

FRANCE AS THE 2ND LARGEST OCEAN POWER - LEGAL CONNOTATION OF OCEAN CHANGE TO THE FRENCH STATE

Abstract

France, being one of the largest economies and the most influential states both in the European Union and globally, remains the ocean power. Despite the fact that the colonial metropolises do not exist anymore, since the United Nation Special Committee on Decolonization does not de facto function anymore, France keeps its overseas territories. Only in the Pacific region the French State governs French Polynesia, New Caledonia, and Wallis and Futuna. French overseas collectivities in the Indo-Pacific region are considered by Paris as geostrategic area. It comes from the fact of the enormous maritime territories. 93% of the French Exclusive Economic Zones (EEZs) are located in the Indian and Pacific Oceans. The region itself is home to 1.5 million French people, and 8,000 soldiers stationed in the region. After the shift of global pivot from the Euro-Atlantic to the Pacific, the area became also a strategical and global economy's centre of gravity. In addition, the maritime trade routes linking Europe and the Persian Gulf, through the Indian Ocean and South-East Asia, to the Pacific Ocean, have become essential for global economy and security. Ocean change in turn is now the biggest threat facing humanity, especially those living on islands and in delta countries. The predicted and expected (sometimes already observed) loss of territory, and thus sovereignty of the submerged states is yet the problem especially in the Pacific. France, being the 2nd largest ocean power, following the USA, is aware of downsizing of EEZs and possible political tensions between Paris and its collectivities.

Keywords: France, Paris, ocean, climate change, ocean change, EEZ, Pacific

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1. Introduction

The French State² is sometimes called the last colonial power. It is one of the largest economies³ and the most influential states both in the European Union (EU) and globally yet remaining the ocean power. Despite the fact that the colonial metropolises do not exist anymore, since the United Nation (UN) Special Committee on Decolonization does not de facto function anymore⁴, France keeps its overseas territories. It shall be briefly presented in this article how France approaches its politics towards the overseas territories⁵. Only in the Pacific region the French State governs French Polynesia, New Caledonia, and Wallis and Futuna. French overseas collectivities in the Indo-Pacific region are considered by Paris as geostrategic area. It comes from the fact of the enormous maritime territories in comparison to the land. For instance, the Republic of Kiribati composes of three island groups, which are dispersed over about 3.5 million km².⁶ Another example can be here the Cook Islands whose the land territory in proportion to its sea area amounts to 1:8,000.⁷ 93% of the French Exclusive Economic Zones (EEZs) are located in the Indian and Pacific Oceans⁸. The region itself is home to 1.5 million French people, as well as 8,000 soldiers stationed there.⁹ After the shift of global pivot from the Euro-Atlantic to the Pacific, the area became also a strategical and global economy's centre of gravity. In addition, the maritime trade routes linking Europe and the Persian Gulf, via the Indian Ocean and South-East Asia, to the Pacific Ocean, have become indeed essential for the world economy and global security.

Ocean change, being the second topic of this article, is now the biggest threat facing humanity, especially those living on islands and in delta countries. The

² The author was granted the Norwegian research grant from the Norwegian University Centre in Paris in March 2020. She has worked in two French institutions, where most of the materials for this article comes from: Institut de relations internationales et stratégiques and Institut du Pacifique.

³ France belongs to the Group of Seven, also called G7, being an international intergovernmental economic organization of the seven most advanced economies in the world. It used to be called G8, when it took into account Russia. The group now consists of the following states: Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States of America.

⁴ It does, however, function de iure, as its competences were just frozen while not ceased or its existence was terminated.

⁵ This is not the main idea of this article and thus will not be elaborated to larger extent.

⁶ Pacific Community, *Kiribati*, website <https://sdd.spc.int/ki> (March 21st, 2020).

⁷ M. Jędrusik, *Wyspy tropikalne. W poszukiwaniu dobrobytu*, WUW, Warsaw 2005, p. 155-159.

⁸ Ministère de l'Europe et des Affaires étrangères, *Asie - Océanie*, website <https://www.diplomatie.gouv.fr/fr/dossiers-pays/asie-oceanie/> (March 21st, 2020).

