

Gemma Andreone *Editor*

The Future of the Law of the Sea

Bridging Gaps Between National,
Individual and Common Interests

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Foreword

The present book is the final product of the work of Marsafenet, which is a network of experts on maritime safety and security, sponsored by the COST funding scheme under H2020. Marsafenet is a collaborative partnership that works together in addressing recent law of the sea issues. The work of Marsafenet has led to a number of symposia held in various countries, the publication of several books and the creation of the *MarSafeLaw Journal*, an open access, peer-reviewed journal. It must be envisaged that this remarkable collective effort will not vanish with the end of Marsafenet—the network of friendships and scholarly collaboration must continue, as must the *MarSafeLaw Journal*.

The goal of the present volume is to address various law of the sea issues not only through the lens of State interests, as in traditional international law, but also from the point of view of common values and the interests of individuals. This is achieved in the two main parts of the book, which discuss respectively ‘the equitable and sustainable exploitation of marine environment and of its resources’ and ‘the national and international response to maritime crimes’.

Common values are already present in the United Nations Convention on the Law of the Sea (UNCLOS), namely, but not exclusively, in the notion of the ‘common heritage of mankind’. The interests of individuals are less evident in the Convention, but nonetheless present, as pioneering studies on the law of the sea and human rights have shown. The present volume, much like those already published by Marsafenet, makes interesting contributions to both points of view.

All the essays contained in the book at hand centre on maritime safety and security problems that have arisen in the last few decades, after the entry into force of UNCLOS. These problems and the responses thereto not only necessitate enhanced international cooperation; they also require action at the domestic level. Questions arise concerning the adoption of domestic legislation and regulations to implement systematically (and not only episodically) the rules of international law within domestic legal systems. Questions concerning the implementation of international judgments in domestic legal systems also arise. Recent cases brought before the International Tribunal for the Law of the Sea (most recently, the *Virginia*

G and the *Nordstar*) and before an Arbitral Tribunal (the *Duzgit Integrity*) suggest that these matters are becoming more pressing.

In light of this, the continuation of the endeavours of Marsafenet—be it by a reborn Marsafenet or by individual scholars or by new collective research projects—would be best served by focusing on the domestic law impact of UNCLOS. How have State Parties implemented the rules of UNCLOS in their domestic systems? How are the mechanisms employed for the implementation of UNCLOS assessed from the point of view of compliance under international law with the Convention? Do the means for implementing UNCLOS include remedies for individuals? How does legislation implementing UNCLOS interact at the domestic level with legislation implementing the European Human Rights Convention? How has UNCLOS been implemented in the EU legal system? What is the best way to prevent divergent implementation legislation or practices from jeopardising the unifying impact of UNCLOS?

All these questions, and others germane to them, are open to debate. They may not be the only questions currently arising as regards the law of the sea, but they are of particular practical and scientific interest and well suited for a comparative study by a multinational team of scholars such as Marsafenet.

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Tullio Treves

Former Judge of the International
Tribunal for the Law of the Sea

Scope and Aim of the Volume

This volume is the final publication of the research carried out within the framework of Cost Action IS1105 Marsafenet (i.e. Network of legal experts on the legal aspects of maritime safety and security), which has brought together more than 80 researchers from 23 countries between 2012 and 2016.

As the main goals of international law in regulating marine spaces are the protection of the marine environment and the sustainable and equitable exploitation of its resources, in addition to the peaceful use of the oceans, this publication proposes some reflections on both maritime safety and security issues.

The principles and norms of the law of the sea are primarily codified in the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and related instruments, which constitute the current legal framework for ocean governance.

As is widely known, this field of international law has long been characterised by a tension between the concept of the freedom of the seas (*mare liberum*) and that of the closed sea (*mare clausum*). Over time, the pivotal issue has always been the extent to which the sea is an international space, with resources freely available to all, and the extent to which it can be claimed by each State. The juxtaposition of these two positions continues to lie at the core of contemporary international law of the sea and international practice, and it is largely focused on national interests in maritime spaces and resources.

Nevertheless, in line with ongoing developments in the international legal order, recognition and protection of the rights of individuals, as well as the common interests of the international community, have become increasingly important in the regulation of maritime spaces and resources. The emergence of such interests, the need to protect them effectively and the growing interest in maritime activities by non-State actors, such as private companies and NGOs, are all elements that are gradually changing the nature of the law of the sea. As a result, there is an emerging inclination for a structural change that may reconcile these objectives with the perpetual importance of State sovereignty.

In several UNCLOS provisions, there are already a number of direct and indirect references that highlight the need to protect the common values of the international

community. The rights and freedoms of the individual are also considered and protected by some UNCLOS provisions.

