25/1964, regulating nuclear energy, the Law of the Sea and the treaties concluded with the United States of America. It concludes examining the regulations on calls of foreign warships at Spanish ports and anchorages.

Espaliú Berdud, C., *Le passage inoffensif des navires de guerre étrangers dans la mer territoriale: portée du régime contenu dans la Convention des Nations unies sur le droit de la mer* (Bruylant, Bruxelles, 2007) [ISBN: 978-2-8027-2219-9]: The main purpose of this study is to examine in greater depth the question of the *ratione materiae* scope of the regime of the 1982 Convention concerning the innocent passage of warships, particularly with regard to the most sensitive aspects relating to the use of force. The paper also questions whether the regime of the 1982 Convention, with respect to such ships, is applicable to non-party States as customary law (*scope ratione personae*). Lastly, the author turns to the rules applicable in cases where the regime provided for by the Convention is not the law between the States involved as conventional law or as customary law.

Espaliú Berdud, C., "¿Un derecho de paso "inocente" por el mar territorial de los buques extranjeros que transportan sustancias altamente contaminantes?", 60-1 *Revista Española de Derecho Internacional* (2008) 147-162 [ISSN: 00349380]: This work focuses on the right of innocent passage through the territorial sea of foreign ships transporting highly polluting substances. This is a matter of great relevance according to the magnitude of the economic, ecological and security interests that this institution tries to reconcile. The main objective is to try to measure, from the practice subsequent to United Nations Convention on the Law of the Sea, the rejection that has been generated through the passage of this kind of ships, to see if it has been translated into legal institutions and if it has been formed a customary law confirming or not the regime provided by the UNCLOS. In this sense, the author concludes that the examination of the practice subsequent to the adoption and the entry into force of the UNCLOS indicates an increasing tendency towards the restriction or even the disappearance of the right of innocent passage by the territorial sea of foreign nuclear ships or transporting nuclear substances or other harmful or dangerous substances. Numerous indications have been found of a practice and an *opinion iuris* that point to the birth of a rule of general international law that allows coastal States to deny, by one way or another, the right of innocent passage to this type of ship, which is contrary to the UNCLOS.

Espósito Massicci, C., 'Inmunidades respecto de los buques de guerra y aeronaves de Estados extranjeros', in Martín y Pérez de Nanclares, J. (Dir.), *La Ley Orgánica 16/2015 sobre Privilegios e Inmunidades: gestación y contenido* (Escuela Diplomática, Madrid, 2016) 339-353 [ISBN: 100993474]: The regulation of the immunities of warships, State ships and State aircraft in the new Organic Law, on privileges and Immunities of Foreign States, International Organizations with Headquarters or Offices in Spain and International Conferences and Meetings held in Spain is clear, precise and, consequently, will constitute a useful instrument for Spanish legal operators, especially for judges. This greater legal security will also benefit foreign States that have relations with Spain.

González García, I., *Bahías (su regulación en el Derecho Internacional del Mar)* (Servicio de Publicaciones de la Universidad de Cádiz, Cádiz, 1999) [ISBN: 84-7786-558-2]: This work refers to the bays and their regulation in the International Law of the Sea. The interest in the research topic is not limited only to the specific aspects of certain bays in the Spanish coast, but in general the legal regime of the bays it has

been one of the aspects less studied in the recent evolution of the International Law of the Sea, reason why the present work constitutes an interesting contribution in this respect.

(3) Contiguous zone

Aznar Gómez, M. J., 'The Contiguous Zone as an Archaeological Zone', 29 *The International Journal of Marine and Coastal Law* (2014) 1-51 [doi: 10.1163/15718085-12341305]. In the author's view, the Law of the Sea does not properly address the protection of underwater cultural heritage, especially in the contiguous zone, where the convergence of public and private activities may threaten that heritage. This article analyses the conventional regime on this issue, primarily consisting in articles 33 and 303(2) of the UN Convention on the Law of the Sea and the 2001 UNESCO Convention on the protection of underwater cultural heritage. However, this is not sufficient to provide adequate protection for underwater cultural heritage. Coastal States have thus expanded their rights over their contiguous zones. The author provides a valuable analysis of State practice on this issue, aiming at demonstrating that the expansion of the coastal States' archaeological rights over their contiguous zone has met with no clear objection among States, which now consider the protection of underwater cultural heritage indispensable to safeguard for future generations the fragile elements composing that heritage.

De Pietri, D., "La redifinición de la zona contigua por la legislación interna de los Estados", 62 *Revista Española de Derecho Internacional* (2010) 119-144 [ISSN: 0034-9380]: This contribution analyses how the contiguous zone is re-defined by subsequent practice of States after the adoption of LOSC. It particularly focuses on domestic practice of States in different continents in order to assess how the competences of coastal States upon their contiguous zones may be wider to those foreseen in Article 33 LOSC. For this, this contribution revisits the recent importance given to the zone by States and the conflicting visions and concerns by other States with regard the traditional freedom of the seas and possible new creeping jurisdictions.

Gutiérrez Castillo, V. L., "La zone contigüe dans la Convention des Nations Unies sur le droit de la mer", 7 *Annuaire de Droit de la Mer* (2002) 149-164 [ISSN: 12838381]: Unlike the 1958 Geneva Convention on territorial waters and contiguous zones, the 1982 Convention on the law of the sea contains no rules to delimit the contiguous zones. Was this deliberate or not? After brief overview of the gradual development of the notion of contiguous zone, the author suggests that the absence of provisions governing the delimitation of contiguous zones corresponds to a deliberate choice on the part of those States taking part in the 3rd Conference on the Law of the Sea. He bases his position on the analysis of certain documents and also on international practice. In addition, the author draws a distinction between contiguous zone and archaeological zones.

(4) Exclusive economic zone and fisheries zones

Carnerero Castilla, R., *El régimen jurídico de la navegación por la zona económica exclusiva* (Servicio de Publicaciones de la Facultad de Derecho de la Universidad Complutense, Madrid, 1999) [ISBN: 84-89764-08-5]. Navigation through the EEZ can give rise to conflicts between the interests of the coastal States and those of other States. This work explores the legal regime on these issues, and it is divided into five chapters. In the first chapter, the author the UNCLOS provisions on navigation through the EEZ. For that purpose, the author describes the rights of the coastal States and the rights of third States in the EEZ, comparing them and drawing conclusions on the possibilities of conflict between the two sets of rights. He then compiles the measures provided for in UNCLOS in order to ensure a balance between the existing interests, establishing the liberties of third States within another State's EEZ and the restrictions imposed on them. In the second chapter, the author analyses the restrictions imposed on freedom of navigation of foreign ships through the EEZ by some coastal States. In the third chapter, the

author focuses on the restrictions on freedom of navigation through the EEZ stemming from the coastal States' sovereign rights of exploitation of living and non-living resources, including the protection of fish stocks, the implementation of the coastal States' laws on exploitation of living resources, restrictions related to other resources and restrictions of freedom of navigation through the EEZ related to the rights of the coastal States over their continental shelf. The fourth chapter refers to restrictions on freedom of navigation through the EEZ arising from jurisdiction over artificial islands, installations and structures, as well as marine scientific research. In the fifth chapter, the author offers a study of the restrictions on freedom of navigation through the EEZ stemming from State jurisdiction in relation to protection and preservation of the environment. The author concludes with some remarks about the necessity of restrictions on freedom of navigation of foreign vessels through the EEZ in order to ensure maritime safety and security, and to protect the rights and interests of the coastal States in their EEZ, among other reasons, as well as on the scope and extension of those restrictions and on the balance between the rights of coastal States and the rights of third States in the EEZ.

Gutiérrez Castillo, V. L., de Faramiñán, J. M., 'Una nueva zona jurisdiccional en el Mediterráneo: la zona de protección ecológica francesa', 8 *Revista Electrónica de Estudios Internacionales* (2004) [ISSN: 1697-5197]. This note analyses the Ecological Protection Zone established in the Mediterranean Sea in January 2004 by the French Government, regarding three topics: the geopolitical peculiarities of the Mediterranean Sea and how it is affected by marine pollution; the legal and political reasons that serve as its basis and the relevant national and international law on conservation.

Martínez Puñal, A., *Los derechos de los Estados sin litoral y en situación geográfica desventajosa en la zona económica exclusiva* (Xunta de Galicia, Santiago de Compostela, 1988) [ISBN: 84-505-7191-X]. This book explains the subject of the rights of landlocked and geographically disadvantaged States to exploit natural resources in the Exclusive Economic Zone, focusing on the debates held by the Seabed Committee and the III United Nations Conference on the Law of the Sea, and also on regulation provided by UNCLOS.

Pueyo Losa, J. A., "La indeterminación del nuevo orden jurídico marítimo internacional: Reflexiones sobre el carácter consuetudinario de la zona económica exclusiva y el valor de la Nueva Convención sobre el derecho del mar", 37-2 *Revista Española de Derecho Internacional* (1985) 323-354 [ISSN: 00349380]. The present work focuses on the analysis of the legal regime of the Exclusive Economic Zone as an institution that determines the transformations undergone by the traditional regulation of the exploitation of the living resources of the sea. According to the author, the EEZ will condition not only the freedom of fishing but most probably other classic uses and freedoms of the high seas. To this end, the paper examines, first, the value of the United Nations Convention on the Law of the Sea to determine the content of the EEZ as customary law; and, second, the legal regime of the EEZ.

Sobrino Heredia, J. M., 'L'approche nationale en matière des zones maritimes en Méditerranée', 13 *Anuario da Facultade de Dereito da Universidade da Coruña* (2009) [ISSN: 1138-039X] 753-772. Fishing zones, ecological zones and mixed zones are maritime areas whose geographic and legal characteristics are closely related to the EEZ. However, the creation of areas that are geographically less extensive than the EEZ does not necessarily reduce the problem of delimitation between States with adjacent or opposite coasts, nor does it eliminate the risks that impede freedom of navigation, which will continue to exist in these areas, giving rise to legal confrontations and controversies where maritime jurisdictions interfere.

Zavala, J., *Consenso y confrontación en la delimitación de la ZEE y de la plataforma continental* (Dykinson, Madrid, 1998) [ISBN: 84-9155-397-2]. In this work, the author analyses the regime on delimitation of the EEZ and the continental shelf. It consists of three parts, each one divided into different chapters. In the first part, the author examines the negotiating process of articles 74, 83 and 121 of UNCLOS. In the first two chapters, he analyses the debates and proposals on the aforementioned topics during the second and the third sessions of the third UN Conference on the Law of the Sea, analyzing the main trends and developments on the first drafts of the abovementioned articles. In the third chapter, the author analyses the impact of the islands regime on the delimitation of the EEZ and the continental shelf. In the second

part, the author explores State practice subsequent to the Third UN Conference on the Law of the Sea, analysing the main treaties about delimitation and drawing some conclusions on the trends followed in those treaties. In the third part, the author examines the main judgments and arbitral awards on the principles of equidistance and equity in delimitation cases. It also offers an interesting and self-explaining annex with cartographic materials.

(5) Continental shelf and its extension

Albiol Biosca, G., “La distribución del suelo y del subsuelo marino en el nuevo derecho del mar”, 1 *Cursos de Derecho Internacional de Vitoria-Gasteiz* (1986) 93-136 [ISBN: 8475850936]. This work aims at analysing UNCLOS developments on the law of the continental shelf, the deep sea-bed and ocean resources. It is divided into three parts. The first one is dedicated to the origins and review of the distribution of the sea-bed, the second part analyses the concept of continental shelf and determines its legal regime, and the last one examines the deep sea-bed regime, distinguishing between multilateral cooperation measures and unilateral legislation.

Faramiñán Gilbert, J. M., ‘Consideraciones jurídicas sobre la extensión de la plataforma continental (PC) más allá de las 200 (M) millas marinas (algunas referencias a la plataforma continental española)’, in Bou Franch, V. E., and Juste Ruiz, J. (Coords.) and Sánchez Patrón J. M., (Dir.), *Derecho del mar y sostenibilidad ambiental en el Mediterráneo* (Tirant lo Blanch, Valencia, 2014) [ISBN: 9788490531785] 59-86. In this chapter, the author presents some legal considerations about the extension of the continental shelf beyond 200 nautical miles, including his opinion about the Spanish continental shelf. First, he exposes the legal framework of the continental shelf within UNCLOS. Second, he analyses the relation between the outer limits of the continental shelf and other maritime spaces (namely, the EEZ and the seabed area). Afterwards, he examines the role of the Commission on the Limits of the Continental Shelf, the concept and the rules on the extension of the continental shelf beyond 200 nautical miles, including the procedure before the CLCS. The author then focuses on the case of the Spanish continental shelf.

Faramiñán Gilbert, J. M., Gutiérrez Castillo, V. L., *El Mediterráneo y la delimitación de su plataforma continental* (Tirant lo Blanch, Valencia, 2007) [ISBN 978-84-8456-654-0]. Undoubtedly, the continental shelf is one of the most suggestive topics of the law of the sea. The evolution of its legal regulation has become a faithful reflection of the adaptation of international law to the advances of technology, and it represents an icon of the claims of developing countries. The determination of its confines is of special interest in the Mediterranean, a semi-enclosed sea, where the delimitation of boundaries of areas subject to the sovereignty and jurisdiction of its coastal states is extraordinarily complex. The study of international law, the analysis of the domestic law of the affected States and the proposal of solutions to potential border conflicts are, among others, some of the issues rigorously addressed by the authors of the work.

Gutiérrez Espada, C., ‘Reflexiones sobre el aprovechamiento de los recursos del suelo y subsuelo del mar: de la plataforma continental a la zona de los fondos marinos’, 4 *Anuario de Derecho Marítimo* (1986) 157-184 [ISSN: 0211-8432]. In this article, the author analyses the changes made in the Law of the Sea with regard to the management of the resources present in the continental shelf and the seabed, holding a positive view of the declaration of the latter as common heritage of mankind. For the purpose of this study, the author divides the article into five parts. The first part introduces the subject and the outline of the article. In the second part, the author explores the regime of the 1958 Geneva Convention on the Continental Shelf, which started the attribution of sovereign rights over the continental shelf to coastal states. In the third part, he analyses the developments represented by UNCLOS, noting that the new concept of islands and rocks has an impact on the concept of continental shelf and that the new convention limits the expansion of the continental shelf. In the fourth part, the author examines the regulation of the seabed and the International Seabed Authority in UNCLOS. In the fifth part, the author expresses his doubts concerning the fate of the concept of common heritage of mankind declared in UNCLOS.

Sánchez Rodríguez, L. I., “La Sentencia del Tribunal Internacional de Justicia, de 24 de febrero de 1982, en el asunto relativo a la plataforma continental entre Túnez y la Jamahiriya Árabe Libia”, 35-1 *Revista Española de Derecho Internacional* (1983) 61-84 [ISSN: 00349380]: The process of creating and expanding maritime areas subject to the jurisdiction or sovereignty of States has increased the need for their delimitation between neighboring countries whose coasts are adjacent or opposite. This need to delimit spaces is manifested in two dimensions: on the one hand, in the increase of international agreements on the subject; on the other hand, with the increasing appearance of international disputes arising from discrepancies on the principles and usable methods, as well as on the material delimitation in each specific case. In this context is inserted the ICJ Judgment of 24 February 1982 in the case concerning the Continental shelf (Tunisia/ Libyan Arab Jamahiriya), which the present work examines in detail. This note focuses on the judgment of the case concerning the continental shelf between Tunisia and the Libyan Arab Jamahiriya. It briefly examines recent practice on maritime delimitation and previous cases on delimitation of the continental shelf before making a critical analysis of the background and legal questions arisen in the judgment, including each party's claims and the merits of the case, as wells as the author's own observations regarding the case.

(6) High seas and the Area

Albiol Biosca, G., *El régimen jurídico de los fondos marinos internacionales* (Tecnos, Madrid, 1984) [ISBN: 8430910530]: Shortly after the adoption of the United Nations Convention on the Law of the Sea, this work studies the law applicable to the seabed located beyond national jurisdiction. This space, previously inaccessible, has awakened the interest and attention of both States and companies. Therefore, the adoption of a specific regulation for this area is the greatest novelty of the recent multilateral convention. This work, already classic, studies monographically this new legal regime, indicating the background and the foreseeable social impact of its provisions. It discusses the concrete scope of the notion of “Common Heritage of Mankind”, the conditions of feasibility of an effective international administration of the area and the effects of the exploitation of its resources in international trade and in underdeveloped countries.

Badenes Casino, M., *La crisis de la libertad de pesca en alta mar* (MacGraw-Hill, Madrid, 1997) [ISBN: 84-481-1124-9]. The objective of this work is to study systematically the legal regulation of fisheries on the high seas, as well as recent events that allow us to speak about a situation of crisis in the traditional rule of freedom of fishing on the high seas. The regulations governing fishing on the high seas have undergone a constant evolution from their customary origins, a development that has not ended with the adoption of the 1982 United Nations Convention on the Law of the Sea. A constant feature of contemporary Law of the Sea is the progressive geographical reduction of the space considered as high seas, including new manifestations of international law, known as “creeping jurisdiction”, such as Chile's presential sea or the Agreement on straddling fish stocks and highly migratory fish stocks adopted by the United Nations General Assembly in 1995. In addition, a special reference is made to the fisheries dispute between Spain and Canada because of its relevance and interest for Spain.

Casado Raigón, R., *La pesca en alta mar* (Consejería de Agricultura y Pesca del Gobierno de Andalucía, Sevilla, 1994) [ISBN: 84-87564-99-2]. In this book, the author analyses the high seas fisheries regime and the challenges faced in the past decades. For the purpose of analysis, this work is divided into three parts. In the first one, the author examines the provisions on high seas fisheries contained in UNCLOS, focusing on conservation and cooperation measures. In the second part, the author addresses the problems that this issue has been faced with in the last decade, such as large-scale pelagic drift-net fishing, straddling fish stocks and institutionalized cooperation in this field. In the third part, the problem of progressive jurisdiction and presential sea and the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks are analysed. The author concludes with some valuable remarks about the undeniable development of the Law of the Sea on this topic.

Díez-Hochleitner, J., ‘Demanda de España contra Canadá ante la Corte Internacional de Justicia’, 47(1) *Revista*

Española de Derecho Internacional (1995) 287-308 [ISSN: 0034-9380]. This note addresses the seizure of the Spanish vessel *Estai* by Canadian authorities and the subsequent conflict between Spain and Canada regarding the exploitation of living resources on the high seas adjacent to the coasts of Canada, focusing on the fisheries jurisdiction case submitted to the International Court of Justice by Spain related to this incident and the Canadian Coastal Fisheries Protection Act Amendment of 12 May 1994, an example of the concept of creeping jurisdiction, which entitled the Canadian maritime authorities to take measures in order to protect straddling fish stocks in a NAFO Regulatory Area, thus expanding their rights under UNCLOS.

Iglesias Berlanga, M., *La regulación jurídica de los recursos vivos de la alta mar – Especial referencia a los intereses españoles* (DILEX, Madrid, 2003) [ISBN: 84-88910-43-6]. Encouraged by several countries interested in controlling high seas fisheries, the recent resurrection of Selden's *Mare Clausum* has resulted in a restriction of the freedom of fishing, the freedom of navigation on the high seas and the principle of exclusive jurisdiction of the flag State over its vessels in that zone, enshrined in the 1958 Geneva Conventions on the high seas and on fishing and conservation of the living resources of the high seas, and in Part VII of the United Nations Convention on the Law of the Sea of 1982. In this line, both the presence of national appropriation legislation (particularly the Canadian law on coastal fisheries) and the current status of the 1995 New York Agreement constitute the main object of this work, which takes into account their implications for remote fishing countries, and especially for Spain, for it may entail a nationalization of the world industrial fishing. From this point of view, the need to strengthen internationally institutionalized systems for the protection of the living resources of the high seas and the analysis of relations and possible jurisdictional and jurisprudential tensions between the Court of the Hague and the Hamburg Court in order to solve the foreseeable multiplication of extractive and commercial controversies beyond 200 miles, complete the full intention of this work: to offer a global perspective of an evolutionary process, supposedly unfinished but a fortiori limited by the physical magnitude of the oceanic space.

Juste Ruiz, J., 'La pesca española ante el actual proceso de revisión del Derecho del mar (con especial referencia a la problemática de nuestra flota del sur)', 1 *Anuario de Derecho Marítimo* (1981) 419-446 [ISSN: 0211-8432]. This article focuses on the impact of the increase of maritime spaces subject to the jurisdiction of the coastal state due to the adoption of UNCLOS on the Spanish fishing industry. It is divided into two parts. The first part is dedicated to the regulation of fisheries in the EEZ under UNCLOS and international practice, focusing on the jurisdiction of the ICJ in cases concerning fisheries. The second part covers the Spanish reaction to these developments in International Law, distinguishing between the treaties concluded by Spain in the field of fisheries and the diplomatic and legal practice relating to fisheries. He concludes with some comments about the uncertainty surrounding the new regime and the lack of consistency of the Spanish reaction to the proposals presented during the III UN Conference on the Law of the Sea.