⁹ *Ibidem*.

predicted and expected (yet observed) loss of territory, and thus sovereignty of the submerged states is yet the problem especially in the Pacific. France, being the 2nd largest ocean power, following the USA, is aware of downsizing of EEZs and possible political tensions between Paris and its collectivities.

French Polynesia, New Caledonia, and Wallis and Futuna have different legal status both in national, as well as in international legal order. However, the final political decisions and accordingly their economic consequences are in the full domain of the French State. Nonetheless, France was and always will be reluctant to give away these areas of indeed key global importance in climate change and biodiversity¹⁰. Besides the already existing quotas on fishing within the EEZs, France is aware of the potential to exploit undersea resources, as well as to get the revenues from foreign fishing fleets, which are operating in the Pacific. The French State contributes noteworthy funding to its three Pacific dependencies, in the amount of nearly €2.5 billion each year.¹¹ The French EEZs are the second-largest following only the USA. Out of the French 11 million km² overseas EEZs, more than 7 million are located in the Pacific Ocean.¹²

2. Ocean power

What needs to be underlined at the beginning of this article are the exact figures. France possesses exactly 10,754,858 km² overseas EEZs, among which more than 7 million are located in the Pacific basin. New Caledonia possesses 1,240,601 km² of EEZs (however, the total maritime space amounts to 1,440,161 km² after adding internal waters and territorial sea), Wallis and Futuna – 256,644 km² of EEZs (again, the total maritime space is larger - 262,465 km²), and lastly French Polynesia – 4,537,730 km² of EEZs (total maritime space 4,787,978 km²).¹³ Despite the Pacific dependencies, there are also Saint-Pierre-et-Miquelon, French Antilles, French Guiana, La Réunion-Mayotte-Scattered Islands, French

¹⁰ Interview made by the author with Serge Segura, Ambassador of the Republic of France to the Oceans, Paris 12.03.2020.

¹¹ C. Ris, “Les Inégalités Ethniques dans L'accès à L'emploi en Nouvelle-Calédonie”, *Economie et statistique*, 2013, Vol. 464, no. 1.

¹² N. Maclellan, “France and the Blue Pacific”, *Asia & the Pacific Policy Studies*, 2018, Vol. 5, no. 3.

¹³ Calculations was made by the author basing on the French official website “Limits Maritime: French national portal of maritime limits”. The authors of the data presented on the website added a sort of a legal clause, which presents also the actual state of matters, which might be changed due to different international arrangements: “Calculations of the performed based on current knowledge of French maritime boundaries on 15 April 2019. These figures are subject to change, depending on the boundary agreements signed and updating of outer limits of the maritime space”: <https://maritimelimits.gouv.fr/resources/areas-frances-maritime-spaces-sovereignty-and-jurisdiction> (March 21st, 2020).

Southern and Antarctic Territories (TAAF) not included Scattered Island and Adelia Land, and Clipperton Island. United Nations Convention on the Law of the Sea (UNCLOS)¹⁴ provides advantages for France. The document, being the most important source of norms regarding the law of the sea, was signed in 1982, but entered into force not until 1994. Among non-parties of UNCLOS there is the USA, the biggest maritime power. Mainland France possesses relatively “modest” amount of EEZs in Europe being 297,123 km² (total maritime space of 371,096 km²). However, after adding its overseas collectivities (fr. collectivités d’outre-mer, COM) in the Pacific, the sum amounts up to almost 11 million km². Thus, instead of being at the 45th position in the world’s ranking of the ocean powers, the Republic of France comes in second position.

In the colonial times, France was present in Oceania via its four colonies; the New Hebrides, French Polynesia, New Caledonia, and Wallis and Futuna. Writing about the Pacific region is relevant to the topic of this article, as none of the French COM in the Atlantic or the Indian Ocean are now not under the threat of ocean change consequences. Only in the South Pacific the scale of damage to the households that have been affected by global warming and sea level rise over the past decade can be presented as follows: over 97% in Tuvalu, 94% in Kiribati and 74% in Nauru¹⁵. The legal diversification of different international law entities is essential when it comes to conducting regional policy through multilateral mechanisms, in order to combat climate change effects. Limited sovereignty of the French COM causes limited legal capability.