The future challenge of the law of the sea is to strengthen the protection of all of the (sometimes conflicting) interests at stake—national, individual and common interests—and to achieve a fair balance among them, in order to foster the realisation of a just and equitable international economic order. The development of legal instruments and mechanisms intended to take into account and balance the diverse interests of States, international organisations, non-State actors (including individuals, groups of individuals, private entities and NGOs) and the international community as a whole is following a tortuous and asynchronous pattern—existing instruments are frequently used and adapted to face issues and challenges that they were not created for.

Against this background, the volume at hand strives to address this dynamic development of the law of the sea, focusing on a few key issues that are under the spotlight of the current international agenda, and which also lie at the heart of the conflict between competing actors and interests.

This volume explores the diverse phenomena that are challenging the international law of the sea today, using a unique perspective, which involves simultaneous analysis of the national, individual and common interests at stake. This perspective can constitute a useful element in the effort to bring today's legal complexity and fragmentation to a homogenous vision of the sustainable use of the marine environment and its resources, as well as the international and national responses to maritime crimes. These two areas of investigation have been chosen because they represent an interesting research laboratory for identifying and analysing the evolving nature of the international law of the sea.

Accordingly, this volume is divided into two sections: one devoted to equitable and sustainable exploitation of the marine environment and its resources, the other to national and international responses to maritime crimes.

The first section addresses the legal instruments and mechanisms concerned with regulating the use of the sea and the exploitation of marine living and non-living resources (e.g. marine protected areas, fisheries agreements, marine scientific research, biodiversity protection and blue energy at sea).

These issues are at the forefront of this discussion due to the increasing use of ocean spaces and resources to meet global demands for energy, food and the mobility of people and goods. They lie in the common ground between different overlapping legal regimes such as the law of the sea, environmental law, energy law, climate change law and EU law, and involve conflicts between the competing economic and environmental interests of States, individuals and private actors, at both the local and global levels.

The second group of issues at stake is concerned with maritime crimes and the changing international security landscape, focusing on human trafficking and smuggling at sea, piracy, private maritime security and the proliferation security initiative. These issues reveal the interplay between the law of the sea, human rights law and international criminal law, highlighting the need for effective instruments

for the protection of individuals at sea under a number of different, conflicting perspectives.

Like all previous Marsafenet publications, this volume is open access and has been peer reviewed by anonymous reviewers actively involved in the Marsafenet network.

My deepest gratitude goes to all the authors and reviewers for their important scholarly contributions.

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Peer Review Process

Each chapter of this book has been assessed by anonymous reviewers.
A list of the reviewers is available from Springer International Publishing.

Funding Institutions



COST (European Cooperation in Science and Technology) is a pan-European intergovernmental framework. Its mission is to enable breakthrough scientific and technological developments leading to new concepts and products and thereby contribute to strengthening Europe's research and innovation capacities.

It allows researchers, engineers and scholars to jointly develop their own ideas and take new initiatives across all fields of science and technology while promoting multi- and interdisciplinary approaches. COST aims at fostering a better integration of less research intensive countries to the knowledge hubs of the European Research Area.

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COST Action IS 1105

This publication is based upon work from COST Action IS 1105, supported by COST (European Cooperation in Science and Technology).

MARSAFENET—the acronym for NETwork of experts on the legal aspects of MARitime SAFETY and security—aims to bring together experts in international law of the sea in order to increase the knowledge on maritime security and safety and to develop a common conceptual and methodological framework with the goal of contributing to fill the legal gaps and of transforming scientific results into feasible solutions. The network is intended to foster the identification and exploitation of synergies between EU policies on maritime safety and security. In terms of societal implications, it is aimed at facilitating the detection of solutions for old and new issues and criticalities, which may be implemented within the public realm (decision-makers, international institutions, international and national tribunals, EU institutions, etc.) and within the private sector (shipping sector, civil society, NGOs, etc.).

This Cost Action takes an in-depth look at current urgent maritime matters focusing on four main issues: shipping and marine environmental protection, new developments of economic activities at sea, international maritime security and border surveillance and, finally, protection of fragile and semi-enclosed seas.

MARSAFENET is currently composed of more than 80 legal experts from 23 different countries.

More information about COST Action IS1105 is available at www.marsafenet.org.



The Grant Holder of the Cost Action IS1105 is the Institute for International Legal Studies (ISGI). The Institute for International Legal Studies is a scientific organ of the Italian National Research Council (CNR), founded as a Centre in 1986 in cooperation with the Italian Society for International Organization (SIGI). Key areas of activity include also training and expert consultancy in cooperation with national and international institutions such as the Ministry of Foreign Affairs, the Ministry of Economic Development and the Ministry of Welfare, Health and Social Policies; the Asser Institute of the Hague; ESA; UNIDROIT; and UNESCO.

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