Juste Ruiz, J., 'Los recursos de los fondos marinos más allá de la jurisdicción nacional como patrimonio común de la humanidad', 33 *Revista Aranzadi de Derecho Ambiental* (2016) 25-42. Existing resources in marine areas beyond national jurisdiction are controversial. UNCLOS proclaims freedom of access to the resources of the deep waters of the high seas and declares that those resources and the subsoil of the seabed are common heritage of mankind. This article examines the resources of the seabed beyond 200 nautical miles as common heritage of mankind, which are currently raising the interests of many States. The author first introduces the topic, outlining the evolution of the regime on the resources present on the deep waters and subsoil of the seabed, and then analyses their legal status and exploitation regime under UNCLOS. Afterwards, he details the law on the different kinds of resources, distinguishing between mineral resources and living, genetic and geological resources. He concludes that, despite the feasibility of their exploitation, those resources must remain common heritage of mankind.

Juste Ruiz, J. and Castillo Daudí, M. V., "La explotación de la Zona de los fondos marinos más allá de la

jurisdicción nacional: El Patrimonio común de la Humanidad frente a las legislaciones nacionales”, 7 *Anuario de Derecho Internacional* (1983-1984) 65-90 [ISSN: 02120747]: The purpose of this paper is to examine the issues raised by the qualification of the international seabed area as a “common heritage of Mankind” and the difficulties that remain for the establishment of an international exploitation regime that makes this principle operational. Thus, the work studies, firstly, the consideration of the Area as a common heritage of Mankind and its regulation; and, secondly, it analyses the system of exploitation of their resources, distinguishing between the system provided by UNCLOS and the systems of national exploitation provided by the laws of some States.

Lirola Delgado, I., ‘La represión del tráfico ilícito de drogas en Alta Mar: cooperación internacional y práctica estatal’, 12 *Anuario Español de Derecho Internacional* (1996) 523-576 [ISSN: 0212-0747]. In this article, the author examines the regulation of prevention and suppression of the maritime trade in illicit drugs. After an introduction and a section on the general aspects of the regime, international cooperation for the suppression of trade in illicit drugs on the high seas is analysed, focusing on its two levels (multilateral and bilateral cooperation). In this section, the main relevant multilateral treaties are studied: United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), and Agreement on Illicit Traffic by Sea, implementing Article 17 of the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances (1995). Besides, the author includes an analysis of the treaty for the repression of maritime trade in illicit drugs concluded between Spain and Italy. In the following section, the author provides some trends in State practice, focusing on the United States of America and Spain. The author concludes with some final remarks in which the maritime trade in illicit drugs is situated within the context of the general fight against trade in illicit drugs. She also remarks the importance of the principle and shared responsibility in this area and explores the possibility of punishment of these conducts as a crime against humanity. In the general framework for cooperation, the instruments analysed in this article have led to an increase of the efficiency of the measures against maritime trade in illicit drugs, using three methods: a) the waiver to act without the prior authorization of the flag state, b) the concession of a tacit authorisation by the flag state in some circumstances, and c) the introduction of measures to simplify and expedite the process of prior authorization of the flag state. However, the author stresses the importance of the general codification of these norms in order to adequately address the subject.

Navarro Batista, N., *Fondos marinos y Patrimonio Común de la Humanidad* (Universidad de Salamanca, Salamanca, 2000) [ISBN: 9788478009640]: The aim of this work is the study of the reforms that the 1994 Agreement has introduced into the regime of the International Seabed Area incorporated to the 1982 United Nations Convention on the Law of the Sea. Therefore, the work examines, firstly, the essential content of Part XI of the 1982 Convention; and, secondly, it analyzes the factors that have led to the elaboration of a new treaty. These premises allow deepening the examination of its main characteristics, beginning with its more formal aspects to stop later on in the substantive reforms.

Ponte Iglesias, M. T., “La Zona Internacional de los Fondos Marinos como Patrimonio Común de la Humanidad: una aspiración truncada”, *Cursos de Derecho Internacional de Vitoria-Gasteiz* (1997) 177-205 [ISBN: 847585060X]: The present work, one of the first on the subject, asks whether the decision to reserve a part of the sea and its mineral resources for the benefit of all humanity has been an operational decision or, on the contrary, constitutes a beautiful idea without real representation, especially after the adoption of the 1994 Agreement. To answer this question, it examines how the figure of the Area has been configured as a common heritage of Mankind until its expression in the 1982 United Nations Convention on the Law of the Sea and to what extent the amendments introduced by the 1994 Agreement have had an impact on the legal status of the Area and its resources.

Salamanca Aguado, E., *La zona internacional de los fondos marinos: Patrimonio Común de la Humanidad* (Dykinson, Madrid, 2003) [ISBN: 9788497720205]: The present work examines in detail the legal regime of the International Seabed Area from the perspective of its consideration as a common heritage of

mankind. This work is articulated in six chapters that, with a critical perspective, trace the evolution of the regime, from the negotiation of the provisions included in Part XI of the Convention until its modification in 1994 searching a greater participation in the Convention. The author reflects on the regression that the 1994 Agreement supposes for the principle of common heritage of Mankind applied to the Area. In this regard, if in the original Part XI the effective participation of developing States in activities in the Area was guaranteed as an inherent element to the common heritage of mankind, the 1994 Agreement only establishes an equitable distribution of benefits derived from activities in the Area, taking into account the interests and needs of developing States. The fundamental difference between the two regulations is that the second perpetuates the real inequality between States with an exclusively distributive effect, while the former tends to compensate for inequalities between States.

Sobrino Heredia, J. M., “El régimen jurídico de la explotación de los fondos marinos y oceánicos y los intereses de España”, 3 *Anuario da Facultade de Dereito da Universidade da Coruña* (1999) 609-634 [ISSN: 1138039X]: The adoption of the 1994 Agreement has facilitated the universalization de facto of the United Nations Convention on the Law of the Sea and has also allowed the implementation, in a short time, of the institutional mechanisms provided in Part XI and its Annexes. In this long process, Spain, according to the author, has behaved more as a spectator than an actor. A number of reasons explain this secondary role and have made it difficult to identify and defend Spain's interests in this field, especially in the context of a very long and extremely complex global negotiations. To show this, the work is structured in two sections. The first one describes the process of defining the International Seabed Area, showing the confrontation of interests between the countries of the North and those of the South and trying to identify what the position of Spain has been. The second section examines the legal regime of the Area and its institutional structure as resulted from the UNCLOS and the 1994 Agreement, highlighting the marginal role that is reserved to Spain in this structure.

Sobrino Heredia, J. M., *La cooperación internacional en la conservación y gestión de los recursos pesqueros de la Alta Mar* (Aranzadi, Pamplona, 1999) [ISBN: 84-8410-309-9]. This study deals with the search for a balance between community interests in the conservation and management of the high seas resources and the protection of the marine environment, and the individual interests of the various States (coastal or long-distance fishing) in the use and exploitation of resources through the exercise of fishing rights in the high seas. To this end, the first part of the report examines the principle of freedom of fishing and how it has been affected by certain States which, by claiming a special interest in the high seas adjacent to their EEZ, try to expand their fishing competences in this marine space. In contrast with these unilateral actions, the practice offers other examples which give rise to the concern to protect the resources of the high seas in the interest of the international community as a whole, through international cooperation procedures, which can consist in the collective or multilateral management of these resources. This can be interpreted as a glimpse of the beginning of a process that can lead to transform this international space into an internationalized space. This process is enshrined in the second part of this work.

Vázquez Gómez, E. M., *Las organizaciones internacionales de ordenación pesquera: la cooperación para la conservación y la gestión de los recursos vivos del alta mar* (Consejería de Agricultura y Pesca del Gobierno de Andalucía, Sevilla, 2002) [ISBN: 84-8474-058-7]. The international community is of utter importance for the conservation and management of living marine resources. International cooperation in this field is one of the main obligations under UNCLOS and customary law. Commercial fishing raised awareness that natural resources are exhaustible and bolstered institutionalised forms of international cooperation for the conservation and management of fish stocks. This work analyses this kind of international cooperation, and it is divided into two parts, each one comprising two chapters: the first one undertakes the study of the scope and regulation of regional fisheries management organisations, including recent developments, and the second part focuses on regional fisheries management organisations. She concludes with some interesting remarks about the evolution of the Law of the Sea on this topic, and warning that RFMOs should not become a form of creeping jurisdiction.

Yturriaga Barberán, J. A., 'Los mares presenciales: del dicho al hecho no hay tanto trecho', 12 *Anuario Hispano-Luso-Americano de Derecho Internacional* (1995) 389-440 [ISSN: 0570-4316]: This paper examines the doctrine of the so-called "Presential Seas" that has inspired the adoption of provisions tending to recognize certain competences in the high seas by Chile and Argentina. For the author, this doctrine is between legality and International illegality and involves the risk of being expanded among States with a wide seafront. After an analysis of the regulation of straddling populations in the UNCLOS, of the proposals in the framework of the United Nations Conference on Environment and Development, as well as of the United Nations Conference on straddling fish stocks and highly migratory fish stocks, the work examines the theory and practice about the Presential Seas as well as the phenomenon of the unilateral extension of Canada's jurisdiction to the High Seas.

Yturriaga Barberán, J. A., *The international regime of fisheries from UNCLOS 1982 to the presential sea* (Brill / Nijhoff, The Hague, 1997) [ISBN: 9789041103659]: Until recently, the international community failed to adopt either an agreed limit for the breadth of the territorial sea or a satisfactory regime of fisheries in the waters adjacent to the territorial sea. This provoked an eruption of unilateral acts by which coastal states extended their jurisdiction towards the high seas. The Third U.N. Conference on the Law of the Sea accepted the establishment of a 12-mile territorial sea and a 200-mile exclusive economic zone. While taking into account the non-existent rights and interests of the so-called geographically disadvantaged states and of states with broad continental shelves, the 1982 Convention on the Law of the Sea practically ignored existing rights and interests of habitual fishing states. It maintained the well-established principle of freedom of fishing on the high seas but with specific conditions. Dissatisfied with the Convention's regulation of fishing on the high seas, a few states elected to hold a U.N. Conference on Straddling and Highly Migratory Fish Stocks which adopted the 1995 Agreement for the implementation of the provisions of the Convention relating to the conservation and management of such stocks. Similarly, some of these states, like Chile, Argentina, and Canada, adopted legislation extending their jurisdiction beyond their respective 200-mile fishing or exclusive economic zones. This book explores these events in the historical development of the international regulations of fisheries and concludes with a look into recent developments in the area. It traces the evolution of the international regime on the conservation, management and exploitation of marine fisheries. It describes this regime under UNCLOS and the UN Fish Stocks Convention, and analyses recent case law and State practice, which are enriched by the valuable experience of the author. It also analyses the trend towards the development of State sovereignty over portions of the high seas, represented by the theory of the presential sea endorsed by some Latin American coastal States and the Canadian efforts to regulate the high sea stocks that straddle its EEZ.

(7) Islands and archipelagos

Gutiérrez Castillo, V. L., 'Análisis histórico-jurídico de la isla andaluza de Alborán', 6 *Revista Electrónica de Estudios Internacionales* (2003) [ISSN: 1697-5197]. Alboran Island is a small island located off the Spanish South Eastern coast. This article analyses the application of the distinction between the concept of island and the concept of rock in UNCLOS in this case, remarking that Alboran Island is arguably a rock and not an island. Thus, it is only entitled to a territorial sea and a contiguous zone.

Jiménez Piernas, C., 'Incidencia del Principio archipelágico en la problemática marítima y autonómica de Canarias', 33(2) *Revista Española de Derecho Internacional* (1981) 523-552 [ISSN: 0034-9380]: This article explains the process that, within the Third Conference on the Law of the Sea, led to denying the application of the archipelagic principle to the archipelagos of the State, and the consequences that ensued for the Canary Islands.

Jiménez Piernas, C., *El proceso de formación del Derecho Internacional de los Archipiélagos* (Servicio de Publicaciones de la Universidad Complutense, Madrid, 1982) [ISBN: XXXX]. This thesis analyses the genesis and development of the archipelagic concept and regime through state practice, international conferences, judicial decisions and academic doctrine. This work is divided into two volumes. In the first

one, the author describes the inconsistency of the archipelagic institution until the 1960s, examining the main trends about this issue. In the second volume, he explores the developments represented by the Third UN Conference on the Law of the Sea and its status as customary international law.

Jiménez Piernas, C., *La revisión del Estatuto Territorial del Estado por el nuevo Derecho del Mar: el caso de los Estados Archipelágicos* (Instituto de Cultura Juan Gil-Albert, Alicante, 1990) [ISBN: 84-7784-049-0]. In this book, the author proposes to adopt a more inclusive term to refer to the physical basis of the State, given that, in modern conceptions of International Law, the notion of territory includes more than land, which is often regarded as a synonym of territory. In this regard, it is important to note the existence of archipelagic States, in which there is no physical continuity, at least over the water surface. This has historically led to an unfair maritime delimitation of their territory and has hampered their development. The author examines the most notorious cases of archipelagic States, concluding that the legal status of the territory of a State must be revised.

Marín López, A., “El régimen de las islas en el actual Derecho del Mar”, 38-1 *Revista Española de Derecho Internacional* (1986) 151-170 [ISBN: 00349380]. This note examines the development of the islands regime in International Law, focusing on the changes made by the Third UN Conference on the Law of the Sea. First, it offers a perspective of the evolution of the regulation of islands in International Law. Second, it analyses the concept and types of islands, distinguishing them from rocks. Third, it examines the legal regime on islands and their maritime zones. Finally, some conclusions are drawn regarding the relevance of UNCLOS for the regime on islands.

Pueyo Losa, J., *El archipiélago oceánico. Regulación jurídico-marítima internacional* (Internacional Law Association, Madrid, 1981) [ISBN: 84-300-4831-6]: This third volume of the series of monographs published by the Spanish Section of the International Law Association, as a reflection of the individual and collective work carried out within it, constitutes an important contribution to the study of a sector of the Law of Peoples as paradigmatic as The Law of the Sea. The work deals with the analysis of a juridical-maritime figure that constitutes a relevant manifestation of the complex range of interests and contradictions that characterize the very essence of maritime international law: that is, the figure of the oceanic archipelago.

Sobrido Prieto, M., ‘The position of the European Union on the Svalbard waters’, in Conde, E. and Iglesias S., (Coords.), *Global Challenges in the Arctic Region: Sovereignty, Environment and Geopolitical Balance* (Routledge, Abingdon, 2017) [ISBN: 9781472463258] 75-106. In this chapter, the author exposes the position of the European Union on the very special case of the Svalbard waters, stating the existing doubts about the scope of the restrictions on the Norwegian sovereignty over the archipelago, in particular, regarding the territorial scope of the Treaty of Paris. In the first part, the author further explains that the main problems concerning these waters were related to fishing in the waters of the Fisheries Protection Zone around Svalbard, providing an analysis of the legal discussion about the waters off Svalbard and its continental shelf. The second part is focused on the position of the European Union, which is not a party to the Treaty of Paris, regarding this issue.

(8) Straits (excluding the Strait of Gibraltar)

López Martín, A. G., *La navegación por los estrechos. Geoestrategia y Derecho* (Dykinson, Madrid, 2008) [ISBN: 9788498492071]. One of the most important legal questions concerning maritime navigation has invariably been the one concerning passage through the Straits, and this is due to the incontestable strategic and commercial interests in the presence. Some interests that have “imposed” a profound change in the regime of navigation, embodied in the right of passage in transit enshrined in the United Nations Convention on the Law of the Sea of 1982, which favors the global strategic interests of the Great Powers, in the same direct relation that moves away from the sacred sovereign rights of the States bordering straits and affects its security. However, there are many unknowns left open by the 1982 Convention, such as the determination of the concept of an international strait or the correct location of all straits in the world in

each of the eight categories established by the Convention, so that is the regime of step that governs in each of them. Such doubts are dissipated and resolved in this work, which also includes the domestic legislation in force in each of the international straits, as well as the traffic separation devices and other security measures in them. This provides a complete study of the current situation in which the regulation of navigation by international straits is found.

- López Martín, A. G., 'El "cierre" del estrecho de Ormuz: un análisis desde el derecho internacional', 25 *Revista Electrónica de Estudios Internacionales* (2013) 1-42 [ISSN: 1697-5197]: In recent years, the Islamic Republic of Iran is threatening a possible closure of the Strait of Hormuz, which is a coastal State. Concern about the negative effects that could lead the closure, especially from the economic point of view, given that is the strait with greater traffic of oil in the world, leads us to analyze whether the closure would be legitimate. We wonder if from the point of view of International Law Iran has the right to close the Strait of Hormuz or, where appropriate, to impose passage rates. An analysis that focuses mainly on the rules of the Law of Sea concerning the international straits, not to mention some aspects of international responsibility, as is the score on the possible closure as a countermeasure against the sanctions imposed by the United States of America and some States of the European Union.

(9) Other spaces

- Iglesias Sánchez, S., 'The Arctic development: New navigational routes and maritime governance', in Conde E., Iglesias, S. (Coords.), *Global Challenges in the Arctic Region: Sovereignty, Environment and Geopolitical Balance* (Routledge, Abingdon, 2017) [ISBN: 9781472463258] 196-213. In this chapter, the author analyses the legal developments entailed by the new Arctic navigation routes. The author introduces the Northeast Passage, the Northern Sea Route and the Transpolar Route, and examines their regime under UNCLOS and its development through the adoption of the Polar Code. The author concludes by stating the pending issues in this matter and the multiple options for cooperation on Arctic shipping.
- López Martín, A. G., *International Straits: Concept, Classification and Rules of Passage* (Springer, Heidelberg, 2010) [DOI: 10.1007/978-3-642-12906-3]: This book analyzes the regime of navigation in historical relation to the United Nations Convention of the Law of Sea (UNCLOS) of 10 December 1982, and then analyzes in detail the concept of international straits to arrive at a complete definition. This work examines the eight categories of straits laid out in the UNCLOS. It analyzes the right of innocent passage and the regime of transit passage, both systems of navigation in international straits, and then presents the domestic legislation and the traffic separation schemes which apply to international straits. Finally, the work includes a complete catalogue of straits with the reference to their respective UNCLOS articles.
- Manero Salvador, A., *El deshielo del Ártico: retos para el derecho internacional, la delimitación de los espacios marinos y la protección y preservación del medio ambiente* (Thomson Reuters-Aranzadi / Universidad Carlos III, Cizur Menor, 2011) [ISBN: 978-84-9903-778-3]. This work analyses the maritime delimitations in the Arctic region and the environmental protection and conservation regime in this area. It is divided into two parts, corresponding to the aforementioned main topics covered therein. In the first part, the author explores the issue of the delimitation and the legal nature of the marine spaces in the Arctic region, including the Eastern Greenland case. The author points out that the sector theory, albeit deemed the most accepted among Arctic States, is, in fact, only endorsed by Canada and Russia, and has been questioned by Denmark, the United States of America and Norway. This part also offers a study of the cases on delimitation of the continental shelf in the Arctic region and an analysis of navigation through the Northwest Passage and the Northern Sea Route. The second part of this work explores the regime on protection and preservation of the environment in the Arctic region, first focusing on the treaty regime, especially the Arctic clause provided for in Article 234 UNCLOS, and then on soft law instruments.