The Republic Vanuatu, formerly known as the New Hebrides, was the British-French condominium. Such dual administration was indeed the colonial phenomenon *sui generis*. Vanuatu gained independence on 30 July 1980. But three other COM are still dependent on the government in Paris. New Caledonia, closest neighbour of Vanuatu in the subregion of Melanesia, is a special collectivity (fr. collectivité) of France. It is governed under the Nouméa Agreement¹⁶. When it comes to the subregion of Polynesia, there are French Polynesia, and Wallis and Futuna. None of these two French COM, unlike in the case of New Caledonia, were granted such a wide degree of autonomy. Citizens of COM subject to French sovereignty have the same rights as other French citizens, but the fact that an individual was born in France or in a French COM does not automatically grant him or her French citizenship. French Polynesians, Wallisians and Futunans

¹⁴ Also called the Montego Bay Convention. United Nations Convention on the Law of the Sea of 10 December 1982. It has been effective since 16 November 1994.

¹⁵ United Nations ESCAP, *Climate Change and Migration on the Pacific: Links, attitudes, and future scenarios in Nauru, Tuvalu, and Kiribati*, United Nations University website: https://i.unu.edu/media/ehs.unu.edu/news/11747/RZ_Pacific_EHS_ESCAP_151201.pdf (March 21st, 2020).

¹⁶ (Fr. L’accord de Nouméa). The official name of the documents is Accord sur la Nouvelle-Calédonie of 5 May 1998.

do possess French citizenship, which is valued also because of the access to the Schengen area. This, of course is especially appreciated when it comes to possibility of free movement, applying for work or studies¹⁷. Another aspect of administration and governance which implies the close political connections with Paris is the slow transfer of public (internal) competences by the French government to the governments of those islands¹⁸. Nonetheless, the foreign affairs, and security will remain in the sole domain of Paris.

The following political fact, arising from the French *raison d'état*, is being underlined by the head of the French State. Regardless of their political affiliation, they all highlight huge importance of the overseas territories for the governments in Paris. What is also being added by the French politicians is the French role in the Pacific region. The French officials create their state as the only reliable and responsible sheriff, who can ensure security, stability and law obedience. This all concerns also the EEZs. Former President of the Republic of France Nicolas Sarkozy said in 2010 that French COM do and will always remain French. He added that he shall never accept French Polynesia's independence¹⁹. His successor, François Hollande, made a speech in 2016 in Tahiti, the largest island of French Polynesia. He said to the audience: "You are not far from France, because you are France. (...) We have to ensure our presence so that no one can come to exploit the EEZ without our consent or authorisation".²⁰ According to Nic Maclellan, Australian journalist and researcher: "This [French policy over its Pacific COM] continues under French President Emmanuel Macron, who presents himself as a champion on climate and oceans policy."²¹ Maclellan quotes former Secretary of State to the Ministry for the Ecological and Inclusive Transition²² in the Macron administration Sébastien Lecornu: "[T]here are several large nations which address the issue of climate change and global warming, but without as much enthusiasm, as much energy and maybe even courage as France. (...) France, which is a large Pacific nation, will henceforth be the only member nation of the EU in the region. The three overseas collectivities French Polynesia, New Caledonia and Wallis and Futuna - the *pays et territoires d'outre-mer* [PTOM]

¹⁷ Interview made by the author with the representatives of La Délégation de la Polynésie française, Paris, 12.03.2020.

¹⁸ Accord sur la Nouvelle-Calédonie, art. 4, section 3.1.

¹⁹ N. Sarkozy, "Voeux à la France d'Outre-mer", *Saint Denis de la Réunion*, 19 January 2010.

²⁰ F. Hollande, *Speech to the Elected Members of the Assembly of French Polynesia*, 22 February 2016.

