



Oxford PIL Discussion Group
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Regime Interaction in Ocean Governance

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Outline

1. Sustainable Ocean Project
2. Defining the terms of the discussion
 - Ocean Governance
 - Regime
 - Regime Interaction
3. Case study:
Investment protection of offshore energy projects
4. Concluding remarks



1 – Sustainable Ocean Project

- Guaranteeing the continuity of the relevant economic activities
- Protecting the marine environment and conserving its biodiversity
- Mitigating climate change effects
- Guaranteeing energy efficiency and security
- Protecting the rights of local communities and populations

➔ **Regime interaction**





Law of the Sea

- General framework
- Competences
- Protection of marine environment

Sustainable ocean

Environmental/ Climate Change Law

- Sustainable development
- Local communities
- Renewable energy

Energy Law

- Energy security
- Energy efficiency



Research question and structure

How does the law strike a balance between competing interests at sea and contribute to the sustainable use of the oceans?

Junior researcher
Vivia Aiyedogbon

WP1
General Theoretical
Framework
PI – S. Trevisanut

WP2
How flexible is the
LOSC regime?
PhD
R. Roland Holst

WP3
Which governance for the
offshore industry?
PhD
N. Giannopoulos



2- Defining the terms of the discussion: What is ocean governance?

“we say ‘governance’ because we don’t really know what to call what is going on” (L. Filkenstein 1995)

- Rothwell and Stephens (2016)
 - Ocean management: “those formal and informal rules, arrangements, institutions and concepts which structure the ways in which sea space is used, how ocean problems are monitored and assessed, what activities are permitted or prohibited, and how sanctions and other responses are applied”
- Tanaka (2008)
 - Dual approach to ocean governance: zonal (management) and integrated (cross-sectoral – IOM)



What is a regime?

- ILC 2003: 'combination of rules which [lay] down specific rights, obligations, competences, and rules on the administration of such rules, (...) including rules on the reaction to violations'
- D. Pulkowski: arrangements promoting societal goals
- M. Young: "sets of norms, decision-making procedures and organizations coalescing around functional issue-areas and dominated by particular modes of behavior, assumptions and biases"
- Inclusion of:
 - Relevant actors
 - Wider variety of normative production
 - Decision making processes