(F) DELIMITATION

- Carnerero Castilla, R., 'La delimitación marítima entre Guyana y Surinam: entre la equidistancia y las circunstancias especiales', in Sánchez, L. I., Quel, F. J., López, A. G., *El poder de los jueces y el Estado actual del derecho internacional* (Universidad del País Vasco, Bilbao, 2010) [ISBN: 978-84-9860-436-8] 605-616. This book chapter focuses on the case concerning the delimitation of Guyana's maritime boundary with Suriname. The author briefly analyses the background of the controversy and addresses the special circumstances with regard to the delimitation of the territorial sea and the application of the principle of equidistance in the process of delimitation of the EEZ and the continental shelves between Guyana and Suriname. He concludes with some remarks on some security and compliance questions stemming from the case.
- Casado Raigón, R., Gutiérrez Castillo, V. L., 'Marruecos y España. La delimitación de sus espacios marítimos', in Mariño F. M., (Coord.), *El derecho internacional en los albores del siglo XXI: homenaje al profesor Juan Manuel Castro-Rial Canosa* (Trotta: Fundación Juan March, Madrid, 2002) [ISBN: 84-8164-576-1] 85-106. The delimitation of maritime boundaries between States with opposite or adjacent coasts must be effected by agreement on the basis of international law, in order to achieve an equitable solution. However, few agreements have been reached in this field. In the case of Spain, its maritime claims overlap those of its neighbouring countries. Negotiations have been especially tough with Morocco, which has claimed sovereignty over part of the Spanish territory, namely, Ceuta, Melilla, Vélez de la Gomera, Alhucemas, and the Chafarinas islands since its independence in 1956. Those claims have influenced the negotiations for the delimitation of maritime boundaries between Spain and Morocco. The authors study Spanish and Moroccan law on maritime spaces in order to establish overlapping claims and analyse this situation in the light of the Law of the Sea, focusing on the Strait of Gibraltar, the Alboran Sea and the Atlantic area. They conclude that, leaving aside territorial claims, a strictly legal delimitation of maritime boundaries between Spain and Morocco will be difficult to achieve due to the presence of islands, rocks and strategic enclaves. Thus, the authors favour the search for an equitable solution.
- Conde Pérez, E., 'Pasado colonial y otras rencillas entre vecinos. La sentencia de la Corte Internacional de Justicia de 16 de marzo de 2001 en el asunto de la delimitación marítima y de las cuestiones territoriales entre Qatar y Bahrein (Qatar c. Bahrein, fondo)', in Sánchez, L. I., Quel, F. J., López, A. G., *El poder de los jueces y el Estado actual del derecho internacional* (Universidad del País Vasco, Bilbao, 2010) [ISBN: 978-84-9860-436-8] 59-84. In this chapter, the author analyses the case concerning maritime delimitation and territorial questions between Qatar and Bahrain (Qatar v Bahrain), in which the ICJ decided the attribution of sovereignty over some disputed islands and the maritime delimitation between Qatar and Bahrain. The author offers a brief historical review of the controversy before analysing the case. She first undertakes its procedural nuances and, afterwards, the substantive issues discussed in the judgment of the ICJ, focusing on the delimitation of the territorial sea, the EEZ and the continental shelf between the two countries. In the conclusions of the chapter, the author sums up the contributions of this judgment to international law.
- Conde Pérez, E., '¿Una bisectriz equidistante o la equidistancia a través de la bisectriz? El asunto de la controversia territorial y marítima entre Nicaragua y Honduras en el mar Caribe (Nicaragua c. Honduras). Sentencia de la CIJ de 8 de octubre de 2007', in Sánchez, L. I., Quel, F. J., López, A. G., *El poder de los jueces y el Estado actual del derecho internacional* (Universidad del País Vasco, Bilbao, 2010) [ISBN: 978-84-9860-436-8] 617-638. This chapter focuses on the territorial and maritime dispute between Nicaragua and Honduras in the Caribbean Sea. After introducing the question of sovereignty over the islands and some considerations about the critical date and the *uti possidetis* principle, the author analyses the application of the bisector method in this case. In order to determine the maritime boundary between two adjacent States, a single maritime boundary must be drawn. Due to the specific circumstances of the case (with the presence of islands and other geographical circumstances), the Court was unable to apply the equidistance method, and made use of the bisector method instead. The author

then studies the starting and ending points of the line to be drawn. She concludes with some remarks about the role of equity in maritime delimitations.

Conde Pérez, E., 'Delimitaciones marítimas y territoriales en el Ártico: desarrollo y tendencias', 68(1) *Revista Española de Derecho Internacional* (2016) 235-239 [ISSN: 0034-9380]. All Arctic States, except for the United States, are party to UNCLOS. However, the United States has traditionally considered its provisions to be customary law and has thus abode by them. Therefore, territorial disputes in the Arctic have been resolved according to the provisions contained in this convention. In this note, the author briefly refers to the territorial dispute over Hans Island, and then examines some cases of maritime delimitation, distinguishing between achieved and pending delimitations, as well as the delimitation of the continental shelf beyond 200 nautical miles, which can lead to further disputes, given that some countries' claims overlap or may overlap. The author concludes that the Arctic has remained a space of peaceful cooperation, with scarce territorial disputes and multiple agreements, and foresees the joint negotiation of overlapping territorial claims.

González Giménez, J., 'Las líneas de base en el mar Mediterráneo: ¿discrecionalidad o arbitrariedad en la acción estatal?' 59(1) *Revista Española de Derecho Internacional* (2007) 65-101 [ISSN: 0034-9380]: The breadth of the maritime zones under national jurisdiction is to be measured from baselines. The rules for drawing baselines are contained in the 1982 United Nations Convention on the Law of the Sea. These rules are too ambiguous. They allow excessive baseline claims, which can extend national jurisdiction significantly seaward in a manner that prejudices international interests. The practice of Mediterranean States in establishing baselines is examined in light of these rules.

Espósito Massicci, C., 'Sobre el establecimiento de una línea mediana como límite marítimo provisional entre España y Marruecos frente a las costas de las Islas Canarias', 13 *Revista Jurídica de la Universidad Autónoma de Madrid* (2005) 91-107 [ISSN: 1575-720-X]. In this article, the author addresses the issue of maritime delimitation between the Canary Islands and the coast of the Kingdom of Morocco, which has been object of bilateral negotiations since 2003. For that purpose, he describes the results of those negotiations and then analyses the hypothetical establishment of a provisional equidistance boundary between the coasts of the two adjacent States and the geomorphical, legal, political and economic factors that might be relevant for its modification. The author concludes that the establishment of a provisional equidistance line could be beneficial for Spain and Morocco from an international legal perspective.

Gutiérrez Castillo, V. L., *España y sus fronteras en el mar. Estudio de la delimitación de sus espacios marinos*, (Publicaciones Universidad de Córdoba, Córdoba 2004) [ISBN: 84-9772-528-X]: Spain, a state (peninsular and island) with a coastline of about eight thousand kilometers in length, extends to two continents and presides one of the international straits with the highest maritime traffic in the world. This circumstance, coupled with the adjacency and opposition of its coasts to those of other States, provokes the inevitable overlapping of its marine spaces with those projected by Algeria, France, Italy, Morocco and Portugal, as well as with the alleged British waters of the colony of Gibraltar. Thus arises the need to set boundaries and borders at sea. In view of this situation, the present monograph is justified, in which the author carries out an exhaustive study of the international and state rules concerning the law of the sea in general and the delimitation of marine spaces in particular. It also offers a complete analysis of its application in Spain and its environment, proposing possible solutions to the controversies that, traditionally, affect the foreign policy of our country. Issues such as those relating to the sovereignty of the island of Perejil, the delimitation of marine spaces in the Strait of Gibraltar or Spanish territory in Africa are addressed with serious and solid legal foundation. In short, we are dealing with an interesting work, of indisputable topicality, in which it has been possible to correctly combine scientific rigor with practicality and conceptual clarity.

Gutiérrez Castillo, V. L., 'Análisis del sistema de líneas de base español a la luz de la Convención de Naciones Unidas sobre el Derecho del Mar de 1982', in Sobrino Heredia, J. M., (Coord.), *Mares y océanos en un mundo en cambio: tendencias jurídicas, actores y factores* (Tirant lo Blanch, Valencia, 2007) 171-198 [ISBN:

978-84-8456-769-1]: The Spanish baseline system is a mixed system. Decree 2510/77 establishes straight baselines along the entire Spanish coast, but not in its entirety, since in some sections the normal baseline has been preferred, which, according to Law No. 20 / 67 of April 8, 1967 and Decree No. 3281/68 of December 26, 1968, is determined by the screened low tide line, whose reference level is that of the mean sea level. In our opinion, the Spanish route of straight baselines deserves a positive evaluation, since, although some traces seem difficult to justify, most of the straight baselines are not separated from the direction general of the coast, do not enclose large swaths of water, nor usually exceed 24 mm. Taking into account all these circumstances, we insist that the system of baselines traced by Spain is in accordance with the UNCLOS, since we understand, it must be evaluated according to its purpose of any baseline system, which does not it is other than to facilitate the determination of the outer limit of the territorial sea, and that of not acquiring new interior waters.

Jiménez Piernas, C., 'La relevancia de la frontera terrestre en la jurisprudencia sobre delimitación de los espacios marinos entre Estados adyacentes', in Mariño, F. M., (Coord.), *El derecho internacional en los albores del siglo XXI: homenaje al profesor Juan Manuel Castro-Rial Canosa* (Trotta: Fundación Juan March, Madrid, 2002) [ISBN: 84-8164-576-1] 393-422. In this book chapter, the author analyses the impact of land boundaries on maritime boundaries between adjacent States in case law, as a relevant circumstance to take into account in maritime delimitation. The author focuses on the land boundary terminus and the direction of the land boundary in the judgments and awards of international courts. In the first case, to which the second party of the article is dedicated, the author states the recognition of the land boundary terminus as a relevant circumstance of geopolitical nature in the process of maritime delimitation. In early judgments, the ICJ considered the position of the intersection of the land frontier with the coastline as relevant in order to establish the starting point of maritime boundaries. This reasonment was followed through by arbitral courts, and soon became one of the elements to take into account in order to achieve an equitable result in maritime delimitation. However, this was not the case of the direction of the land boundary, which has not been acknowledged as a relevant circumstance in maritime delimitation, given that its result must be verified in each case. The author reaffirms his findings in the conclusions of the chapter.

Jiménez Pienas, C., 'La jurisprudencia sobre delimitación de los espacios marítimos: una prueba de la unidad del ordenamiento internacional', in Vázquez, E. M., Adam, M. D., Cornago N., (Coords.), *El arreglo pacífico de las controversias internacionales: XXIV Jornadas de la Asociación Española de Profesores de Derecho internacional y Relaciones internacionales (AEPDIRI), Córdoba, 20-22 de octubre* (Tirant lo Blanch, Valencia, 2013) [ISBN: 978-84-9033-521-5] 241-276: The present work deals with the jurisprudence of the ICJ, as well as that of the ITLOS and arbitral tribunals, as an example of the progress made in relation to the jurisdictional settlement of disputes in the Law of the Sea, which can serve as a thermometer to evaluate the health of a legal system characterized by its decentralized nature. The paper analyzes the normative framework foreseen in the UNCLOS, the normative interaction in this matter and the role played by the international jurisprudence, and the customary rule on delimitation, its interpretation and evolution. The analysis allows to conclude that, in general terms and to date, the jurisdictional solution of the disputes regarding the delimitation of marine spaces has been satisfactory, which does not prevent identifying some uncertainties.

Juste Ruiz, J., 'Delimitaciones marinas en África occidental: el laudo arbitral sobre la delimitación de la frontera marítima en Guinea y Guinea-Bissau', 42-1 *Revista Española de Derecho Internacional* (1990) 7-42 [ISSN: 0034-9380]. In this article, the author analyses the impact of the award in the matter of an arbitration concerning the delimitation of the maritime boundary between Guinea and Guinea-Bissau in International Law, highlighting the utilization of the *uti possidetis* principle in the maritime context and the determination of a border that would encompass the territorial sea, the EEZ and the continental shelf. The article consists of two parts preceded by an introduction on the background of the case. The first part covers the lack of delimitation of maritime boundaries in the 1886 convention between France and Portugal, the interpretation of its provisions and its consequences for the case. In the second part, the

author examines the equitable delimitation of the disputed maritime spaces under International Law. He concludes with some remarks on the similarities between arbitral awards and the judgments of the International Court of Justice on maritime delimitation and a critical analysis of the award.

- López Martín, A. G., 'El asunto relativo a la delimitación marítima y cuestiones territoriales entre Qatar y Bahrein (Qatar c. Bahrein). Sentencia del Tribunal Internacional de Justicia de 16 de marzo de 2001', 54(1) *Revista Española de Derecho Internacional* (2002) 143-157 [ISSN: 0034-9380]. In its judgment in the case concerning maritime delimitation and territorial questions between Qatar and Bahrain (Qatar v Bahrain), of 16 March 2001, the ICJ decided the attribution of sovereignty over Zubarah, the Hawar Islands, Janan, Qit'at Jadarah and Fasht ad Dibal, as well as the single maritime boundary between Qatar and Bahrain. The ICJ thus put an end to a sixty-year territorial dispute, and also to one of the longest and most innovating litigations in its history. The author notes that this judgment highlighted the connection between the law of State territory and the law of the sea and made important contribution to both branches of legal knowledge. After providing a brief historical review of the conflict, the author analyses the question relating to the territory of each island or group of islands and the different criteria for maritime delimitation, criticising the admission of a British decision of 1939 as a legal title to territory, and the 'proclamation' the existence of a right of innocent passage between the islands of Bahrain, despite the fact that it was generally recognized in Article 8(2) of UNCLOS.
- López Marín, A. G., 'Nuevamente, delimitación conjunta de la frontera terrestre y marítima y, además, responsabilidad. La sentencia de la Corte Internacional de Justicia de 10 de octubre de 2002 en el asunto relativo a la frontera terrestre y marítima entre Camerún y Nigeria (Camerún c. Nigeria. Guinea Ecuatorial interviniente)', in Sánchez, L. I., Quel F. J., López, A. G., *El poder de los jueces y el Estado actual del derecho internacional* (Universidad del País Vasco, Bilbao, 2010) [ISBN: 978-84-9860-436-8] 171-196. This chapter focuses on the case concerning Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening). The author provides a general background of the controversy and thoroughly describes the development of the proceedings, before analysing the judgment rendered by the ICJ on the dispute, highlighting three aspects: land boundary delimitation, maritime boundary delimitation and international responsibility.
- Orihuela Calatayud, E., *España y la delimitación de sus espacios marinos* (Universidad de Murcia, Murcia, 1989) [ISBN: 84-7684-160-4]: Spain, a state with a coastline of about eight thousand kilometers in length, extends to two continents and presides one of the international straits of greatest maritime traffic in the world. This circumstance, together with the adjacency and opposition of its coasts to those of other States, provokes the inevitable overlapping of its marine spaces with those projected by Algeria, France, Italy, Morocco and Portugal, as well as with the claimed British waters of the colony of Gibraltar. This work constitutes an exhaustive study of the international and domestic norms related to the Law of the sea, in general, and to the delimitation of the marine spaces in particular. It also offers a complete analysis of its application in Spain and its surroundings, raising possible solutions to the controversies that traditionally affect our foreign policy, such as the sovereignty over the "Isla de Perejil" or the delimitation of the marine spaces in the Strait of Gibraltar, among other.
- Orihuela Calatayud, E., 'La delimitación de los espacios marinos en los archipiélagos de Estado: Reflexiones a la luz de la ley 44/2010, de 30 de diciembre de aguas canarias', 21 *Revista Electrónica de Estudios Internacionales* (2011) [ISSN-e: 1697-5197]: The passing of the Canary Water Act, of 30th December 2010, give us a new opportunity to reflect about the application of the archipelagic principle respect to the State archipelagos and to assess the effects and consequences that the application of this Act bring. The Spanish action derived from this Law joins the action of other mixed States which intend to promote a change in the Law of the Sea, aiming either to extend the scope of the principle for including the archipelagoes of States or to favor, also, a change in its regulation. This paper analyzes the issues related to the regulation of the archipelagoes by the International Law of the Sea, the ones derived from the application of the archipelagic principle to the State archipelagoes and specially the consequences of the

new Spanish Act, most of which have not cleared up by that regulation.

- Pastor Palomar, A., *Delimitación Marítima entre Estados. Formaciones Insulares y Bajíos* (Tirant Lo Blanch, Valencia, 2017) [ISBN: 9788491199892]. In the law of the sea, the delimitation of spaces between States is the most contentious dispute in international courts. In this context, this monograph studies the international legal regime of the islands, shoals, rocks, reefs, atolls, islets, cays and banks. The analysis is not limited to the main categories (islands and shoals), since others can also play and, in fact, play an important role in many maritime delimitations. A dispute such as that of the South China Sea, still unresolved despite the arbitration award of July 12, 2016, demonstrates the need to specify the applicable law and its geopolitical relevance. The analysis also affects Spain, which has pending a series of maritime delimitations and territorial disputes with the presence of these geographical formations. In the present work the reader will find a systematic exposition of legal practice in the matter, that is to say: two hundred marine delimitations, some thirty international judicial and arbitral disputes, a hundred treaties, another hundred national legislations of States and territorial entities of the five continents, and several legal disputes of domestic law. With all this, possible juridical precedents of a sector of the international law that forge to the geography, without remaking it, are analysed.
- Pozo Serrano, M. P., '¿Hacia una solución "económicamente" equitativa? Reflexiones sobre la evolución de la jurisprudencia internacional en materia de delimitación marítima', 13 *Anuario Español de Derecho Internacional* (1997) 407-466 [ISSN: 0212-0747]. In the Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v Norway) case, the ICJ defined a maritime boundary in order to ensure equitable access to fishery resources, introducing a new economic factor to take into account in the process of delimitation. This article covers the incidence of economic factors in judicial delimitation in case law, analysing the evolution of the decisions of international courts on maritime delimitation. For study purposes, the article is divided into three parts: one related to the presence of natural resources in the disputed area, another one dedicated to the Parties' general economic situation, and the last one covering socioeconomic factors relating to economic dependence on the resources existing in the disputed area, including historical rights. The author concludes underlying that, although the delimitation of the continental shelf between States shall be effected on the basis of international law in order to achieve an equitable solution, some economic circumstances can be relevant for the delimitation process. The presence of natural resources in the area is one of them, as long as their existence and location are known or can be easily determined. If it is just a mere hypothesis, the presence of natural resources in the area becomes irrelevant for maritime delimitation. This criterion had been previously acknowledged by the ICJ, stating that economic considerations were not relevant for the delimitation process but could not be disregarded either, as they should be considered in order to verify equity in the result of the delimitation process. The Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v Norway) case is thus a turning point in the ICJ criteria for maritime delimitation.
- Ruiloba García, E., *Circunstancias especiales y equidad en la delimitación de los espacios marítimos* (Real Instituto de Estudios Europeos, Zaragoza, 2001) [ISBN: 8495929015]. This thesis focuses on the study of those special circumstances that must be taken into account in order that all delimitation of the sea spaces between two or more States is equitable. The first chapter is devoted to the process of historical formation of the norms that govern maritime delimitation. In the second chapter delimitation is approached in its factual dimension. The purpose of the third chapter is to define the concept and nature of the delimitation operation. Chapter four determines the content of the rules applicable to the delimitation of maritime spaces. Finally, the fifth chapter analyses the scope and significance of the special circumstances by examining the various circumstances that the International Tribunals have considered relevant in each specific case, in order to achieve a fair outcome.
- Saura Estapà, J., *Límites del mar territorial* (Bosch, Barcelona, 1996) [ISBN: 8476983824]: The object of this study is the analysis of the international legal regulation of the limits of the territorial sea contained in the United Nations Conventions that have codified this matter (1985 Geneva Convention relative to the

territorial sea and the contiguous zone; the United Nations on the Law of the Sea, 1982) as in the field of customary law. It will begin by determining the width that can reach the territorial sea, to continue with the study of the different baselines, from which it is measured, not only that width, but also that of almost all the marine spaces on which the coastal State exercises some kind of competition. Finally, the last chapter is devoted to the examination of special situations that may occur in the littoral of the riparian and that have an influence when measuring the width of the territorial sea, in order to finish determining the methods and technical criteria used in the design of the outer limit of said marine space.

Saura Estapà, J., *Delimitación jurídica internacional de la plataforma continental* (Tecnos, Madrid, 1996) [ISBN: 84-309-2939-8] This thesis analyses the rules on the limits of the continental shelf. It is structured in three parts, each one analysing one of the limits of the continental shelf: its inner limits, which encompass the outer limits of the territorial sea; its outer limits, subject to two different procedures of determination in the 1958 Sea Shelf Convention and in UNCLOS, and the delimitation of the continental shelf between States with adjacent or opposite coasts. It includes a special chapter about joint delimitation of the sea shelf and the Exclusive Economic Zone.

Torres Ugena, N., 'Delimitación de fronteras a partir de la sucesión colonial. La demanda de revisión de la sentencia de 11 de septiembre de 1992 en el asunto de la diferencia fronteriza, terrestre, insular y marítima (El Salvador c. Honduras; Nicaragua interviniente) (El Salvador c. Honduras)', in Sánchez, L. I., Quel, F. J., López, A. G., *El poder de los jueces y el Estado actual del derecho internacional* (Universidad del País Vasco, Bilbao, 2010) [ISBN: 978-84-9860-436-8] 261-280. This chapter provides an analysis of the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) case. It starts introducing the background of the controversy and then focuses on the legal situation of islands and the estuary of the Goascorán River. Afterwards, it examines the application of the *uti possidetis* principle and the process of avulsion in the 1992 judgment. The author concludes with a legal analysis of the application for revision of the judgment, examining every requisite provided for in article 61 of the Statute of the ICJ and discussing its inadmission by the Court.

(G) GIBRALTAR (INCLUDING DELIMITATIONS AND NAVIGATION THROUGH ITS STRAIT)

Acosta Sánchez, M. Á., 'Encuentros y desencuentros hispano-británicos en las aguas en torno a Gibraltar: ¿son posibles acuerdos de cooperación práctica?' 28 *Anuario Español de Derecho Internacional* (2012) 233-275 [ISSN: 0212-0747]: The dispute between Spain and United Kingdom over the sovereignty of Gibraltar and the water jurisdiction has been exacerbated in recent years by the increasing incidents among its Security Forces. Such incidents have become a political demonstration of national positions about the maritime areas. That is why we are required to adopt action protocols, respecting national sovereignty claim, and in order to face illegal traffics in the area of Strait of Gibraltar.