²¹ N. Maclellan, *op. cit.*

²² *Ministère de la Transition écologique et solidaire* was created in 1971 as Ministry of the Environment (known now and then as Ministry of Ecology).

as we call them - are the incarnation of Europe in this part of the world.”²³

France is not willing to give away its high in the rank position of ocean power, not only due to purely geostrategic reasons²⁴. French officials are aware of the high significance and affordability of their EEZs, but not only when it comes to living marine resources²⁵. There are, first of all, enormous mineral maritime resources (seabed minerals, gas reserves), as well as reef biodiversity²⁶. Unsurprisingly, there are many public and private agencies from France, which perceive and use the Pacific as own “laboratory”. This situation reminds the time of French nuclear testing in the years 1966-1996. Through three decades the French State has been taking most of the possibility to experiment outside of its European territory, despite the obvious destruction of nature and human health.²⁷ Besides French business-elites, there are also other groups of metropolitan citizens benefiting from the COM. Those are bureaucrats working in the islands’ administration, military, transnational corporations’ representatives, who profit from trade in- and outside of the EU, as much as from deep-sea exploitations. Currently, French agencies see their chances in initiatives connected with climate geoengineering, energy, pharmaceuticals and aqua business. Noteworthy is the fact that the Oceania microstates rely strongly on their EEZs, as 80% of their national budgets come from tuna fishing.²⁸

3. Ocean change

Ocean change is used intentionally by the author instead of climate change to underline the enormous impact of the global warming and sea level rise on the maritime systems, as well as the population of islands, peninsulas and delta states. It is indisputable that changes in Earth’s environmental system are the biggest threats facing humanity. Those changes are dangerous and unprecedented as never before in our history the effects of humans’ activities have been that severe. It is indisputable that anthropogenic carbon dioxide emissions come from combustion of fossil fuels, essentially coal, oil, and natural gas. In addition, other contributions come from deforestation, changes in land use, mainly industry and

²³ N. Maclellan, *op. cit.* based on S. Lecornu, unpublished data, interview from 2017.

²⁴ M. Redon, *Géopolitique des îles*, Le Cavalier Bleu, Paris 2019, p. 59-66.

²⁵ 60% of the world’s tuna stock live in the Pacific.

²⁶ This can have a significant usage in chemistry, petroleum and pharmaceutical industries.

²⁷ S. Firth, K. von Strokirch, *A Nuclear Pacific*, in: *The Cambridge History of the Pacific Islanders*, D. Denoon, M. Meleisea (ed.), Cambridge University Press, Cambridge 1997.

²⁸ M. Jędrusik, *op. cit.*; J. Sibert, I. Senina, P. Lehodey, J. Hampton, “Shifting from marine reserves to maritime zoning for conservation of Pacific bigeye tuna (*Thunnus obesus*)”, *PNAS*, 2012, Vol. 109, no. 44

agriculture (including livestock), which effect into soil erosion and acidification of the oceans. This in turn changes ecosystems and food chains. As this article uses the legal method of analysis, the broader natural science analysis will not be implemented.

Albeit most of the new weather patterns are predicted to occur in the future, small island states across the globe, including those under the French administration, are already experiencing some of these harms nowadays. The microstates in the South Pacific, like the Federated States of Micronesia (FSM), are threatened by tidal surges, coastal erosion, submersion of their atolls, destruction of food crops, reduced potable water supply, and harm to marine species because of the rising sea temperature.²⁹ Without going into non-legal analysis, the basic facts of ocean change have to be recalled too. The ocean is now being extremely impacted by increasing carbon dioxide and other greenhouse gas emissions (GHG) from human activities. This in consequence causes changes in water temperature, ocean acidification³⁰ and deoxygenation. Those chemical reactions lead to changes in oceanic circulation and general chemistry, but also to sea level rise, increased storm intensity, and changes in biodiversity or even abundance of marine species³¹. From the economic security vantage point, it is also important to be aware of degradation of coastal and marine ecosystems. Ocean change weakens the ability of the ocean and coasts to provide critical services such as food, carbon storage, oxygen generation, as well as to support nature-based solutions to climate change adaptation. The latter implies coral reefs, seagrass and mangroves, which are natural and indeed effective barriers to protect coastal communities against the impacts of waves and storms³².

According to the International Union for Conservation of Nature (IUCN): “The sustainable management, conservation and restoration of coastal and marine ecosystems are vital to support the continued provision of ecosystem services on which people depend. A low carbon emissions trajectory is indispensable to preserve the health of the ocean.”³³ However, this does also apply to the health of island inhabitants, by providing most of the oxygen they (we) breathe.

²⁹ M.B. Gerrard, G.E. Wannier, *Threatened Island Nations: Legal Implications of Rising Seas and a Changing Climate*, Cambridge University Press, Cambridge 2013.