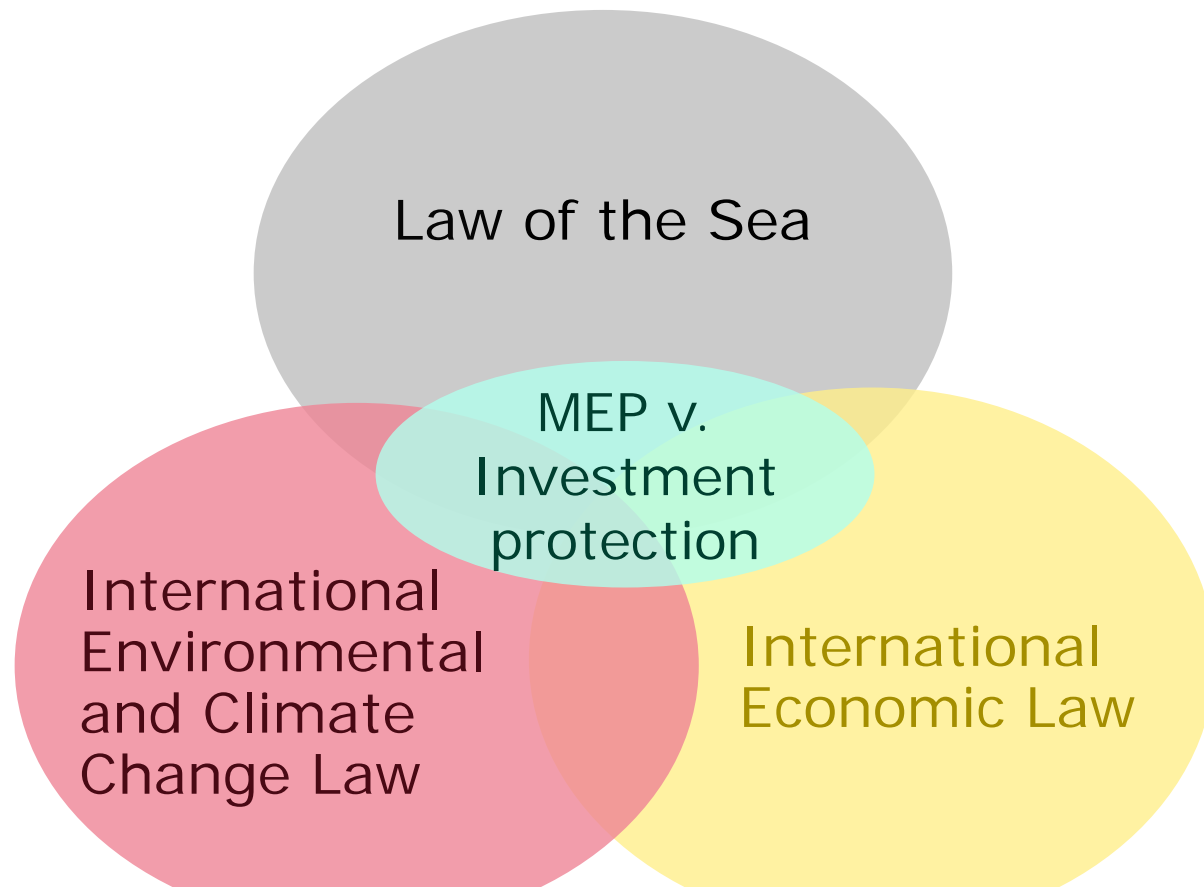


What is regime interaction?

- Interactions can be:
 1. Conflicting
 2. Synergetic
 3. Neutral
- Factors influencing interactions:
 1. Laws developed in different times
 2. Different institutional structures
 3. Lack of parallel membership
 4. Divergent (and sometimes competing) interests
- Three characteristic dimensions of regime interaction:
 1. Interaction of goals
 2. Interaction between institution
 3. Interaction between legal norms (treaty conflicts)



3- Case study: Investment protection of offshore energy projects in context



How does regime interaction impact investment protection in the offshore energy sector?





➤ UNCLOS 'sophisticated' system of marine environmental protection

- Article 192 UNCLOS:
 - general and comprehensive duty to protect the marine environment
 - “due diligence” & certain level of vigilance
 - embedded in the wider environmental obligations stemming from relevant MEAs (South China Sea Award)
- Article 206 UNCLOS:
 - cornerstone procedural obligation to conduct EIA
 - continuous duty to monitor impact throughout the life of major projects (art. 208 + IEL obligations)



➤ Regulatory framework for offshore energy production

- Global level
 - MARPOL
 - Convention on Biodiversity
 - Espoo Convention
 - Ramsar Convention
 - World Heritage Convention
 - Energy Charter Treaty...
- Regional level
 - Barcelona Offshore Protocol
 - Kuwait Offshore Protocol
 - OSPAR Convention (spec. Annex VI)
 - Helsinki Convention
 - EU Law
 - NAFTA
- Bilateral level
 - Joint development agreements
 - Bilateral Investment Treaties





Interactive form relationship between instruments

- drafting techniques (compatibility clauses; rules of reference; common instruments)
- treaty law
- Law-making /sources

Interactive substance relationship between obligations

- balancing legal principles
 - Reasonableness
 - Proportionality
 - Deference
- balancing legal obligations
 - due regard
 - obligation to cooperate
 - precautionary principle

Interactive process relationship between institutions

- MoUs; Task Forces
 - Law of international Institutions
- GAL / IPA
- procedural obligations
- EIA
- due diligence (IEL)

Law Making

Law application (incl. dispute settlement)



3. Concluding remarks

➤ Pending Questions:

- How can international law confront competing challenges?
- Pluralistic accommodation or hierarchy of policies/objectives?

➤ Tentative (optimistic) conclusion:

- Regime interaction is not necessarily a “threat” to the fulfillment of overlapping/juxtaposing international obligations
- Identifying the type of interaction is key to identify the applicable legal tools/techniques





Thank you for your attention!

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