Cepillo Galvín, M.A., 'The control of maritime traffic in the Strait of Gibraltar', 18 *Spanish Yearbook of International Law* (2013-2014) 299-308: The control of maritime traffic in the Strait of Gibraltar is conditioned by the regulation established in the United Nations Convention on the Law of the Sea, of 1982, in relation to straits used for international navigation where transit passage is applied. In this respect, it is necessary a cooperation between Spain and Morocco in order to designate sea lanes and establish a traffic separation scheme in that space. An analysis of this cooperation and of the last modifications of the Traffic Separation Scheme of the Strait of Gibraltar after the new Tangier-Med port being brought into service will be carried out in this paper.

Fernández-Sánchez, P. A., 'La controversia sobre la titularidad jurídico-internacional de los espacios marítimos adyacentes a Gibraltar', 67(2) *Revista Española de Derecho Internacional* (2015) 13-47 [DOI: <http://dx.doi.org/10.17103/http://dx.doi.org/10.17103/redi.67.2.2015.1.01>]: The study seeks to identify the applicable law relating to the sovereign title of Gibraltar's adjacent Marie waters. To this end, the author considers four elements. The first element relates to the specific colonial situation where the United

Nations have been continuously outlining the need for negotiations between the Administrator Power (UK) and Spain to proceed to the reintegration of Gibraltar into the Spanish territory, taking into account the interest and legitimate aspirations of the population of Gibraltar which are consistent with International Law. It also analyzes the cessions of the port of Gibraltar to the UK, which currently manages the port and its internal waters. The principle of *lex specialis derogat legi generali* is also analyzed, where the Treaty of Utrecht is considered as *lex specialis* and the Law of the Sea as *lex generalis* and, finally, the application of the «dry shore» theory to the specific case of Gibraltar.

González García, I., 'La Bahía de Algeciras y las aguas españolas', in del Valle J. A., (Coord.), *Gibraltar, 300 años* (Servicio de Publicaciones de la Universidad de Cádiz, Cádiz, 2004) 211-236 [ISBN: 84-96274-43-8]: Addressing the analysis of the Bay of Algeciras and Spanish waters, in accordance with the provisions of Article X of the Treaty of Utrecht, is not a task free from difficulties, as evidenced by the fact that the same conventional basis is alleged by the United Kingdom as legal title to identify British waters in the Bay of Gibraltar. In accordance with the International Law of the Sea, it is our intention to offer the initial legal framework that will reward us to understand, in practice, the indeterminacy existing in relation to the legal nature of the waters included in the Bay of Algeciras.

González García, I., 'Los espacios marítimos del istmo y Peñón de Gibraltar: cuestiones en torno a su delimitación' in Sobrino Heredia, J. M., (Coord.), *Mares y océanos en un mundo en cambio: tendencias jurídicas, actores y factores* (Tirant lo Blanch, Valencia, 2007) [ISBN: 978-84-8456-769-1] 141-170. This book chapter is focused on the delimitation of maritime spaces off the isthmus and the rock of Gibraltar. It is divided into three parts. The first one covers the Treaty of Utrecht and the regime of the waters; the second one explores the regime of waters off the Rock of Gibraltar and the Bay of Algeciras, and the third one examines the waters off the isthmus. In the conclusions, the author states that the Spanish posture in this controversy is not consistent with the practice followed in past centuries –except for the waters off the isthmus–, and the consolidation of the British posture on the subject of the waters off the rock. She also favours dialogue and cooperation in order to find a solution for the maritime delimitation between Spain and Gibraltar.

González García, I., Acosta Sánchez, M. Á., 'La difícil aplicación de la estrategia marina europea y la protección del medio marino en la bahía de Algeciras/Gibraltar', 25 *Revista Electrónica de Estudios Internacionales* (2013) [ISSN: 1697-5197]: The transposal into national law of the European Marine Strategy represents the first step towards the establishment of the so-called European Maritime Policy. This new policy aims to provide a sustainable and coherent dimension to human interventions on the European coasts. In the Spanish case, the Law 41/2010 has transposed the EU Strategy in a much clearer manner than the wording of the EU lawmaker. One of the Spanish regions that necessitates demarcation lines is the area between the Strait of Gibraltar and Isla de Alborán, where maritime boundaries are yet to be defined. Indeed, the existence of a territorial dispute between Spain and the United Kingdom over the waters around Gibraltar and the recent conflict regarding the Sites of Community Importance (SCI) have created serious difficulties in implementing the Marine Strategy.

Gutiérrez Castillo, V. L., 'Legal Regime on Navigation through the Strait of Gibraltar: The Role of its Coastal States', 2017(2) *Il Diritto Marittimo* (2017) 349-365 [ISSN: 1826-8595]: The Strait of Gibraltar has all the characteristics of the straits used for international navigation. Its coastal states are signatories of the United Nations Convention on the Law of the Sea and accept the transit passage regime. The agreements between the international community and the States bordering the Strait regarding the definition of maritime navigation lanes, with particular stress on the rights and obligations of the said States, as well as the international commitments undertaken by both States in terms of environmental protection and how their pledge is affected by the applicable navigation regime in the Strait are discussed in this study.

Gutiérrez Castillo, V. L., García Blesa, J., 'Le Détroit de Gibraltar et l'application de la normative de l'Union Européenne relative aux énergies renouvelables', 1 *Paix et sécurité internationales: revue maroco-espagnole de droit international et relations internationales* (2013) 103-119 [ISSN-e: 23410868]: The purpose of this

paper is to review the configuration and point out the weaknesses of the main legal regimes of environmental protection of the Mediterranean Sea applicable to the implementation of marine renewable energies in the maritime and coastal areas of the EU, focusing on Strait of Gibraltar. Renewable energy sources have become a strategic industry for Europe over the last years due, among other things, to the need for finding cheap and clean energy sources. Within this context, marine renewable energies attract a lot of attention from the EU and several Member States. However, the development of this industry without a sound environmental protection and preservation policy and regulation, might well result in a rather negative impact on the affected marine ecosystems. On the other hand, the legal framework established by the EU and other international legal regimes for the protection of the marine environment seems to give much room for Member States putting economic objectives before environmental considerations.

Jiménez Piernas, C., "El Brexit y Gibraltar: las aguas de la colonia", en Martín Martínez, M.M., y Martín y Pérez de Nanclares, J. (Coords.), *El Brexit y Gibraltar. Un reto con oportunidades conjuntas* (Ministerio de Asuntos Exteriores, Escuela Diplomática, Madrid, 2017), 79-92 [ISSN: 978-84-95265-77-7]: The author briefly explains the Anglo-Spanish controversy on the legal status of the colony's surrounding waters. In view of Brexit, the author proposes an arrangement or compromise that he understands would be reasonably satisfying for both sides. This proposal is built upon the following points: the regression of Spanish sovereignty over the Rock; a regime of co-sovereignty for the military base; a privileged regime of transit passage and overflight for British warships and aircraft on the Algeciras Bay; and the recognition by the United Kingdom of certain Spanish historic rights in that bay.

Orihuela Calatayud, E., "La delimitación de los espacios marinos en España: perspectivas futuras", in Martín y Pérez de Nanclares, J., (Coord.), *España y la práctica del Derecho internacional: LXXV Aniversario de la Asesoría Jurídica Internacional del MAEC* (Ministerio de Asuntos Exteriores, Escuela Diplomática, Madrid, 2014) 121-141 [ISBN: 100962350].

Valle Gálvez, J. A., '¿De verdad cedimos el Peñón? Opciones estratégicas de España a los 300 años del Tratado de Utrecht', 65(2) *Revista Española de Derecho Internacional* (2013) 117-156 [ISSN: 0034-9380]: The 300th anniversary of the Treaty of Utrecht is an opportune moment to reflect on the legal framework of this longstanding dispute, its current relevance, the prevailing differences, the possibilities of finding common ground in order to reach an agreement, and on the way in which the parties use legal concepts and institutions for their own interests. Following changes in the three Governments between 2011 and 2012, the Gibraltar question is currently marked by a situation of structural crisis, given the grave doubts concerning the bilateral legal framework as well as that of the United Nations. In addition, the traditional tenets of Spanish policy on Gibraltar have been called into question. Spain needs to reassess its strategies with regard to Gibraltar, which requires the reopening of bilateral negotiations that are prepared to take an imaginative approach in their search for solutions, and to consider the option of finding a judicial solution, which would be a high risk alternative. Having ruled out the renewal of the dialogue Forum established in 2004, the strategic options are limited, although a series of tactical approaches are always possible. This article also questions whether the cession of the city of Gibraltar under the terms of the Treaty of Utrecht automatically included the cession of The Rock or not, which would have implications for the theory of the "Costa Seca" (dry coast) doctrine defended by Spain.

Valle Gálvez, J. A., 'España y la cuestión de Gibraltar a los 300 años del Tratado de Utrecht', 1 *Cuadernos de Gibraltar - Gibraltar Reports: Revista Académica sobre la Controversia de Gibraltar - Academic Journal about the Gibraltar Dispute* (2015) 83-96 [ISSN-e: 2444-7382]: This year 2013 marks 300 years of the Treaty of Peace and Friendship between Spain and Great Britain, signed in Utrecht on July 13, 1713, by which the crown of Spain ceded Gibraltar to the United Kingdom of Great Britain. The cession opened a historical controversy between Spain and the United Kingdom that has become a historical and permanent claim of the State, before what is perceived as an amputation of the territory of Spain. The truth is that at present the question of Gibraltar is in a negotiating crisis of a structural nature, since there is a deep questioning

of bilateral and United Nations legal frameworks. Spain in this way must consider its strategies with regard to Gibraltar, which entails, among other options, relaunching bilateral negotiations with an imaginative search for solutions, and weighing the option of a judicial solution.

- Valle Gálvez, J. A., El Houdaigui, R., Acosta Sánchez, M. Á., (Dir.), *Las dimensiones internacionales del Estrecho de Gibraltar* (Dykinson, Madrid, 2006) [ISBN: 9788497728577]: This book is the result of the papers presented at the I Euro-Moroccan Dialogue, organized by the University Classroom of the Strait at the Faculty of Law, Economics and Social Sciences of Tangier, with the aim of discussing problems common to each other side of the Strait of Gibraltar. This area, brimming with issues of International Law and International Relations, raises many issues that are addressed by Andalusian and Moroccan professors and diplomats and has contributions in French, Spanish and Arabic. And it is that this book intends that the sharing of the various international issues and perspectives dealt with be known on both sides of the Strait.
- Valle Gálvez, J. A., González García, I., Verdú Baeza, J., '¿Es posible un acuerdo de delimitación de aguas con Gibraltar?', in González García I., *Gibraltar y el foro tripartito de diálogo* (Dykinson, Madrid, 2009) 293-318 [ISBN: 978-84-9849-826-4]: In the present work it is proposed that Spain and the United Kingdom agree in writing to the provisional exercise of differentiated jurisdictions in the maritime spaces around the Peñon; As will be explained, this Water Demarcation Agreement can not only preserve and reaffirm the Spanish position, but could also point to a specific statute for the waters of the isthmus, helping to consolidate the different situation of the isthmus that connects the Rock with the Line; and of course, this may be beneficial for the traditional political and legal position of Spain in the historical controversy over the Rock. Even the Agreement could potentially be beneficial also for Gibraltar, as it would provide a title or frame of reference on a de facto control situation maintained to date, and that would give it legal certainty.
- Valle Gálvez, J. A., González García, I., Verdú Baeza, J., 'Propuestas para un acuerdo práctico sobre las aguas de Gibraltar', in Aznar, M. J., (Coord.), *Estudios de Derecho Internacional y de Derecho Europeo en Homenaje al Profesor Manuel Pérez González* (Tirant lo Blanch, Valencia, 2012) [ISBN: 978-84-9004-999-0] 407-440. In this chapter, the authors explore some proposals in order to reach an agreement on the waters off Gibraltar. For that purpose, they expose the current situation, characterised by the absence of an agreement on this subject, and the distinction between the waters off the Rock of Gibraltar and those off the isthmus. Afterwards, they analyse its environmental impact and its consequences on navigation through those waters, and the need for an agreement. Finally, they examine the possibility to reach an agreement and some precedents that might be useful in order to determine a regime for the waters off Gibraltar, and then propose some options for the content of the agreement.
- Verdú Baeza, J., 'La controversia sobre las aguas de Gibraltar: el mito de la costa seca', 66(1) *Revista Española de Derecho Internacional* (2014) 81-123 [ISSN: 0034-9380]: The legal status of the waters around Gibraltar is a dispute with its own specific characteristics, which overlap and interrelate with the other controversies surrounding Gibraltar. Recently, disagreements between the parties have led to a number of confrontations. This paper stresses the weakness of the Spanish positions in its attempts to deny the existence of waters under the jurisdiction of Gibraltar, an interpretation known as the «costa seca» or dry coast doctrine. It is our opinion that this untenable doctrine has neither legal nor historical support and, this being the case, Spanish policy regarding Gibraltar's water needs to be thoroughly revised, in an attempt at avoiding confrontation and at seeking dialogue and negotiation.
- Verdú Baeza, J., 'Las aguas de Gibraltar, el Tratado de Utrecht y el Derecho Internacional del Mar', 1 *Cuadernos de Gibraltar – Gibraltar Reports: Revista Académica sobre la Controversia de Gibraltar – Academic Journal about the Gibraltar Dispute* (2015) 97-132 [ISSN-e: 2444-7382]: The legal nature of the waters surrounding Gibraltar as well as the delimitation of marine spaces in the Bay of Algeciras in relation to Spanish waters constitutes a controversy with its own specific characteristics that overlaps and interrelates deeply with the rest of the controversies opened in around Gibraltar. If in any way the controversy over waters has

always been traditionally present in the positions of the parties in the Gibraltarian controversy, in recent times the reiteration of incidents in the Gibraltarian waters has acquired a special dimension overlapping on the general framework of treatment of the controversy, having been one of the main causes of paralysis of the process known as the Tripartite Dialogue Forum, original and courageous formula for dealing with cross-border issues, constituting today a dangerous reason for hardening the positions of the parties as a result of the respective changes of Government both in Gibraltar and in Spain at the end of 2011 and the fishing conflict around these waters that especially contaminates the Gibraltarian issue since May 2012. In this sense, the Gibraltarian decision in July 2013, after one year of continuous incidents, of throwing artificial reefs in a part of the waters near the airport has triggered one of the most intense crises in the complex relations around the Rock, with measures of Spanish reaction consisting mainly of the hardening of controls in the fence / border that have caused the intervention of the European Commission, multiplying the incidents and diplomatic tensions between the parties.

(H) INTERESTS

(1) Fisheries and other living resources

Abad Castelos, M., Rey Aneiros, A., ‘Una nueva Política Pesquera Común. Comentario al Reglamento (CE) n.º 2371/2002 del Consejo, de 20 de diciembre de 2002, sobre la conservación y la explotación sostenible de los recursos pesqueros en virtud de la Política Pesquera Común’, 1 *Revista General de Derecho Europeo*, 2003 [ISSN: 1696-9634]: On December 20, the Council adopted the new Regulation that will govern the Common Fisheries Policy (hereinafter PPC) during the coming years (Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy). In Article 14.2 of the Regulation that has governed this Common Policy during the last ten years (Council Regulation (EEC) No. 3760/92 of December 20, 1992, establishing a Community regime for fisheries and aquaculture) it was expected that such revision of the regime should begin with a reflection by the Commission before December 31, 2001, and end with new regulations of the Council adopted before 31 December 2002. The first step was actually carried out in March 2001, with the presentation by the Commission of the “Green Paper on the future of the Common Fisheries Policy”. The controversial content of this document of the Commission already made foresee that this new revision of the CFP would be especially intense. Finally, the new basic Regulation has not come to mean a simple adjustment of the current regime but, on the contrary, the revision has been substantial and global. This Regulation has also been accompanied by a framework of new provisions on structures, urgent measures for the scrapping of ships, annual distribution of total allowable catches, technical measures, access and fishing opportunities for deep-water species, etc.

Badenes Casino, M., ‘Las poblaciones de peces transzonales y altamente migratorias en el Derecho Internacional’, 12 *Anuario Español de Derecho Internacional* (1996) 91-145 [ISSN: 02120747]. This work analyses the regime of straddling and highly migratory fish stocks in International Law. It examines, firstly, the development of the interests over this kind of resources during the Third United Nations Conference on the Law of the Sea and its regime under UNCLOS, as well as the subsequent practice stemming from this regulation. The work analyses, secondly, the conferences and the negotiations that led to the adoption of the 1995 Convention on Straddling and Highly Migratory Fish Stocks, and it concludes with a study of its provisions.

Bou Franch, V. E., “La protección de los mamíferos marinos en el mar Mediterráneo”, 14 *Anuario Español de Derecho Internacional* (1998) 2-51 [ISSN: 02120747]: This work examines the main international legal instruments that protect marine mammals in the Mediterranean Sea. Their measures provide both direct and indirect protection. Within the measures that provide direct protection, it should be recalled the inclusion of existing marine mammals in the Mediterranean Sea in both the List of threatened and endangered species annexed to the Barcelona Protocol of 1995 and the establishment of an indicative list

of Mediterranean cetaceans annexed to the Agreement of 1996. Indirect protection has been achieved by safeguarding their habitats as well as regulating fishing methods that may accidentally affect the conservation of marine mammals.

- Carrera Hernández, F. J., *Política pesquera y responsabilidad internacional de la Unión Europea* (Ediciones Universidad de Salamanca, Salamanca, 2010) [ISBN: 9788469352618]: This work addresses two major blocks of legal problems: the first one, related to the European Union competence to conclude international agreements on conservation and access to the waters of third States; the second one, around the international responsibility of the European Union in case of violation of such agreements. The first block leads to the examination of the international legal personality of the European Union, its external competence, the exclusivity of its powers in matters of fisheries resources and the procedure for concluding bilateral agreements with third States. The second block analyses the responsibility for attributable acts in relation to bilateral fishing agreements or claims submitted by third States.
- Casado Raigón R., (Dir.), *L'Europe et la mer. Pêche, navigation et environnement marin / Europe and the Sea. Fisheries, Navigation and Marine Environment* (Bruylant, Brussels 2005) [ISBN: 280272052]: This book contains the results of the Colloquium of the International Association of the Law of the Sea (ASSIDMer), which, on the theme of Europe and the Sea, was held at the Faculty of Law of the Universidad de Córdoba (Spain) in 2003 and attended by a hundred lawyers and prestigious Maritimists from four continents (Europe, Asia, Africa and America) and twenty countries. The work developed during the symposium was divided into three sessions: the first session devoted to sea fishing, the second one to maritime navigation and the third one to the marine environment. Each of the three sessions consisted of a general report and various specific reports. The Symposium ended with the general conclusions drawn up by the President of the AssIDMer, Professor Daniel Vignes, and various complementary reports.
- Casado Raigón, R., “Nuevas tendencias en materia de conservación y gestión de los recursos marinos vivos”, in Sobrino Heredia, J. M., (Coord.), *Mares y océanos en un mundo en cambio: tendencias jurídicas, actores y factores* (Tirant lo Blanch, Valencia, 2007) [ISBN: 978484567691] 73-98: The conservation and management of living marine resources is governed by two basic instruments: the United Nations Convention on the Law of the Sea and the 1995 United Nations Fish Stocks Agreement, this latter with very much less acceptance. This work examines the 1995 Agreement with a critical point of view face to its next review conference, which discussed, among others, the conservation of marine living resources, the ecosystem approach, the principles of precaution and compatibility, the IUU fishing and the establishment of protected marine areas.
- Casado Raigón, R., “La aplicación de la política pesquera común en el mar Mediterráneo”, in Badia Martí, A. M., Pigrau i Solé, A., Olesti Rayo, A., (Coords.), *Derecho internacional y comunitario ante los retos de nuestro tiempo: homenaje a la profesora Victoria Abellán Honrubia*, Vol. 2 (Marcial Pons, Madrid, 2009) [ISBN: 9788497686662] 895-920: The Mediterranean Sea has cultural, geographical, economic, social, biological or environmental characteristics that have conditioned the application of the common fisheries policy in that sea. Only after 1997, with the establishment of the fishing protection zone and with the accession of Cyprus and Malta, the Community Fishing Area in the Mediterranean Sea began to extend beyond twelve nautical miles. This work examines this peculiarity by analysing the EC-Regulation 1626/94 and its limitations, the areas of national jurisdiction established in the Mediterranean Sea, and the EC-Regulation 1967/2006 and, in particular, the fishing protected areas that it contemplates.
- Corral Suárez, M., *La conservación de los recursos biológicos del mar en el derecho internacional vigente* (Universidad of Valladolid, Valladolid, 1993) [ISBN: 8477623689]: The fishing activity is as old as the history of the Humanity. At present, however, it presents a different dimension, since today the conflicts related to fishing are no longer localized or limited, but, on the contrary, they affect the most of the States and refer to almost all of the marine spaces. This situation is the consequence of the evolution of International law and the Law of the sea in particular. The work has two parts. The first one examines

the genesis of regulation of the conservation of the living resources of the sea, focusing on the background, the adoption of the 1958 Geneva Convention and the revision of the issue at the III United Nations Conference on the Law of the sea. In the second part, the work analyses the current state of the Law on the conservation of living resources of the sea: from the provisions included in the Geneva Convention that are still in force to the new emerging principles, through the examination of the provisions of the 1982 United Nations Convention on the Law of the Sea and other conventions on the matter.