³⁰ A. Scottie, “The Pacific Ocean is so acidic that it’s dissolving Dungeness crabs’ shells”, *CNN Edition*, 27.01.2020.

³¹ Those subjects were touched upon the governmental conference organized by Ministère de la Transition écologique et solidaire, *Ensemble, protéger la biodiversité marine! Connaître pour agir*, Paris, 12 March 2020. The author was the only foreign researcher participating in that event.

³² G. Guannel, K. Arkema, P. Ruggiero, G. Verutes, “The Power of Three: Coral Reefs, Seagrasses and Mangroves Protect Coastal Regions and Increase Their Resilience”, *PLoS ONE*, 2016, 11(7).

³³ International Union for Conservation of Nature, *The Ocean and Climate Change*, Issues Brief, November 2017.

Additionally, the oceans have absorbed more than 90% of the warming created by humans since the 1970s. Unfortunately, there must be a limit to how much the oceans are able to absorb carbon. According to the scientists, such capacity is beginning to slow.³⁴

While there is a common recognition that sea-level rise is happening now and is affecting especially the island states, it is still uncertain by how much and how quickly that level will rise. The already tough situation has the potential to accelerate, where severe flooding, drought and extreme weather will make coastal areas (literally the whole territory of the Pacific islands) gradually inhabitable. After submersion of urban centres, already overpopulated with a high rate of unemployment, even more migrations of displaced people and related socio-economic effects will apply.³⁵ Especially four of low-lying countries of Kiribati, the Marshall Islands, Tokelau and Tuvalu are projected to lose most or even whole of their territory by the end of the 21st century.³⁶ Another example can be given here, as one islet of the Federated States of Micronesia has already vanished, another one in Pohnpei State (one of the four states of FSM) has split because of coastal erosion, while two islands in the Chuuk State have been submerged.³⁷

As the ocean change effects are unprecedented, this situation was also never touched upon or regulated by the law. UNCLOS, drafted after the 2nd world war and signed in 1982 was not prepared for the legal effects of climate change. Thus, the main document of the law of the sea does not codify the procedure what to do when the island is submerged or when its EEZ is downsizing. Losing part or whole of a state's territory opens up the international legal discussions of myriad legal dilemmas: If a nation without a territory can be called a state?³⁸ Or has it got rights and obligations of a state, in accordance with the 1933 Montevideo Convention?³⁹ What will happen to a state's EEZ, as there will not be anymore

³⁴ D. Laffoley, J.M. Baxter, *Explaining ocean warming: causes, scale, effects and consequences*, IUCN Publication, Gland 2016.

³⁵ R.J. Nicholls, A. Cazenave, "Sea-Level Rise and Its Impact on Coastal Zones", *Science*, 2010, No. 328.

³⁶ United Nations High Commissioner for Refugees, *Summary of Deliberations on Climate Change and Displacement*, April 2011.

³⁷ M.B. Gerrard, G.E. Wannier, *op. cit.*; G. Kubota, *Micronesia vanishing as climate warms up*, *Star Bulletin*, 2001 Vol. 12(63).

³⁸ Such disappearing state, sometimes called as a vanishing state, could de iure function under its deterritorialized form. The legal interpretations are indeed numerous, nonetheless they require de facto international acceptance and de iure - international recognition.

³⁹ Montevideo Convention on the Rights and Duties of States of 26 December 1933. This document in its art. 1 enumerates the obligatory conditions for a country to become a state in international arena. Those are: a permanent population; a defined territory; government; and capacity to enter into relations with the other states.

any baseline in relation to which 200 nautical miles⁴⁰ could be measured? Would the population of such submerged state lose its citizenship in a hosting country? Or would it be given citizenship of that hosting state per se? What would be the legal scope of protection of those displaced people (or ecological refugees/climate refugees)? Should the United Nations draft a new international agreement and reach its binding ratifications? Or, due to over-fragmentation of legal procedures, long process of ratification and implementation into domestic legal orders, is it better to rely on already existing norms? Is it quicker and more effective to create hard law, or perhaps become more flexible and use customary law, what in turn would require special interpretation and extraordinary approach toward legal culture?