Forcada Barona, I., “La evolución de los principios jurídicos que rigen la explotación de los recursos económicos de los fondos marinos y del alta mar: retorno a la soberanía”, 14 *Anuario de Derecho Internacional* (1998) 53-112 [ISSN: 02120747]: This work examines the evolution of the legal principles governing the exploitation of international seabed and High Seas resources. Two important agreements have been adopted in both areas: the 1994 Agreement relating to the Implementation of Part XI of the UNCLOS and the Agreement of 1995 on the Implementation of its provisions regarding the conservation and management of Straddling Fish Stocks and Highly migratory fish stocks. The first one has been acclaimed for contributing to universal participation in the UNCLOS; the second one, for clarifying and developing its provisions through the cooperation between States. In spite of this initial enthusiasm, the author considers that both reforms are a step backwards: the 1994 Agreement depletes the status of Common heritage of mankind applied to international seabed and the 1995 Agreement has extended the exercise of sovereign competences to areas formerly subject to the regime of freedom of the high seas.

González García, I., ‘Los acuerdos comunitarios de pesca con Marruecos y el problema de las aguas del Sáhara Occidental’, 36 *Revista Española de Derecho Europeo* (2010) 521-563 [ISSN: 15796302]: This work examines the issues that are raised by the adoption of fisheries agreements by the European Community with Morocco, which extend to the waters of Western Sahara, specifically the most recent agreements (1988, 1992, 1999 and 2005), which have been in force since February 2007. The core issue here is that European Community institutions have recognized the Moroccan practice of licensing EU vessels to fish in waters off the coast of the Sahara, notwithstanding the fact that these waters have not been mentioned or explicitly defined in the agreement text (neither in the Agreement, nor the Protocol nor the Annex). The development of the 2007 Fisheries Agreement and the European Community’s actions appear contrary to the rules of International Law. According to the United Nations, the Western Sahara is a territory under decolonization, and the UN’s resolutions do not grant Morocco the status of administrative power, however it does grant de Saharawi people the right to exploit their natural resources.

González Giménez, J., *El Mar Mediterráneo: régimen jurídico internacional: de las zonas de pesca a las zonas de protección* (Atelier, Barcelona, 2007) [ISBN: 9788496758155]: The singularity of the Mediterranean Sea acquires a special intensity in the establishment of maritime zones by the coastal States, and its legal regime deserves an examination in detail. The interest of coastal States to ensure the exclusive use of natural resources in large areas adjacent to the territorial sea, and exercise there the corresponding exclusive jurisdiction, has contributed to transform the Law of the sea. This work answers to some of the questions that this raises, particularly about the role played by the Mediterranean coastal States in that transformation, or the coordinated or unilateral character of the establishment of exclusive fishing zones, exclusive economic zones or ecological and fisheries protection zones.

Gutiérrez Espada, C., ‘Desventuras contemporáneas de la libertad de pesca en alta mar’, 17 *Anales de Derecho* (1999) 227-258 [e-ISSN: 19895992]: The present work carries out a review of the evolution of the principle of freedom of fishing on the high seas, and its progressive reduction. The author points out three main stages: the golden age of the principle until the seventies; the beginning of its decline in the 1980s, particularly with the adoption of the United Nations Convention on the Law of the Sea; and its progressive abolition through further developments, such as the 1995 Agreement and unilateral acts of States.

Hinojo Rojas, M., “El acceso de terceros Estados a las organizaciones internacionales de pesca: una cuestión a

revisar”, in Sobrino Heredia, J. M., (Dir.), *La toma de decisiones en el ámbito marítimo: su repercusión en la cooperación internacional y en la situación de las gentes del mar* (Bomarzo, Albacete, 2016) [ISBN: 9788416608515] 167-188: The purpose of this paper is to examine the issue of the access by third States to international fisheries organizations. This problem is framed in the context of a principle of freedom of fishing on the High Seas that, today, far from having the same content as in its origins, must be interpreted in a way that allows the balance between the interests of all States, as well as the interests of the international community as a whole. This work shows how there are important limits to the access of third States in these fishing organizations and how these limits undoubtedly affects the possibility of those States of exploiting fishing resources.

Juste Ruiz, J., “Explotación, conservación y protección de los recursos biológicos en el Mediterráneo: aplicación de la política pesquera común y medidas unilaterales y concertadas de los Estados ribereños”, in Caflisch, L., Bermejo García, R., Díez-Hochleitner, J. and Gutiérrez Espada, C., (Coords.), *El derecho internacional: normas, hechos y valores: Liber amicorum José Antonio Pastor Ridruejo* (Universidad Complutense, Madrid, 2005) [ISBN: 8484810593] 413-439: The situation in the Mediterranean Sea is clearly conditioned by the geographical, oceanographic and biological peculiarities of this sea. Due to these, the Mediterranean area was left out of the global fishery crisis of the 1970s, but since then, scientists have begun to warn of the progressive depletion of numerous fish stocks. The present work examines, in the first place, the progressive application of the common fisheries policy in the Mediterranean Sea and, secondly, the national legislation and regional agreements that have been adopted for the protection of its biological resources.

López Rueda, F. C., “La nueva política comunitaria de pesca sostenible”, 31 *Anuario de Derecho Marítimo* (2014) 153-193 [ISSN: 02118432]. This article analyses the reform of the CFP in the European Union. For that purpose, the author introduces the concern for sustainability, which emerged in the 1980s and was included as a principle of the CFP, as well as the scope and the challenges faced by the fishing industry (overexploitation of the resources, excessive fishing capacity, bycatches and discard policy, IUU fishing, etc.). The author considers that the previous CFP was unable to overcome those challenges and that this situation is to be corrected by the new CFP. He then analyses the scope, the objectives and principles of the new CFP, as well as conservation measures, and the proceeds to examine the precautionary principle, the maximum sustainable yield, the ecosystem approach to fisheries and the multiannual plans. He then focuses on the discard policy and the landing obligation, the management of fishing capacity, the regionalisation and decentralisation of conservation measures, sustainable aquaculture and the common organisation of the markets, as well as state control and state aids in this field. The author concludes that sustainability should prevail in the regulation of the fishing industry, and that the approach adopted by the new CFP should be strengthened in the future, focusing on the correct implementation of the law.

Rey Aneiros, A., “Hacia un nuevo marco jurídico internacional de la pesca en alta mar: la NAFO en esta encrucijada”, 62-2 *Revista Española de Derecho Internacional* (2010) 77-109 [ISSN: 00349380]: Despite the lack of evidence of disputes open in recent years, the fishing relations between the international actors on the two sides of the Atlantic have been far from cosy since the end of the “Halibut War”. In fact, surprisingly intense legal-diplomatic activity has been underway since the late 1990s. All this activity raised hopes in both Canada and the EU that a balance had been struck between their respective interests and that an effective role could finally be set out for NAFO (the Northwest Atlantic Fisheries Organization) in the Northwest Atlantic. The twenty-first century, however, began with substantial differences between certain NAFO members (principally Canada and Spain) over the application of the organization’s rules. Serious infringements were detected in the NAFO area that were not always duly penalized by flag States, and differences re-emerged. On the one hand, the Canadian government debated the possibility of adopting positions to remedy the failure of the NAFO project: the extension of Canada’s Exclusive Economic Zone, jurisdiction beyond the 200-mile limit, application of custodial management, and the reform or even replacement of NAFO. Spain and the EU, in turn, from the time the earliest signs of dispute began to appear, actively sought a multilateral solution to the problems

detected in the management of NAFO. Via their participation in international forums they have advocated strengthening international fisheries organizations, furthered the creation of new IFOs in response to new requirements, and encouraged reform wherever needed, as in the case of NAFO. The action of Spain and the EU has also been the result of pressure brought to bear by the regions and industries most deeply involved in fishing in the area. Oddly (or not), the solution adopted in 2007 to reform and create a new NAFO Convention has not fully satisfied either the Northeastern Canadian provinces or the Spanish and Portuguese regions, but it is the equilibrium solution (admittedly unstable until it proves its effectiveness) defended by the Canadian and EU administrations. These, briefly, are the issues addressed in this article, which aims to shed light on possible laboratory tests for a new international law of high seas fisheries.

- Ruiloba García, E., “Las zonas de explotación conjunta de los recursos pesqueros: una forma alternativa de cooperación”, 54-2 *Revista Española de Derecho Internacional* (2002) 753-773 [ISSN: 00349380]: This work analyses the areas that have been established for the exploration and joint exploitation of fishery resources, also known as “common fishing areas”. The work is structured in two parts. The first part deals with the relationship between the delimitation of marine spaces and the establishment of areas of joint exploitation. After establishing the functional nature of cross-border cooperation in these areas, the second part examines the different common fishing areas that States have established in practice.
- Sobrino Heredia, J. M., “Perspectivas de cambio en la política de conservación y gestión de los recursos pesqueros de la Unión Europea”, 11 *Revista de Derecho Comunitario Europeo* (2002) 7-43 [ISSN: 11384026]: The Common Fisheries Policy, in its current form, comes to an end on 31 December 2002. In order to prepare its review, in March 2001, the European Commission presented its Green Paper on the future of the CFP, opening the debate on the scope and content of this Policy’s reform. The present study figures within this debate. It attempts to reflect on the future of European Union’s conservation and management of fishery resources Policy, which constitutes the backbone of the CFP. It proposes certain changes within the CFP, destined in our opinion, to favour the development of a sustainable fishing industry, which is both economically profitable and ecologically responsible. This paper is divided into two parts. In the first part, the internal aspect of this Policy and more specifically subjects such as waters access, exploitation control, conservation and control measures are examined. In the second, its external aspect and the fisheries international agreements and the participation of the EC in the fisheries regional Organizations in particular. The main idea of this study is that this Policy’s review should be in line the achievement of a complete integration of the Community fishing sector in the internal Market and the norms relative to the fundamental liberties and free competition should also be applied to it. In summary, it would be based on the elimination of the existing repeals which impede the true achievement of the Fishery Common Market. Equally, it proposes to strengthen the role of the Community Institutions regarding the management of the internal and external fishing resources in accordance with the exclusive nature of the Community competences in that field.
- Sobrino Heredia, J. M., López Veiga, E. C. and Rey Aneiros, A., *La integración del enfoque ecosistémico en la política pesquera común de la Unión Europea* (Tirant lo Blanch, Valencia, 2010) [ISBN: 9788498768855]: The present work addresses the design of a model for the reform of the Common Fisheries Policy of the European Union that integrates the ecosystem approach. This study is divided into two major sections. The first section is devoted to the examination of fisheries management in the International law of the sea, exposing, on the one hand, the evolution of the management of the fisheries, from a traditional management to a management focused on the ecosystems; and, on the other hand, the technical and scientific aspects surrounding the ecosystemic management of fisheries. The second section addresses the issue of fisheries management by the EU within the framework of the Common Fisheries Policy by focusing, firstly, on its evolution and on the achievements and difficulties it has encountered and, secondly, on a proposal ecosystem approach for a new Common Fisheries Policy.
- Sobrino Heredia J. M. and Oanta, G. A., “The Sustainable Fisheries Partnership Agreements of the European

Union and the Objectives of the Common Fisheries Policy: Fisheries and/or Development?”, 19 *Spanish Yearbook of International Law* (2015) 61-85 [doi: 10.17103/sybil.19.04]: The documents published by the European Commission within the framework of the latest Common Fisheries Policy reform include the “new” Sustainable Fisheries Partnership Agreements. This work analyses whether their inclusion reinforces the objectives of the Common Fisheries Policy by facilitating the development of a coherent and comprehensive external fishing policy, respectful with the international fisheries norms. In order to address it, this work examines, firstly, the European Union’s fisheries treaty practice and, secondly, the changes introduced by the new Agreements regarding this practice and their compliance with the objectives of the Common Fisheries Policy.

Teijo García, C., “Pesca y cooperación al desarrollo en el marco de las relaciones Unión Europea-ACP”, 31 *Revista de Derecho Comunitario Europeo* (2008) 743-771 [ISSN: 11384026]: The interaction between the external dimension of the Common Fisheries Policy and the Development Cooperation Policy of the European Union has traditionally been considered problematic. Various analyses have pointed out that fisheries policy has frequently violated the mandate of Article 178 of the Treaty establishing the European Community, which compels EC to take into account development cooperation goals when it implements other policies. However, European institutions have promoted in recent years a process to improve the coherence of the Common Fisheries Policy with Development Cooperation Policy. This work makes an introductory analysis about this reform process in three basic dimensions: the new Fisheries Partnership Agreements, the growth of development projects on fisheries cooperation and, finally, the changes experienced by some commercial aspects that contribute to shape the relationship of EU-ACP on the fishing ground.

Vázquez Gómez, E. M., *Las Organizaciones internacionales de ordenación pesquera: la cooperación para la conservación y la gestión de los recursos vivos del alta mar* (Consejería de Agricultura y Pesca, Sevilla, 2002) [ISBN: 8484740587]: This work shows how the institutionalized cooperation constitutes the best instrument for the fulfillment of the obligation that every State has to cooperate to conserve and manage the living resources of the high seas and, consequently, to achieve the establishment of rational, sustainable and responsible fishing. The work has two parts: the first one is devoted to examining the scope to which the action of fishing organizations is limited and the International Law of the Sea to which they are subject. The second part analyzes the fishery management organizations themselves, with special attention to the main issues that arise in relation to current trends in international fisheries law.

(2) Non-living resources

Abad Castelos, M., *Las energías renovables marinas y la riqueza potencial de los océanos. ¿Un mar de dudas o un mar de oportunidades?* (Bosch, Barcelona, 2013) [ISBN: 8494143522]: From a universal perspective, marine renewable energies are still in a very embryonic stage. Even so, it can be expected that, if developed, multiple benefits could be achieved at the international level. The benefits are connected with the well-known triple dimension of sustainable development and can therefore be achieved in environmental, social, economic and political terms. First of all, its potential role in mitigating climate change must be highlighted. However, certain problematic aspects are also perceptible, as far as the environmental, social and economic aspects are concerned. With this in mind, this book examines the main legal aspects involved. Given that international law is a reference legal order in this field, the main objective is to examine its content and scope, as well as to identify possible gaps that may exist for the use of renewable energy from the seas and oceans. The conclusions reached are based on a vision favorable to the progressive expansion of the different marine renewable energies.

Abad Castelos, M., “Mar, energía y ordenamiento jurídico: seguridad y sostenibilidad como referentes ineludibles para la estrategia de España”, in IEEE, *Documentos de Seguridad y Defensa* 67: Desafíos nacionales en el sector marítimo (2015) [ISBN: 9788490910344] 67-158: This paper examines the main issues of energy in relation to the sea, using the perspective of International law. The most important

implications of the participation of corporations in such sector, and also the international legal order on safety, security and sustainability are discussed. Both fossil energies and marine renewable energies are explored. In the case of hydrocarbons, oil and gas, an approach to the regulation of all possible operations is made to cover prospecting, exploring for and exploiting them, transporting and conducting of energy and the environmental protection in this regard, including prevention and action in case of oil spills and the responsibility triggered. With respect to marine renewable energies, the different types which can be harnessed from the marine environment and their current stage of deployment are also examined, besides the main benefits and challenges to overcome. It is concluded that the advantages clearly outweigh the disadvantages. While the latter are essentially economic, the former may be located in the three dimensions of sustainable development, ie. social, economic and environmental. In short, the strengths are connected primarily with benefits derived from reducing our energy dependence and the use of safer and cleaner energy, which directly impact positively on the reduction of gases that cause global warming and climate change mitigation.

Gutiérrez Castillo, V. L., and García Blesa, J., "The Environmental Protection Regimes Governing Maritime Renewable Energies in the EU and their Implementation in the Marine and Coastal Areas of the South of Spain", 17 *Spanish Yearbook of International Law* (2011-2012) [ISSN: 09280634]: The purpose of this paper is to review the configuration and point out the weaknesses of the main legal regimes of environmental protection of the Mediterranean Sea applicable to the implementation of marine renewable energies in the maritime and coastal areas of the EU. Renewable energy sources have become a strategic industry for Europe over the last years due, among other factors, to the need for finding cheap and clean energy sources. Within this context, marine renewable energies attract a lot of attention from the EU and several Member States. However, the development of this industry without an appropriate environmental protection and preservation policy, might well result in a rather negative impact on the affected marine ecosystems. On the other hand, the legal framework for the protection of the marine environment established by the EU, as well as other international legal regimes, seems to give much room for Member States prioritizing economic objectives rather than environmental considerations.

Gutiérrez Espada, C., "Reflexiones sobre el aprovechamiento de los recursos del suelo y subsuelo del mar: de la plataforma continental a la zona de los fondos marinos", 4 *Anuario de Derecho Marítimo* (1986) 157-184 [ISSN: 02118432]. This article provides some remarks on the exploitation of the resources found on the continental shelf and the seabed. The author compares the regime on this matter under the 1958 Geneva Convention and UNCLOS, considering the developments introduced by the latter and the declaration of the seabed as common heritage of the mankind as positive. He concludes with some doubts about the feasibility of the treatment of the seabed and its resources as common heritage of mankind, given the (then) recent changes in the interests of the United States of America, the German Federal Republic, the United Kingdom, France, the Soviet Union and Japan, which constitutes a real threat to the implementation of the UNCLOS provisions on this matter, in the author's view.

Martínez Pérez, E. J., "The environmental Legal Framework of the Development of Blue Energy in Europe", in Andreone, G., *The Future of the Law of the Sea. Bringing gaps between National, Individual and Common Interests* (Springer, 2017) 127-144 [ISBN: 9783319512730] The new energy ocean energy sources, they help reduce greenhouse gas emissions, they boost energy security, they favor industrial and technological developments, and they are a major source of jobs in high-unemployment areas. But they also face important challenges, such as the high costs of technology, the development of grid connections for renewable marine energy, and the issue we will address here, uncertainty over the environmental impact of the new installations and their compatibility with other maritime activities. So when projects of this kind are introduced, rigorous assessments of their environmental effects must be run to identify the project of protected projects areas, on plants and animals, and on other uses, such as navigation. These assessments must take account of EU law in the framework of biodiversity policy and integrated maritime policy, pay special attention to the rules of maritime spatial planning and marine strategy, and not overlook the international legal established by international environmental law and marine law.

(3) Marine environment and special protected zones

- Bou Franch, V. E., Badenes Casino, M., 'La protección internacional de zonas y especies en la región mediterránea', 13 *Anuario Español de Derecho Internacional* (1997) 33-129 [ISSN: 0212-747]. The Mediterranean Sea is the biggest semi-enclosed sea in the world. It separates and connects Asia, Africa and Europe, which are regions with very different fishing interests, and this has an impact on the exploitation of living resources therein. Fishing is essential for its coastal States and for the economy of the Mediterranean region. This article aims at examining how those resources are regulated in international fisheries and environmental law. In the first part of this work, the authors analyse all the relevant international treaties on environmental law, both of a global and a Mediterranean scope. In the second part, the authors examine the regulation of fisheries and protection of marine resources in the Mediterranean sea, noting an increasing environmental awareness in those instruments. The authors conclude summarising the evolution of the regulation of the exploitation of living resources in the Mediterranean sea towards a more sustainable approach.
- Carreño Gualde, V., *La protección internacional del medio marino mediterráneo* (Tecnos, Madrid, 1999) [ISBN: 9788430933136]: The need to protect the marine environment through common actions aimed at preventing and eliminating pollution is one of the fundamental concerns of the international community. As a consequence of its special vulnerability, this need is of particular intensity in the Mediterranean Sea. In this sense, this work is dedicated to the study of the international legal protection of the mediterranean marine environment. In the first place, it examines the universal norms applicable to the protection of the sea. Secondly, it pays particular attention to the legal results achieved by the cooperation of coastal States within the framework of the Mediterranean Action Plan. The research is completed, thirdly, with the analysis of the most relevant legislative practice by the coastal States, and especially the Spanish practice.
- Conde Pérez, E., "El Derecho Internacional ante el proceso de cambio climático en el Ártico. Especial referencia al Derecho del Mar", in Ministerio de Defensa, *Documentos de Seguridad y Defensa* 58: Energía y clima en el área de la seguridad y la defensa (Ministerio de Defensa, Madrid, 2013) [ISBN: 9788497818667] 175-196: As a result of new opportunities for exploitation derived from the climate change, the Arctic region has become a focus of geostrategic interest where the sovereign interests of the coastal States and those of the international community as a whole converge. In the absence of a specific legal regime for the area - widely claimed by the doctrine -, Public International Law, and especially the Law of the Sea, is the legal tool that will serve to harmonize these interests. This work analyses the opportunities and challenges that climate change means to the Arctic region from the particular point of view of the Law of the Sea. In this sense, it examines the sovereign aspirations for an expanded continental shelf, the debate about the legal status of the Arctic ocean passages or the rights and duties of States in the exploitation of its resources.
- Fernández Beistegui, C. F., "La preservación del medio marino en el nuevo Derecho del Mar", 7 *Anuario de Derecho Marítimo* (1989) 143-179 [ISSN: 02118432]. This articles focuses on the preservation of marine environment in the new law of the sea. The author introduces the main shortcomings of international law on the matter and then analyses the developments under UNCLOS, focusing on the competences of the coastal states in their internal waters, their territorial sea and in their EEZ, as well as on the competences of flag states and port states. He concludes that, while the UNCLOS has provided a useful legal framework, some of its provisions are ambiguous and optional, depending largely on the will of the states.
- Fernández Beistegui, C. F., "Las zonas marinas especialmente sensibles (ZMES): las incertidumbres de las medidas previstas para su protección", 21 *Anuario de Derecho Marítimo* (2004) 89-119 [ISSN: 02118432]. In this article, the author examines the regime on Particularly Sensitive Sea Areas (PSSAs). For that purpose, he analyses their origin and evolution within the context of the IMO, as well as the ecological, socioeconomic and cultural, and scientific criteria for the designation of PSSAs, which the author finds ambiguous given its alternative formulation in the 2001 Guidelines. The author examines the PSSA protection measures, focusing on the possibility of their establishment by the coastal state or the IMO, depending on the location of the PSSA. Finally, the author provides a thorough analysis of the

competences of the IMO and the coastal states over the PSSAs before concluding the need for PSSAs and the positive impact of the intervention of the IMO on the matter.

- García Rubio, M. P., and Álvarez González, S., *La Responsabilidad por los daños causados por el hundimiento del Prestige* (Iustel, Madrid, 2007) [ISBN: 9788496717152]: The responsibility arising from the damage caused by the sinking of the Prestige vessel is multiple and affects various subjects. From a multidisciplinary perspective, the present work addresses, on the one hand, the typology of the damages caused and the different regimes of repairing them. On the other hand, the work also addresses other aspects related to the prevention of this type of catastrophes, both at the community and national and regional levels. The result is a plural work that, from different points of view, analyzes the effectiveness of the system of prevention and repairation of discharges of hydrocarbons in the sea.
- Jorge Urbina, J., “Prevención y control de la contaminación causada por buques en el mar territorial: competencias del estado ribereño y contribución de las organizaciones internacionales”, 60-1 *Revista Española de Derecho Internacional* (2008) 71-95 [ISSN: 00349380]: The coastal State may adopt the territorial sea in a series of measures to preserve the marine environment that allows it to act preemptively before the risks of pollution from ships navigating off its coast. However, also in this space maritime is noted the tension between the protection of the marine environment and freedom of navigation recognized all foreign ships through the right of innocent passage. Thus, some state practice - for the time being not significant- intended to rid the coastal State of the restrictions imposed by UNCLOS, especially in the regulation of the right of innocent passage, to prevent the navigation of any ship potentially dangerous before that the pollutant discharge has occurred. Despite this practice, the prevention of vessel-source pollution must be the result of concerted action by all States, especially through international organizations such as the IMO or the EU, which they are playing a very important role in this area. Only through international cooperation will be achieving this goal in an effective way.
- Jorge Urbina, J., Lirola Delgado, I. and Pueyo Losa, J. A., “En torno a la revisión del régimen jurídico internacional de seguridad marítima y protección del medio marino a la luz del accidente del Prestige”, 55-1 *Revista Española de Derecho Internacional* (2003) 43-78 [ISSN: 00349380]: The Prestige’s accident is the last example of a long series of marine accidents that have affected the coast of Galicia with very serious environmental and socio-economic consequences. For this reason, it raises again the question concerning which measures can be adopted by the coastal State in order to control the navigation of substandard ships in their maritime spaces, particularly in the Exclusive Economic Zone, with the purpose of preventing possible acts of marine pollution. In the current international legal frame represented by the 1982 United Nations Convention on the Law of the Sea and in face of the reiterated passivity of the Flag State which is favored by the existence of Flags of convenience, the scarce powers recognized to the coastal State within its EEZ do not allow him to carry out an effective task of control and prevention of all the risks posed by the navigation of substandard ships in front of its coast. This happens, as the Prestige’s case clearly shows, in spite of the existence of Port State control mechanisms established at a regional level, such as the Paris MOU or the European Union. In this situation, it seems necessary to proceed to an effective application of all the possibilities offered by the 1982 Convention to the coastal State, like the establishing of special protection areas or marine traffic systems. But, mainly, the Prestige’s casualty raises the opportunity of proceeding to a revision of the EEZ legal régime that could grant the coastal State with wider control competences to protect its marine environment. This proposal which is supported by the existence of an important state practice, should be developed through agreed initiatives and cooperation in the regional frame. Also, all these measures should be completed with a strengthening of the Port State that allows this figure to take advantage of all the possibilities it offers.
- Jorge Urbina, J., Ponte Iglesias, M. T., (Coords.), *Protección de intereses colectivos en el derecho del mar y cooperación internacional* (Iustel, Madrid, 2012) [ISBN: 9788498902082]: The marine environment constitutes a vast natural space in which, due to its own characteristics, not only a diversity and

heterogeneity of state interests converge, but also a set of collective interests that have been promoted and protected in the current international maritime legal order. This was fully reflected in the United Nations Convention on the Law of the Sea of 1982, in which the Preamble reminds us that “the problems of ocean space are closely interrelated and need to be considered as a whole”. That is why, in this Constitution for the Oceans, state powers and activities carried out in the seas and oceans are regulated in order to ensure the protection of such collective interests, such as freedom of navigation, conservation of marine living resources, preservation of the marine environment, maritime safety, etc. However, problems and threats affecting such interests have increased and diversified and require political and legal responses based on international cooperation, at the universal and regional levels, to address the phenomenon of overfishing, illegal, unreported and unregulated fishing, marine pollution, climate change or certain criminal activities such as piracy. In all these cases, as discussed in the various works included in the book, collaboration between States remains critical to achieving peaceful and durable solutions to the challenge of ensuring proper governance of the seas and oceans.

- Juste Ruiz, J., “El vertimiento de desechos radioactivos en el mar: aspectos de Derecho Internacional”, *Cursos de Derecho Internacional de Vitoria-Gasteiz* (1985) 209-256 [ISBN: 847585060X: This paper examines the international law aspects regarding the dumping of radioactive waste at sea, a complex and multidimensional issue on which there are serious disparities between the criteria of States. To do this, the work examines, first, the international norms on the subject, especially included in the 1972 London Convention of the Prevention of Marine Pollution of Dumping of Wastes and other Matter. Secondly, it analyzes the problem of toxic discharges in the High Seas and their evacuation from the seabed. Finally, the study addresses the position of Spain around this matter and its diplomatic action.
- Juste Ruiz, J., “El accidente del Prestige y el Derecho internacional: de la prevención fallida a la reparación insuficiente”, 55-1 *Revista Española de Derecho Internacional*, (2003) 15-42 [ISSN: 00349380]: The environmental catastrophe caused by the oil tanker ‘Prestige’ once again demonstrates the international dimensions of this type of maritime accidents. This catastrophe shows that the existent precautionary measures are not entirely effective in avoiding the risks of oil tanker accidents and also that the damages caused by them are not always sufficiently repaired. International and domestic legislations related to navigation sometimes allow situations that create excessive risks for the safety of coastal States in the case of ships transporting hazardous substances. Those overly permissive rules are the origin of the problems that we suffer today, in consequence, it is necessary to achieve a reform of international regulations and domestic laws that ensure that this kind of accidents will never happen again.
- Juste Ruiz, J., “Compensation for Pollution Damage caused by Oil Tanker Accidents: From ‘Erika’ to ‘Prestige’”, 1 *Aegean Review of the Law of the Sea and Maritime Law* (2010) 37-60 [ISSN: 18649610]: The international legal regime for repairing oil pollution damages works quite efficiently in case of minor oil spills. However, the accidents of “Erika” and “Prestige” vessels disclose the serious implementation gaps affecting the international civil liability regime when applied to major marine casualties producing extensive pollution damage. In such cases, the ceilings for compensation are manifestly too low and most of the pollution damage provoked is not remedied. Recent developments by national and European Courts relating to the “Erika” accident have made progress towards a more comprehensive compensation of pollution damage. But, in the “Prestige” case, the United States Courts have taken a more conservative stand with respect to actions brought by Spain against the Classification Society American Bureau of Shipping.
- Juste Ruiz, J., “La directive européenne sur la sécurité des opérations pétrolières et gazières en mer”, 1 *Revue Juridique de l’Environnement* (2014) 23-43 [ISSN: 03970299]: Following the accident at the Deepwater Horizon drilling platform in the Gulf of Mexico in 2010, the European Union adopted the directive 2013/30/EU of June 12, 2013 on safety of offshore oil and gas operations and amending directive 2004/35/EC. The aim of this work is to analyse in detail this normative. Its main purpose is to prevent major accidents and limit its consequences by establishing minimum safety requirements which might

also indirectly contribute to improving the environmental and health protection of workers in oil operations at sea. The directive also amends directive 2004/35/ EC of 21 April 2004 on environmental liability to make it applicable at sea. Overall, Directive 2013/30/EU make a step forward in safety of offshore oil and gas operations. But the rules established are neither clear nor complete: they contain only obligations declined in terms of soft law which do not apply to major accidents that may occur on the high seas in the marine regions of the Union or on waters outside the Union.

- Juste Ruiz, J., Bou Franch, V. E., (Dirs.), Sánchez Patrón, J. M., (Coord), *Derecho del mar y sostenibilidad ambiental en el Mediterráneo* (Tirant lo Blanc, Valencia, 2014) [ISBN: 9788490531785]: This book analyzes the recent developments in the Law of the Sea to promote a sustainable exploration and exploitation of marine resources and the protection and preservation of the seas and oceans, taking particular account of the situation in the Mediterranean Sea. These developments are occurring at a very rapid pace thanks to the action of international organizations and programs, such as the United Nations, the International Maritime Organization and the UNEP Regional Seas Program, which have devoted particular attention to issues of sustainability and governance of the sea. The European Union is also developing a very ambitious maritime policy and plays an important role in the Mediterranean Sea.
- Martínez Pérez, E. J., *El desarrollo sostenible como justificación de las acciones unilaterales para la conservación de los recursos marinos* (Ministerio de Agricultura, Pesca y Alimentación, Madrid, 2004) [ISBN: 8449106192]: The purpose of this work is to examine the legality of unilateral actions in the light of international law in the field of sustainable development. To do this, the book dedicates its first part to learn about the different types of coercive measures that come with each of the unilateral manifestations. Thus, the first chapter focuses on trade restrictions and their compatibility with GATT / WTO provisions, and the second chapter addresses the issue of the use of force in the framework of management and enforcement measures for the conservation of living resources in the high seas. In the second part, the excuses alleged by the States to avoid responsibility for their actions are presented, paying special attention to the impact that the concept and the principles that serve as a basis for sustainable development exercise, and that will unquestionably delimit its scope. Hence the third chapter addresses the content and legal nature of each of these principles in the context of the conservation of the living resources of the sea, and, finally, in the fourth chapter, the configuration of these justifications in the field of sustainable development is analyzed.
- Meseguer Sánchez, J. L., *Derecho internacional de los ecosistemas marinos* (Marcial Pons, Madrid, 2011) [ISBN: 9788429016512]: This work analyses the Law of marine ecosystems from a multidisciplinary perspective of the new principles of “soft law” for the conservation and integral management of the resources of the marine environment: principles of the sustainable and responsible fisheries, precautionary measures, marine biodiversity and the marine ecosystem approach. The book includes an introduction about the concept and nature of “soft law” and three parts that examine, respectively, the Code of Conduct for Responsible Fisheries; the International Plans of Action developed by FAO; and the United Nations General Assembly Resolutions on Fisheries.
- Sánchez Ramos, B., “Nuevos avances en el acceso a lugares de refugio: las directrices sobre lugares de refugio para buques en peligro adoptadas por la Organización Marítima Internacional”, 8 *Revista Electrónica de Estudios Internacionales* (2004) 1-15 [ISSN: 16975197]: Although International Maritime Organization had already adopted several Conventions with the aim of preventing the pollution of the marine environment by tankers, the latest accidents of the Erika, Castor and Prestige vessels have highlighted the need to take measures regarding access to places of refuge for ships in distress. The present work focuses on the study of access to places of refuge both from a general perspective, through the analysis of the provisions of International Law of the Sea and the recent IMO Guidelines, as well as from a regional perspective, reflected in the dispositions that the European Union has adopted in the matter, with a special consideration to the action of Spain.

(4) Marine scientific research

- Casado Raigón, R., “La investigación científica en los espacios marinos reconocidos por el Derecho internacional”, 68-2 *Revista Española de Derecho Internacional* (2016) 183-206 [ISSN: 00349380]: This work studies the legal regime of marine scientific research applicable to the different maritime areas recognized by international law declared in the United Nations Convention on the Law of the Sea. The Convention does not define what it means by marine scientific research, but from its Part XIII can be deduced a unitary and broad concept, applicable in principle to activities not expressly contemplated and to those that have an industrial or commercial purpose or involve the exploration and exploration of the marine environment. International practice, moreover, confirms the principle of the consent of the coastal State, which is not necessarily express, for the conduct of MCI activities by other States or by the competent international organizations. This does not mean that all the provisions of Part XIII declare or crystallize general international law and that they are not exempt from requiring development because of their insufficient gaps, particularly those relating to scientific research in areas beyond national jurisdiction.
- Conde Pérez, E., *La Investigación científica marina: régimen jurídico* (Marcial Pons, Madrid, 1998) [ISBN: 8472485269]: This work raises the obstacles that have been erected to the free marine scientific research, with a particular interest in finding ways of agreeing between interests in presence. The author proposes a re-reading of part XIII of the United Nations Convention on the Law of the Sea in order to impose the principles of notification and fulfillment of certain additional conditions for the development of the research activities.
- Conde Pérez, E., “Retos jurídicos de las actividades de bioprospección marina: especial referencia a las zonas polares”, 68-2 *Revista Española de Derecho Internacional* (2016) 253-275 [ISSN: 00349380]: Marine bioprospecting activities open immense possibilities to develop products in multiple areas that affect our daily lives. However, the joint implementation of various legal instruments - the United Nations Convention on the Law of the Sea, the Convention on Biological Diversity and related instruments - highlight the existence of legal gaps in their regulation. This work refers to marine bioprospecting activities in the polar spaces - Arctic and Antarctica - in order to establish a comparison that yields very different results - with serious problems of concept in one case (Antarctica) and with important national solutions and regional ones in the other (Arctic) - which can serve as a basis for addressing the issue constructively in the future.
- Pérez González, M., “La investigación científica marina y el nuevo derecho del mar desde la perspectiva española”, 5 *Anuario de Derecho Marítimo* (1987) 45-96 [ISSN: 02118432]. In this article, the author discusses the role of marine scientific research after UNCLOS from a Spanish perspective. He first introduces the importance of marine scientific research as an activity with legal and political consequences, and as a kind of freedom, subject, however, to some limits and state interests. Afterwards, the author analyses the legal regime on marine scientific research before and after UNCLOS, and tries to foresee some changes of international practice on this matter. This article includes some considerations on Spanish legal and conventional practice. The author concludes that international practice is critical in order to establish the scope and the impact of the developments represented by UNCLOS, which, in the present case, indicates that the UNCLOS provisions on the subject have been implemented on the whole.

(5) Underwater cultural heritage

- Aznar Gómez, M. J., *La protección internacional del patrimonio cultural subacuático con especial referencia al caso de España* (Tirant lo Blanch, Valencia, 2004) [ISBN: 8484561097]: Underwater cultural heritage includes submerged remains of entire cities, harbor and docks, fishing gear and thousands of wrecks scattered across the seas and oceans of our planet. This heritage of Mankind has not until recent years received the doctrinal attention it deserves nor the normative protection that its importance for all peoples demands. Current international law can not remedy, today, the cacophonous national legislation that States have

adopted for this purpose. Thus, UNESCO adopted the Convention on the Protection of the Underwater Cultural Heritage on 2 November 2001. This Convention, despite its defects, presents an overall treatment which, above all, adheres to the strictest archaeological protocols in the protection of underwater cultural heritage. Together with the analysis of all these issues, this work aims to highlight the Spanish case and the threats that surround its underwater cultural heritage.

Aznar Gómez, M. J., 'Treasure Hunters, Sunken State Vessels and the 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage', 25 *The International Journal of Marine and Coastal Law* (2010) 209-236 [ISSN: 09273522]: Two sets of quite related judicial decisions in the US, regarding in rem actions directed at several Spanish State shipwrecks, have completed a new legal framework that must be kept in mind not only for treasure-hunter companies and any other persons trying to gain any right over the wrecks of sunken State vessels, but also for States trying to seek a clear interpretation of the legal status of those vessels in current international law. These decisions might complete the new legal layout given by the 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage, in particular giving full meaning to the 'without prejudice' clause included in its Art. 2(8) relating to sovereign immunities and State vessels; they might also ease future ratification of that Convention by reluctant States like the United Kingdom, France or the United States.

Aznar Gómez, M.J., 'Patrimonio cultural subacuático español ante tribunales extranjeros: los casos de la Mercedes y del Louisa', in 19 *Anuario de la Facultad de Derecho de la Universidad Autónoma de Madrid* (2015), pp. 47-77: Several key cases discussing the question of the protection of underwater cultural heritage have occurred in Spain in the last decade. In particular, two cases —the plundering of the Mercedes frigate in front of the Portuguese Algarve and the plunder from the Louisa ship in the Bay of Cadiz— have led to a renewed interest in protecting an archaeological legacy that has been neglected in our country. Both cases have been judicially discussed: the first before the courts of the United States of America and the second before the International Tribunal for the Law of the Sea. In both cases judicial decisions have been favourable to Spain, confirming in particular two issues —the principle of immunity of sunken state vessels and the sovereign jurisdiction of the coastal State over its territorial sea in the protection of underwater cultural heritage— which reinforce the Spanish position in that particular area. However, further political and legislative efforts are still needed to significantly improve the protection of underwater cultural heritage by Spain, within and beyond its waters. This paper tries to address all these questions.

Bou Franch, V., *La flota imperial española y su protección como patrimonio cultural subacuático* (Minim, Valencia, 2005) [ISBN: 8496033376]: After an introduction to the problems posed by the international protection of the remains of the Spanish imperial fleet as underwater cultural heritage, this book has four parts. The first part examines the consideration of the Spanish imperial fleet as underwater cultural heritage. The second part analyzes the current International Law and the protection of the underwater cultural heritage. The third part studies Spanish law and practice on warships and other ancient and sunken state ships. The fourth and last part deals with the future perspectives of underwater cultural heritage.

Carrera Hernández, F. J., *Protección internacional del patrimonio cultural submarino* (Universidad de Salamanca, Salamanca, 2005) [ISBN: 8478005226]: The aim of this work is to offer an analysis of the problems posed by the extraction and protection of underwater cultural heritage from the perspective of Public International Law. The book is structured in three chapters. The first one exposes the current legal regime in relation to the underwater cultural heritage, which is scarce and shows the need for the entry into force of a specific agreement on the matter. The second chapter analyzes the issue in depth, in particular from the perspective of the Jamaica Convention. Finally, the third chapter examines the content and implications of the UNESCO Convention of November 2nd, 2001.

Espósito, C. and Fraile, C., 'The UNESCO Convention on Underwater Cultural Heritage: A Spanish View', in David D. Caron and Harry N. Scheiber (eds.), *Bringing New Law to Ocean Waters* (Brill, Leiden, 2004) 201-223: This contribution offers an analysis of the 2001 UNESCO Convention on the Protection of the

Underwater Cultural Heritage. The first part describes the context and origin of the UNESCO Convention. It briefly introduces international law on the protection of underwater cultural heritage as it stands in the United Nations Convention on the Law of the Sea and provides a brief account of the negotiations of the UNESCO Convention, its participants, and the values and interests at stake. Part II contains a general assessment of the UNESCO Convention, with an emphasis on certain particularly controversial concepts, such as the definition of underwater cultural heritage, the status of state vessels, the relationship between UNCLOS and the UNESCO Convention, the regimes of jurisdiction and protection of underwater cultural heritage in the different maritime zones, and the prohibition of commercial activities. The chapter concludes with an appreciation of the general exercise and its potential efficacy.

García García-Revilla, M., and Agudo Zamora, M. J., “Underwater cultural heritage and submerged objects: conceptual problems, regulatory difficulties. The case of Spain”, 14 *Spanish Yearbook of International Law* (2008) 1-33 [ISSN: 09280634]: The entry into force of the 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage means certainly good news for the protection of this part of the legacy of past generations. A great deal still remains to be done, however. 2001 Convention has a limited personal and material scope of application. In its absence, the international regime applicable to this kind of heritage spreads out among a number of heterogeneous instruments focused on diverse topics. One of the problems that the said diversity and heterogeneity causes is the variety of terms and definitions used by it. On the other hand, the implementation of a series of instruments so different becomes particularly complex when referring to States that have partially transferred their competences “up” to a regional integration organization, like the European Union, and “down” to decentralized territorial units, like the so-called Autonomous Communities. To this respect, the case of Spain provides with a good example of such difficulties.

Juste Ruiz, J., “La protección internacional de los hallazgos marítimos de interés histórico cultural”, 20 *Anuario de Derecho Marítimo* (2003) 63-99 [ISSN: 02118432]. This article focuses on the international regime of findings of historical and cultural relevance at sea. The author approaches the subject by distinguishing between three regimes: its regime under maritime law, its regime under the law of the sea, and its regime under the 2001 UN Convention on the protection of the underwater cultural heritage. He concludes that the latter is an important step in the protection of underwater cultural heritage and has filled the lacunae existing in international law, even though it has not achieved a general consensus on the matter.

(6) Security issues

Carreño Gualde, V., “Suppression of the Illicit Traffic in Narcotic Drugs and Psycotropic Substances on the High Seas: Spanish Case Law”, 4 *Spanish Yearbook of International Law* (1995-1996) 91-106 [Doi: 10.1163/221161296X00037]: This work has two parts. The first one examines the general regulatory framework relating to the suppression of the Illicit traffic in drugs on the High Seas: basically, the United Nations Convention on the Law of the Sea and the Convention against illicit traffic in narcotic drugs and psycotropic substances of 20 Decembre 1988. In the second part, the work examines the Spanish practice, both conventional and case-law practice. Conventional practice shows that international cooperation in this field, both general and regional, has been developed by upholding the application of the principle of exclusive jurisdiction of the flag State over its vessels, which exercise freedom of navigation on the High Seas, since prior consent is a necessary requisite for legitimating the intervention of third states with regard to vessels in its sea area. In orther to achieve more efficiency in the supression of the illicit traffic of drugs in the high seas, nonetheless, some strategies have been developed, particularly in the conventions drawn uo in the regional and bilateral spheres.

Espaliú Berdud, C., “Las solicitudes de pronta liberación de buques y de sus tripulaciones ante la Corte Internacional de justicia: compatibilidad del artículo 292 de la CNUDM y los textos reguladores de la actividad de la corte”, 8 *Revista de Estudios Jurídicos* (2008) 79-106 [ISSN: 1576124X]: The Article 292 of

the United Nations Convention on the Law of the Sea foreseen that the questions relating to the prompt release of vessels and their crews may be submitted to some international jurisdictions, among others the International Tribunal for the Law of the Sea and the ICJ. Nevertheless, in reality all of them have been submitted to the ITLOS. The article tries to find out whether the provisions of Article 292 UNCLOS and the provisions which regulate the functioning of the ICJ are incompatible. The author arrives to the conclusion that only Article 34 of the ICJ Statute impedes the submission of prompt release questions to the ICJ by international organisations. For the rest, except decisions based on political grounds, there is nothing which bars the possibility to submit questions of prompt release to the ICJ.

Lirola Delgado, I., “La represión del tráfico ilícito de drogas en Alta Mar: cooperación internacional y práctica estatal”, 12 *Anuario Español de Derecho Internacional* (1996) 523-576 [ISSN: 02120747]: The aim of this paper is to examine the international norms aimed at suppressing illicit drug trafficking on the high seas, seeking the principles and mechanisms on which they are articulated and considering their adequacy to the efficiency requirements that a criminal activity of this size would require. Thus, taking as a starting point the general aspects of the legal regime of the high seas, this work analyzes first the international cooperation at the multilateral and bilateral levels, focusing the latter on the bilateral cooperation developed by the US and Spain; of which some manifestations of unilateral practice are also examined.

Sobrino Heredia, J. M., “La protección marítima, nueva dimensión de la política marítima de la Unión Europea”, 27 *Revista de Derecho Comunitario Europeo* (2007) 417-462 [ISSN: 11384026]. The maritime insecurity and the criminality at sea have increased, as it happens, for instance, with the pirate attacks, the illegal immigration and the menace of terrorist acts. In the European Union, the heterogeneity of the menaces derived from these illicit acts, together with the diversity of national systems of risks management, intensifies the danger and hinders the creation of a space for the maritime security. Before this situation it is necessary a common reply to these risks. In this sense, the maritime policy of the European Union slightly introduces a small progress in this matter. This research aims to analyze the transversal nature of the main risks and the need to adopt a Communitarian reply inspired by the subsidiary principles, loyal cooperation, complementarity and articulation between the national, communitarian and intergovernmental policies, in order to improve the maritime protection.

Sobrino Heredia, J. M., (Dir.), *Sûreté maritime et violence en mer* (Bruylant, Paris, 2011) [ISBN: 9782802730170]: With the 1982 United Nations Convention on the Law of the Sea, the States Parties wanted to establish a new legal order for the promotion of the peaceful uses of the seas and oceans. A quarter of a century later, it is clear that, unfortunately, that did not happen. Indeed, crime at sea has increased and become more frequent, often manifesting itself in forms not foreseen by the drafters of this Convention. Thus, growing maritime insecurity emerges, arising not only from natural hazards or caused by shipping, but also derived from intentional illicit actions. Association internationale de Droit de la Mer (ASSIDMer), aware of the relevance and importance of the problems related to violence at sea, has selected for its Third Ordinary Symposium held in La Coruña (Spain) in 2009, the theme Maritime security and violence at sea. The work focused on three topics: illegal trafficking of persons and transnational organized delinquency; terrorism and maritime piracy; and protection and safety in maritime transport. This volume contains the work presented on this occasion by a variety of jurists and professionals in the field from several countries and institutions. Each of its three parts is composed of a general report, reports on national measures as well as those of the European Union and international organizations, supplemented by reports and by a conclusion of the meeting. All of this was also enriched by a synthesis of the reflections that took place during the round table in which the judges of the International Tribunal for the Law of the Sea took part, and by general conclusions.

Sobrino Heredia, J. M., “Vulnerabilidad del espacio marítimo en la UE: hacia una política de protección marítima en el marco de la política marítima integrada”, in de Tomás Morales, M. S., (Coord.), *Retos del derecho ante las nuevas amenazas* (Dykinson, Madrid, 2015) [ISBN: 9788490852576] 29-52: More than 70% of the EU’s external borders are maritime. Also, on commercial terms or regarding shipbuilding, port

activities, energy production or tourism, the seas and oceans are one of its main sources of wealth. The importance of the sea to the EU, together with the vulnerability of maritime areas and augmented by a diversity of risks and threats, has led the European authorities to introduce the issue of maritime security and safety into its Integrated Maritime Policy. In this context, the EU has been developing a Maritime Safety Strategy (which was finally approved in 2014). This paper presents this strategy. Firstly, the paper examines the strategic maritime interests of the EU. Then, it addresses the risks and threats that may affect the European maritime space. Finally, the work analyzes the measures and instruments that could remedy or mitigate the vulnerability of the UE maritime space.

(7) Piracy and terrorism at sea

Espaliú Berdud, C., "The crime of maritime piracy in the 2010 reform of the Spanish Penal Code", 16 *Spanish Yearbook of International Law* (2010) 55-93 [ISSN: 09280634]: In 2010, the Spanish Criminal Code has been reformed in order to include again the crime of maritime piracy after the recrudescence of this phenomenon in the waters of the Horn of Africa. Due to the fact that Spain is a maritime country, the internal regulation against piracy is ancient and rich. This crime was already described in the Siete Partidas (Seven-Part Code), the Castilian statutory code compiled during the reign of Alfonso X of Castile (1252-1284), and has been punished at least from 1801, by an Order of the King Carlos IV consecrated to the regulation of Privateering. Later, in the epoch of the codification, it starts being included usually in the Criminal Codes, but this trend broke with the absence of Piracy in the Criminal Code of 1995, because it had stopped being frequent in practice. The historical analysis of all this regulation demonstrates that Spanish Law has always recognized the nature of crime against the law of nations of Piracy and, at the moment of typifying and punishing it, has transposed the universal competence of jurisdiction that was conferred by Public International Law. The 2010 reform consists in the introduction of two new articles in the Criminal Code: in the first place, Article 616 ter, which possesses a very wide material, spatial and personal scope, allowing to chase all kinds of acts of violence or depredation in the sea against the ships and platforms, persons or goods on board, with independence of the nationality of the authors and of the victims, of the maritime space and nationality of the craft or platform where they have been committed, or of the motivation that has stimulated the authors. With such a wide scope, the recent regulation answers correctly to the new reality of the piracy, which frequently is carried out in the territorial waters of failed States, or that is difficult to distinguish of the maritime terrorism when the pirates are nothing more than a link of a criminal chain formed with political purposes. In the second place, another article has been included, 616 quáter, which does not have very much sense regarding to the fact that it typifies and penalizes as piracy conducts that should be considered to be rather like constitutive of the crimes of resistance, disobedience or attempt on the authority or its agents typified in other chapters of the Criminal Code.

Espaliú Berdud, C., "La operación Atalanta de la Unión Europea en el marco de la lucha contra la piratería marítima", 79 *Revista de las Cortes Generales* (2010) 103-159 [ISSN: 02130130]: The international community has been trying to remedy for almost two decades the situation in Somalia. In recent years, it has reacted face to the problem of piracy with the instruments provided for in international law. However, those instruments have proved to be ineffective. The aim of this work is to deepen into the role played by the European Union and some of its Member States in particular at providing new legal and military solutions to the phenomenon of maritime piracy, both within the framework of international and UE legal order. The work analyses, firstly, the evolution of the treatment of piracy throughout history in order to present its current regulation. Secondly, it examines the fight against piracy in general, and within the framework of the EU legal order, both at the supra-state level and in the domestic law. Finally, the paper focuses on various actions of international organizations aimed at eradicating piracy in the specific case of Somalia.

Juste Ruiz, J., "Piratería en aguas somalíes: reacción internacional y derecho español", in Aznar Gómez, M. J., (Coord.) and Cardona Llorens, J., (Ed. lit.), *Estudios de derecho internacional y de derecho europeo en*

homenaje al profesor Manuel Pérez González. Vol. 1 (Tirant lo Blanch, Valencia, 2012) [ISBN: 9788490047897] 733-758: Maritime piracy has recently shown signs of a permanent vitality in particular in some areas of the planet that are visited by Spanish ships. In the face of the dangers of this new challenge for international maritime security, it has been established a universal and regional framework to prevent and fight maritime piracy and armed robbery at sea. In general, it can be said that the results of military actions undertaken under the auspices of the competent international organizations and organisms have been relatively effective and have contributed to containing the rise of piracy in some particularly turbulent regions. However, the mechanisms established in domestic legal systems have been much less effective. The present work examines the international regulation regarding the repression of the crime of piracy; the international response to stop piracy activities on the coast of Somalia, especially through international and regional cooperation; and the provisions of the Spanish legal system.

López Lorca, B., *La piratería y otros delitos contra la seguridad de la navegación marítima* (Tirant lo Blanch, Valencia, 2015) [ISBN: 9788490860465]: This book focuses on the analysis of the regulation of the different manifestations of violence at sea that affect the safety of maritime navigation, paying special attention to the crime of piracy insofar as this criminal activity constitutes at present the principal threat to this legal good. It is an articulated investigation on a criminological, international juridical and criminal-legal analysis. The opportunity of this work is underlined by the participation of the Spanish courts in the international cooperation strategies for the prevention and repression of piracy (Alakrana case, Patiño case, Izurdia case), as well as the need to solve the interpretative problems posed by the offences introduced by the legislator in the criminal code reform in 2010.

López Rueda, F. C., “Piratería marítima, terrorismo y figuras afines”, 29 *Anuario de Derecho Marítimo* (2012) 55-123 [ISSN: 02118432]. In this article, the concept and law on piracy, terrorism and other similar activities are analysed. The author first describes the historical evolution of piracy since ancient Roman times, drawing the conclusion that it is linked to business and commercial activity. He then establishes the objectives and methodology of his work, and analyses the situation in modern times and the strategies used in national and international law to fight against this phenomenon. Afterwards, the author studies the context of the topic in international law and the terminology and the concept of piracy both in national and international law. He then analyses the distinction between piracy and other legal concepts, such as crimes against maritime security, boarding and terrorism. The author then proceeds to analyse the regulation of piracy under UNCLOS, the SUA Convention, the Convention against the taking of hostages, the law of the European Union and some bilateral and multilateral international agreements. The author continues by offering an analysis of the Spanish criminal and administrative law on the subject, and finishes with some considerations of private international law before introducing his conclusions on piracy. Those conclusions are the absence of an exclusive concept of piracy, the multidisciplinary approach of international actors to the subject, the development of national law against piracy, the existence of problems of jurisdiction and the identification of applicable law, the lack of uniformity in international law and the need for an international court with jurisdiction over piracy crimes committed on the high seas.

Oanta, G. A., “The Legal Treatment of Maritime Piracy Carried Out by the Spanish Legislator”, *Insecurity at Sea: Piracy and Other Risks to Navigation* (Ed. Francesco Giannini & Figli S.P.A., Naples, 2013) [ISBN13: 9788874316793] 123-135: Traditionally, maritime piracy has come and gone into the Spanish legal system and its classification has caused major legal problems in Spain, especially in recent years. The present study is divided into two main parts: In the first part, it addresses the legal regulation of maritime piracy in Spain before the reform of its Criminal Code in 2010 and which legal problems in Spain caused the arrest of the persons responsible of the hijacking of the fishing vessel Alakrana. In the second part, it analyses the today legal norms regulating maritime piracy in the Spanish legal System as well as its more direct consequences.

Rodríguez Villasante y Prieto, J. L., “Aspectos jurídico-penales del crimen internacional de piratería”, in

- Castillejo, R., (Ed.), *La persecución de los actos de piratería en las Costas Somalíes* (Tirant lo Blanch, Valencia, 2011) [ISBN: 9788499859736] 113-144: The present work examines the main criminal legal problems posed by the repression of international piracy crime (problems related to the definition of crime itself or with the criteria of attribution of jurisdiction, among others) and proposes possible solutions, both regionally and internationally through international standards. Among the latter, the conclusion of an agreement on the matter, the modification of the United Nations Convention on the Law of the Sea, the creation of an international criminal court “ad hoc” or the incorporation of the crime of piracy in the statute of the International Criminal Court.
- Sánchez Patrón, J. M., “La legítima defensa ante la piratería marítima”, 28 *Revista Electrónica de Estudios Internacionales* (2014) 1-39 [Doi: 10.17103/reei.28.06]: The resurgence of maritime piracy and the importance of their means employed have forced States to repel the attacks of sea pirates in self-defence, and not only perform police work against this illegal activity. Furthermore, the extension and severity of this phenomenon explain that merchant and fishing vessels attacked for sea pirates have engaged their own defense with private security companies. This contribution attempts to answer the questions posed by the use of legitimate defense by States against armed attacks from private actors, as well as the use of armed force by private security companies to respond this kind of attacks from maritime piracy.
- Sobrino Heredia, J. M., “Piratería y terrorismo en el mar”, 1 *Cursos de Derecho Internacional y Relaciones Internacionales de Vitoria-Gasteiz* (2008) 81-148 [ISBN: 9788498602425]. Maritime piracy is an ancestral international crime and it is still common nowadays. However, the modern forms of piracy are not based on the original practice (*iuris gentium* piracy): illegal and violent acts committed on the high seas with a financial or personal objective. On the contrary, piracy is defined as an act of violence or detention, a predatory act in territorial waters and/or under political issues (pseudo piracy and terrorism at sea), when the *animus ferendi* and the political objective are intertwined, complicating its prevention and its resolution. As a consequence, new violent manifestations on the sea do not fit into any category of maritime piracy in international law. The author proposes the convenience to revise the notion of piracy in order to broaden its scope and some legal solutions to this problem, which encompass both its prevention and repression.
- Sobrino Heredia, J. M., “El uso de la fuerza en la prevención y persecución de la piratería marítima frente a las costas de Somalia”, 15 *Anuario da Facultade de Dereito da Universidade da Coruña* (2011) 237-262 [ISSN: 25306324]: Maritime piracy is an ancestral and current international crime. These days this crime is not based only on its original practice -illegal and violent acts portrayed in high sea with a financial or personal objective-, but also on acts of violence, detention or predatory in territorial waters and/or under political issues, hindering its prevention as well as its repression. This succeeds particularly serious in front of coasts of Somalia, where they multiply incidents involving the use of force by international military operations deployed in the area. The purpose of this paper is to examine which is the legal base for the use of force, in what situations it is possible and who is entitled to it.
- Jorge Urbina, J., ‘Estados fallidos y proliferación de actos contra la seguridad de la navegación marítima en las aguas somalíes: papel del Estado ribereño e importancia de la cooperación internacional’, 2 *Revista Española de Relaciones Internacionales* (2010) 88-118 [ISSN-e: 19896565]: The increase of unlawful acts against the safety of maritime navigation in the Gulf of Aden and off the coast of Somalia has served to highlight the essential role of coastal States in the prosecution of various criminal activities at sea, as piracy and armed robbery against ships. The absence of state authority in this country is a key factor in the proliferation of these and other forms of maritime crimes. Faced with this grave situation has required the intervention of the Security Council. Its function was to serve as an instrument for promoting international cooperation in the suppression of these crimes, but the measures taken to this, with the consent of the Somali government, can only be temporary. The eradication of these criminal activities in the medium and long term, we need to reach a peace agreement that allows restoring stability to Somalia and the establishment of regional cooperation mechanisms that promote collaboration of

coastal States most affected.

(8) Human rights and migrants at sea

Abad Castelos, M., 'El tráfico ilícito de personas por mar y la acción de las organizaciones internacionales', 14 *Anuario de la Facultad de Derecho de la Universidad de la Coruña* (2010) 137-162 [ISSN: 16953509]: This paper, starting from the universal normative framework, emphasizes which International Organizations have worked more on the specific question of illicit trafficking of people by sea, and it examines the main actions and measures adopted by them. In the universal plan, the work carried out by UNODC, IMO and UNHCR is highlighted. However, it is in the context of International Organizations of regional and sub-regional areas where, for diverse reasons, greater levels of operative measures and technical collaboration have been reached. In addition to this, the singly useful role carried out by the so called Regional Consultative Processes is also analyzed, and, furthermore attention is focused on the importance of strengthening cooperation to several levels, that is to say, not only among the States, but between all concerned players: States, IO and other international agencies, Regional Consultative Processes and civil society.

Acosta Sánchez, M. A., Remi Njiki, M. and del Valle Gálvez, J. A., (Dir.), *Inmigración, seguridad y fronteras: Problemáticas de España, Marruecos y la Unión Europea en el área del Estrecho* (Dykinson, Madrid, 2012) [ISBN: 9788490310465]: The Strait of Gibraltar area is undoubtedly a very interesting place for internationalist analysts and academics, because here there are many problems associated with this particular border area, which derive from its status as a strategic maritime passage, a division of continents, separation and cooperation between states and cultures. For Spain, in particular, it is the place where controversies and disputed borders are located, such as Gibraltar, and also territories claimed by Morocco in North Africa. The book has two parts. The first part examines the issues and problems related to immigration and borders both in Spain and in the European Union. The second part focuses on the different immigration, security and development problems in the Strait area and, in particular, it analyses the economic, democratic, legal and social issues posed by several EU common policies.

Casado Raigón, R., "Traffic illicite des personnes et criminalité transnationale organisée", in Sobrino Heredia, J. M., (Dir.), *Sûreté maritime et violence en mer* (Bruylant, Paris, 2011) [ISBN: 9782802730170] 3-18: Transnational organised crimes are usually linked to one another. This chapter focuses on two of them: smuggling of migrants and human trafficking at sea. He first addresses the relevant legal concepts and the main legal instruments regulating this subject: the Protocol against the Smuggling of Migrants by Land, Sea and Air; UNCLOS and the second supplementary Protocol to the SUA Convention. The author also explains some bilateral agreements on the subject. He then focuses on the possibilities and shortcomings of the existing legal framework. The author concludes that the Protocol against the smuggling of migrants by land, sea and air has given a concrete content to the UNCLOS provisions on the right of visit, that the preferent jurisdiction of the flag state is a principle of international law in statu nascendi, and that the implementation of the aforementioned protocol should be strengthened in the future

Fernández Sánchez, P. A., "Tráfico ilegal de personas y cooperación marítima internacional", in Pueyo Losa, J. A., and Jorge Urbina, J., *La cooperación internacional en la ordenación de los mares y océanos* (Iustel, Madrid, 2009) [ISBN: 9788498900613] 363-396: The illegal Human trafficking has, on the one hand, a migratory aspect, since it is related to the recruitment and transfer of people from one State to another, through irregular channels, regardless of whether their purpose is sexual exploitation, labor exploitation or slavery, terrorism or the search for better living conditions, among others. And, on the other hand, the illegal Human trafficking has a criminal aspect. When the transport is by sea, also, depending on the maritime space where the traffic is being carried out, the legal consequences are different. Following this idea, this work examines the applicable legal regime in the cases of illegal Human trafficking in the marine spaces under state sovereignty, in the marine spaces under limited state sovereignty, and in the High Seas. Finally, it also examines international maritime cooperation in the fight against this

phenomenon.

- García Andrade, P., “Extraterritorial Strategies to Tackle Irregular Immigration by Sea: A Spanish Perspective”, in Ryan, B., Mitsilegas, V., (Eds.), *Extraterritorial Immigration Control. Legal Challenges* (Brill-Martinus Nijhoff, 2010) [Doi: 10.1163/ej.9789004172333.i-441] 311-346. This book chapter examines the extraterritorial strategies to tackle irregular immigration by sea from a Spanish perspective. The author introduces the context of the matter and the main extraterritorial strategies adopted by Spain in order to fight clandestine immigration. The chapter is divided into two sections. In the first section, the author explores the interception operations carried out by the Spanish authorities in order to prevent irregular immigration by sea, with a special reference to the interception operations led by Spain and their connection with FRONTEX operations. In the second section, the author analyses the Spanish criminal jurisdiction law and case law on the extraterritorial pursuit of the smuggling of irregular migrants and the repatriation process to which intercepted immigrants are subject. The chapter finishes with some conclusions on the subject. The author remarks that the fight against irregular migration has become a control of irregular migration, which has led to major problems. She also remarks that supervision of the conformity of interception operations is extremely difficult due to the lack of publication of the agreements between the countries, and that the shifting of migration routes has posed some difficult challenges for both transit and destination countries. She finally stresses the need for a greater commitment to the principle of loyal cooperation of Member States with regard to the FRONTEX Agency and some concerns about the extraterritorialisation of the operations of the Spanish authorities.
- Lirola Delgado, I., “España y la lucha contra el tráfico ilícito de inmigrantes por mar”, in Pueyo Losa, J. A. and Jorge Urbina, J., *La cooperación internacional en la ordenación de los mares y océanos* (Iustel, Madrid, 2009) [ISBN: 9788498900613] 397-429: In recent years, Spain has become a preferred destination for the illegal traffic of immigrants by sea. This work examines, in the first place, the issues raised by the adaptation of the Spanish legal system to the obligations assumed under the Protocol Against the Smuggling of Migrants by Land, Sea and Air. Secondly, the work studies the typology and content of the legal instruments developed for cooperation in immigration and / or criminal matters among the States parties that are located in the smuggling routes of migrants by sea. Finally, it analyzes the particular problems that arise for Spain to make compatible the repressive and dissuasive aspects of the illegal traffic of migrants by sea with the obligations of respect to the rights of migrants and the duty to provide assistance at sea that International Law establishes.
- Moreno Lax, V. and Papastavridis, E., (Eds.), *‘Boat Refugees’ and Migrants at Sea: A Comprehensive Approach. Integrating Maritime Security with Human Rights* (Brill/Nijhoff, 2017) [ISBN13: 9789004300743]: This book aims to address ‘boat migration’ with a holistic approach. The different chapters consider the multiple facets of the phenomenon and the complex challenges they pose, bringing together knowledge from several disciplines and regions of the world within a single collection. Together, they provide an integrated picture of transnational movements of people by sea with a view to making a decisive contribution to our understanding of current trends and future perspectives and their treatment from legal-doctrinal, legal-theoretical, and non-legal angles. The final goal is to unpack the tension that exists between security concerns and individual rights in this context and identify tools and strategies to adequately manage its various components, garnering an inter-regional / multi-disciplinary dialogue, including input from international law, law of the sea, maritime security, migration and refugee studies, and human rights, to address the position of ‘migrants at sea’ thoroughly.
- Oliva Martínez, J. D., “Derecho del mar e inmigración irregular”, 17 *Revista de Derecho Migratorio y Extranjería* (2008) [ISSN: 16953509] 265-289: This work makes an approximation to the international legal framework related to the search, interception or rescue of vessels in danger in territorial or international waters and their relationship with the international obligations of Spain linked to the protection of human rights, the preservation of dignity and the treatment granted to irregular immigrants or asylum seekers who, on occasion, are the protagonists of this type of journey. The ultimate objective is to clarify what are the

rules that must be met by the authorities and the captains of ships sailing under the Spanish flag, taking into account the context that places our country as the destination of a large part of illegal immigration by sea that aims to reach European territory.

Rodríguez Carrión, J. L., “El salvamento marítimo de vidas humanas en el Convenio Internacional de Naciones Unidas de 1989”, 11 *Anuario de Derecho Marítimo* (1994) 137-158 [ISSN: 02118432]. This article explains the rescue regime under the 1989 UN Convention. The author first analyses the developments introduced by this Convention with regard to the previous 1910 Convention and criticises some of the postures adopted during the Conference. The author then focuses on the obligation to render assistance at sea and the compensation for it, which depends largely on national law provisions about the subject. The author finishes by providing twelve conclusions about the provisions of the UN Convention, summarising the obligations provided for in such Convention.

Salamanca Aguado, E., “The Trafficking of People and Smuggling of Migrants at Sea: New Approaches at the European Level”, in Fernández-Sánchez, P. A., *New Approaches to the Law of the Sea (In Honor of Ambassador José Antonio de Yturriaga-Barberán* (Nova, 2017) [ISBN: 9781536120073] 259-271: The oceans have facilitated the commerce of human beings, traded like commodities from one jurisdiction to another, and the smuggling of migrants by illegal enterprises, due to the profitability of trafficking in person. Despite the gravity of the problema, the question of forced migration by sea was neither examined by the Law of the sea not by maritime law until recently. At first, the main difficulty was the absence of an adequate international legal framework but nowadays is to promote better coordination and cooperation in combating transnational crime, include trafficking and smuggling of persons. In this context, this paper assesses the measures adopted at European level in the fight against trafficking in persons and smuggling in the Mediterranean Sea.

Sobrino Heredia J. M., and Oanta, G. A., “Control y vigilancia de las fronteras en los diferentes espacios marítimos”, 14 *Anuario da Facultade de Dereito da Universidade da Coruña* (2010) 759-788 [ISSN: 1138039X]: Seas and oceans are essential for the security of States and to support their development and prosperity. However, not in all maritime spaces States enjoy the same powers. This raises the question of knowing what powers States may exercise over maritime areas under their sovereignty and/or jurisdiction, and also on those where a State does not have any control. All this begs the question of delimitation of maritime boundaries and effective control over them. International Law acknowledges that States, as outlined in the first part of this work, can establish control and surveillance measures within their maritime borders, as well as deploying them in the different maritime spaces. In carrying out such activities there may be situations, as it is developed in the second part of this work, where it is necessary to search for, intercept or rescue vessels and persons at risk. This may lead to a tension between State security and the duty to protect those whose lives are at risk at sea.

(9) IIU fisheries

Andrés Sáenz de Santamaría, M. P., “Incidentes pesqueros y recurso a la fuerza. Estudio del apresamiento de buques pesqueros como medida de ejecución en el régimen internacional de pesquerías”, 41-1 *Revista Española de Derecho Internacional* (1989) 7-41 [ISSN: 00349380]: The enlargement of the maritime areas in which the coastal state has jurisdiction over fishing activities has involved an automatic extension of their enforcement powers; so, different measures can be taken by the coastal state in the exercise of its sovereign rights over fisheries to ensure compliance with its national laws about this subject, being the arrest of foreign vessels one of the most important. This paper discusses upon this theme, studying its regulation in the international law as well as the national legislations and examining its content and limits from the point of view of the international law. In this way, it shows how the 1982 LOS Convention includes for the first time the arrest among the measures of enforcement in the article 73, as good as the national laws developing the new law of the sea and the fishing incidents. On the other hand, the work states the problem of the use of armed force in the development of the operations of the seizure, asserting

that there is not proportionality between the eventual offence and the measure of violence, by this reason, the arrests involving armed force are unlawful acts violating the international law. In the author's opinion, this affirmation rises from the interpretation of the article 73 par. 1 of the LOS Convention and the law of the sea as a whole, as well as from the international practice and the institution of the right of hot pursuit. Finally, the paper refers to the importance of the material questions in the operations of surveillance of the fisheries activities, pointing out a link between this subject and the due observance of the international law in the application of enforcement measures in the fisheries law.

Jorge Urbina, J., "La cooperación internacional en la aplicación de medidas comerciales para luchar contra la pesca ilegal, no declarada y no reglamentada", 33 *Revista Electrónica de Estudios Internacionales* (2017) [Doi: 10.17103/reei.33.04]: Illegal, unreported and unregulated fishing remains the main global threat to the conservation and sustainable management of living marine resources. In practice, the fight against these illegal activities requires increased involvement of market States as a result of the ineffectiveness of the flag State controls. The relevance of market measures against IUU fishing stems from two factors: the main incentive of IUU fishing is economic and fish is one of the most traded food products. Therefore, an effective means of discouraging these predatory fishing practices is to increase the costs of these activities or reduce the benefits of IUU operators. But the implementation of these measures requires international cooperation. For this reason, this paper focuses on examining the practice of regional fisheries management organizations (RFMOs), as these institutions have been pioneers in the adoption of trade measures to deny access to markets of IUU fish. These measures are more effective than those adopted unilaterally by States because they have been approved in a multilateral framework as representing RFMOs and offer more guarantees to respect the WTO rules.

Pons Rafols, F. X., "La Unión Europea y el acuerdo de la FAO sobre las medidas del Estado rector del puerto destinadas a prevenir, desalentar y eliminar la pesca ilegal, no declarada y no reglamentada", 27 *Revista General de Derecho Europeo* (2012) 1-40, [ISSN-e: 16969634]: IUU fishing is currently one of the most important threats to the conservation and management of fishery resources. The European Union has driven international action and, since the regulations adopted in 2008, has led the fight against IUU fishing through the trade focus and approach of port State measures to prevent, deter and eliminate IUU fishing. This action by the European Union interacts with international action and in particular with the adoption by the 2009 FAO Conference of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and not regulated. This study analyzes the political and legal influence of the European Union in the progressive practical implementation of the provisions of this Agreement and its future entry into force.

Sobrino Heredia, J. M., "Pabellones de conveniencia y pesca ilegal", in Vargas Gómez-Urrutia, M. and Salinas de Frías, A., (Coords.), *Soberanía del Estado y derecho internacional: homenaje al profesor Juan Antonio Carrillo Salcedo*. Vol. 2 (Universidad de Sevilla, Sevilla, 2005) [ISBN: 8447208761] 1331-1348. IUU fishing is one of the main challenges in current Law of the Sea. It affects living resources' conservation and management as well as maritime security, and it is a form of unfair competition in the fisheries sector. In order to face this challenge, the author proposes the strengthening of the genuine link that must exist between a ship and its flag State, which must exercise effective control over the former. This strengthening of the genuine link must be done by giving it specific content. The author analyses the main existing theories on this issue, and, although no concrete definition of the content of the genuine link is made, it is suggested this it should be one that emphasises the responsibility of the flag State to exercise effective jurisdiction and control over the ships flying its flag. The author also proposes some measures in order to avoid the proliferation of the fleet of convenience, stressing the responsibility of flag States in this matter.

Sobrino Heredia, J. M., "Una nueva manifestación de delincuencia organizada transnacional: las actividades de pesca ilegal, no declarada y no reglamentada", in Bou Franch, V., Juste Ruiz, J., Sánchez Patrón, J. M., (Dir.), *Derecho del mar y sostenibilidad ambiental en el Mediterráneo* (Tirant lo Blanch, Valencia, 2014)

[ISBN: 9788490531785] 147-174: The international community in view of the magnitude and seriousness of illegal, undeclared and unregulated fishing must urgently reinforce the mechanisms to combat it, and adopt new measures that encompass this problem in its many facets. Following this premise, this work places IUU fishing as a broader problem that affects the prevention and repression of transnational organized crime. Beyond the instruments of the Law of the sea, this perspective leads to the United Nations Convention against Transnational Organized Crime, as well as to those bilateral or multilateral agreements of judicial assistance or memoranda of cooperation and understanding for conducting investigations together. It also raises the convenience of appealing not only to the fisheries authorities but also to other national authorities and regional and international police bodies such as EUROPOL and INTERPOL. In order to develop this connection, first of all, the work studies the drift of IUU fishing towards transnational organized crime, analyzing the legal response from international, European and national fisheries law. And, second, it examines the criminalization of certain IUU fishing activities, exploring the possibility of considering them as a major crime in the case of a transnational organized crime.

(I) SETTLEMENT OF DISPUTES

Abegón Novella, M., 'Las opiniones consultivas de la Sala de Controversias de los Fondos Marinos del Tribunal Internacional del Derecho del Mar como un instrumento para la protección del interés general', in Bouza, N., García, C., Rodrigo Hernández, Á. J., (Dir.), Pareja, P., (Coord.), *La gobernanza del interés público global* (Tecnos, Madrid, 2015) 547-559 [ISBN: 9788430965045]: The International Seabed Area has been recognized as common heritage of mankind, which implies the attribution of a legal status that prohibits, among others, appropriation and individual exploitation of its natural resources. The exploration and exploitation of these resources, as well as their conservation, is a matter of interest not only to States but to the international community as a whole. In the protection of this general interest, the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea may be essential. Its first Advisory opinion of 1 February 2011 on the Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area suggests the important role it can play in establishing the limits the preservation of the general interest impose with respect to the actions by States and private companies in this maritime space. This is particularly important since the 1994 Agreement modified the management model of the Area by encouraging the participation of States parties or particular entities to the detriment of the Authority.

Aznar Gómez, M. J., 'The obligation to exchange views before the International Tribunal for the Law of the Sea: a critical appraisal', 47(1) *Revue Belge de Droit International* (2014) 237-254 [ISSN: 0035-0788]: In 2006, Spanish authorities decided the immobilisation of the vessel *Louisa*, a vessel flying Saint Vincent and the Grenadines' flag, due to its illicit activities against underwater cultural heritage in Spanish internal waters and territorial sea. The flag State filed an application against Spain before the International Tribunal for the Law of the Sea complaining that Spain had violated the UN Convention on the Law of the Sea with that immobilisation. In its Judgement of 28 May 2013 the Tribunal concluded that it had no jurisdiction *ratione materiae* to entertain an application since no dispute concerning the interpretation or application of LOSC existed between the Parties. However, Spain had argued not only a lack of jurisdiction *ratione materiae* but that the Tribunal should have dismissed the case the applicant had not fulfilled the obligation to exchange of views as established in Article 283(1) LOSC. That question was not dealt with by the Tribunal in its Judgement, thus avoiding any discussion of the content and scope of that important procedural obligation. This Article tries to offer a critical appraisal of the position of the Tribunal in the *Louisa* case with regard the obligation to exchange of views as established in LOSC, bearing in mind the general principle as embodied by current general international law and its application by the ITLOS in the different cases submitted before it.

Espósito, C., 'Advisory Opinions and Jurisdiction of the International Tribunal for the Law of the Sea', in

Harry N. Scheiber and Jin-Hyun Paik (eds.), *Regions, Institutions and Law of the Sea* (M. Nijhoff Publishers, Leiden, 2013) 57-72 [available at SSRN: <https://ssrn.com/abstract=2104156>]: Following an introduction to the advisory jurisdiction of the Tribunal, this contribution discusses crucial aspects of the advisory function of the Seabed Disputes Chamber. It will of course consider the jurisdiction to give an advisory opinion and the issues of admissibility related to the opinion delivered by the Seabed Disputes Chamber on the Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the International Seabed Area. The discussion, however, will not touch upon the substantive legal questions asked to the Chamber in this occasion, but deal only with procedural issues. Moreover, it will attempt to go beyond this specific case to present a general analysis of the key issues of jurisdiction and admissibility, together with some questions of procedure, that should be taken into account in order to arrive to an authoritative advisory opinion of the Seabed Disputes Chamber and, eventually, of the International Tribunal for the Law of the Sea.

García García-Revilla, M., *El tribunal internacional del Derecho del Mar: Origen, organización y competencia* (Ministerio de Asuntos Exteriores y Cooperación, Córdoba, 2005) [ISBN: 8478017917].

Juste Ruiz, J., 'Unidad y pluralismo en la jurisprudencia del Tribunal Internacional del Derecho del Mar', in Rodrigo Hernández A. J., and García Segura, C. (Ed.), *Unidad y pluralismo en el derecho internacional público y en la comunidad internacional* (Tecnos, Madrid, 2011) 287-317 [ISBN: 9788430952120]: The dispute settlement system established in Part XV of the Convention marks an important line of opening towards compulsory dispute settlement procedures even though it has not been able to overcome all the structural barriers that make the international jurisdiction dependent on the freedom of election of the Parties. In addition, the application of this system of settlement of disputes has been found in practice with operational pitfalls that have become particularly manifest in the jurisdictional work of the ITLOS.

Juste Ruiz, J., 'La solución de controversias en el convenio de las Naciones Unidas sobre el Derecho del Mar', in Bou Franch, V., (Coord.), *Nuevas controversias internacionales y nuevos mecanismos de solución* (Tirant lo Blanch, Valencia, 2005) 327-383 [ISBN: 8484561518]: The dispute settlement regime is designed in the United Nations Convention on the Law of the Sea of 10 December 1982. Despite its inherent limitations and the complexity and secrecy of some of its provisions, the system for the settlement of disputes envisaged in Part XV it represents a clear progress and constitutes one of the fundamental pivots in the general structure of the Convention.

Ojinaga Ruiz, M. R., 'La Unión Europea y los Estados miembros en los procedimientos de arreglo jurisdiccional de controversias de la CNUDM', 55 *Revista de Derecho Comunitario Europeo* (2016) 977-1018. [doi: <https://doi.org/10.18042/cepc/rdce.55.06>]: The European Union is increasing its participation in dispute settlement systems in the new framework of proliferation of international courts and tribunals. Specifically, the rules of the United Nations Convention on the Law of the Sea (UNCLOS) on jurisdictional settlement of disputes provided in section 2 of Part XV contains express provisions dealing with the participation of EU which are of interest to the study of the issue. Furthermore, there has been decisive progress of the EU and the Member State's practice before the International Tribunal for the Law of the Sea (ITLOS). Recently, the advisory proceeding initiated by the Sub-regional Fisheries Commission (SRFC), before ITLOS (case num. 21) highlighted the internal difficulties involved in the appropriate coordination of the EU and the Member State's participation in proceedings before international tribunals. Additionally, the European Court of Justice has clarified a number of issues concerning the definition of EU position and its representation before international courts and tribunals.

Soroeta Licerias, J., *La Jurisprudencia del Tribunal Internacional del Derecho del Mar: (1997-2005)* (Dilex, Madrid, 2005) [ISBN: 8488910703]: 1997 - 2005. The law of the sea has become the greatest test-bed for the bargaining power of the States when it comes to compromise, to achieve the equilibrium of the ambassadors, where international rules are the thin line in which the actors move. The regulation of the sea is open and, therefore, in need of additional legal limits. The author studies rigorously the various incursions of the Tribunal of the Law of the Sea in material areas of necessary study in relation to the

concrete case. The general result of the research carried out places the Court in a situation quite compromised by the low solidity of its jurisprudential constructions. Thus, with regard to the arduous debate on flags of convenience and the requirement for an effective link between the vessel and the flag, the Court has not been able to adopt a clear position, even though this is a recurrent issue in the cases raised. Mercantile corsairs enjoy this sort of patent that is certainly cheap. In short, this text highlights with absolute clarity the difficulties and needs present in the application of the sector of the law of the sea, absolutely weighed down by enormous tensions.

Jorge Urbina, J., *Controversias Marítimas, Intereses Estatales y Derecho Internacional* (Dilex, Madrid, 2005) [ISBN: 9788488910578]: The Law of the Sea is currently one of the most relevant sectors of the international legal system, but also one of the most conflicting by the confluence in the regulation of the seas and oceans of diverse and conflicting state interests as a result of political inequalities, economic, technological, military or geographic in contemporary international society. Therefore, the need to peacefully accommodate the conflicting claims of States on the marine environment has led to the elaboration of a complex and imaginative dispute settlement mechanism, as set out in Part XV of the United Nations Convention on Biological Diversity. The Law of the Sea of 1982, which, far from constituting an ancillary aspect, constitutes a means of guaranteeing respect for the integrity and coherence of the complete and complex legal regime established by the aforementioned Convention. From this perspective, after examining the different political, strategic, economic or ecological factors that make the marine environment a particularly problematic area, as emphasized in international practice, the book focuses on the analysis of the role to be played by the system of settlement of disputes established in Part XV as a means of harmonizing the claims of States in the maritime field, while at the same time highlighting their peculiarities and their possible deficiencies and limitations - some of which have already been the decisions that have already been taken in the framework of this mechanism - are the fruit of precisely those opposing state interests. In this line, it should be highlighted as one of the novelties of this dispute settlement system the implementation of a new institution designed to address the various disputes that may arise in this area, the International Tribunal for the Law of the Sea. Before a specialized jurisdiction which has already begun to develop its first jurisprudence, especially in relation to certain types of disputes, but which is called upon to play a more important role as States decide to overcome their reluctance towards this means of judicial settlement, because it is an organ in which the plurality of the contemporary international society is reflected and whose action is presided over by the speed and efficiency in the treatment of the diverse subjects that are submitted to him. All this underlines the value and timeliness of this work, in view, in particular, of the important maritime interests that Spain continues to maintain, inter alia, in aspects such as fishing, protection of the marine environment or delimitation of spaces; and that make of this text a useful instrument of consultation for professionals and scholars of the Law of the Sea.