The tragic situation of the island countries and territories creates more than enumerated above questions. Scientists, politicians, activists and legal advisers are all fully aware that UNCLOS was not prepared for the case of disappearing land. Thus, the Convention does not provide any provisions when the maritime components of the ocean nations may be lost due to the sea level rise. Reaching any international deal is hard, especially when it comes to the Pacific – being the crossroad for the global trails, fishing territories, and neighbouring superpowers such as the USA, China, Russia, the South Korea and Japan. Another aspect which needs to be recalled when discussing legal aspects of ocean change and lack of legal solution are overfishing and illegal fishing⁴¹. As it was already pointed in this article, a large amount of the national budgets comes from fishing (sometimes even more than 80%), while the biggest stocks of tuna live in the Pacific Ocean. This is why the EEZs are the matter of concern of the Pacific island countries and territories. When losing or even downsizing EEZs, a state loses its only source of income, but also very existence of nation.

4. Approach of the French State

French engagement in the region is also highly noticeable in its membership in the local organizations and fora. Pacific regionalism has its beginnings in the 1980s, after two bursts of decolonisation in 1962-1970 and 1974-1980. The Secretariat of the Pacific Community (SPC)⁴², previously called the South

⁴⁰ Art. 56 of UNCLOS states: “The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.”

⁴¹ I. Urbina, *La jungle des océans: crimes impunis esclavage ultraviolence pêche illégale*, Payot, Paris 2019.

⁴² At the 50th Conference of SPC in 1997 the organization was renamed onto the Pacific Community. However, the name “Secretariat of the Pacific Community”, as well as its acronym SPC are widely used in documents in international circulation. The author uses the outdated de iure name, although functioning de facto in Pacific regionalism.

Pacific Commission, is the largest regional organization in the Pacific⁴³. Since its establishment in 1947, France was one of the main drivers of the post-war regional policy in Oceania.⁴⁴ The French State was the founder, along with other five colonial powers, who signed the Canberra Agreement.⁴⁵ The Pacific Islands Forum (PIF) calls itself as the main political and economic organization⁴⁶ of the region⁴⁷. Founded in 1971 under the name the South Pacific Forum, consists now of 18 countries. New Caledonia and French Polynesia were initially granted observer status, and then in 2006 - associated membership.⁴⁸ In 2017 though, PIF decided to include those two French territories as full member,⁴⁹ despite them being non-sovereign states.⁵⁰ Currently, the observer status is held by Wallis and Futuna, yet the government in Paris is seeking to upgrade this rank to associate membership.⁵¹ The latest inter-governmental organization (IGO) which builds up Pacific regionalism is the Pacific Islands Development Forum (PIDF). It was officially constituted in 2015.⁵² Among 17 founding countries and regional organizations, there are also French Polynesia, New Caledonia, and Wallis and

⁴³ United Nations, *Report of the Secretary-General on Regional and sub-regional inputs* E/CN.18/2011/3.

⁴⁴ H. Goiran, "The Role of the French Military in key Issues for Oceania", *Asia Pacific Bulletin*, 2018, no. 416; S. Lawson, "Regionalism and Colonialism in Contemporary Oceania", *The Round Table*, 2017,

⁴⁵ Agreement establishing the South Pacific Commission of 6 February 1947.

⁴⁶ Even though the PIF cannot be considered as an IGO, according to the international law doctrine, as it does not fulfill the conditions, mostly its constitutive agreement is not an international treaty.

⁴⁷ This concept was present at many speeches within the PIF. Compare: M. Taylor, *Griffith Asia Lecture 2019 – Delivered by the Secretary General of the Pacific Islands Forum*, Griffith University, Brisbane, 11 November 2019.

⁴⁸ It is generally accepted in Public international law that only states can be (full) members of intergovernmental organizations. Other entities, like non-sovereign territories, NGOs and other non-state actors (NSA) can become participants of IGO, but with no right to establish legally binding norm, for instance, by no right to vote. However, due to political interests, NSA will be invited to IGOs. Still their rights and duties will not be equal to the ones of member states.

⁴⁹ PIFS, *Forum Foreign Ministers Meeting - Outcomes*, Pacific Islands Forum Secretariat, Suva, 11 August 2017.

⁵⁰ A term „non-sovereign state” should be understood as all of the entities which are not sovereign states. Here, regardless of their legal and political form, the pressure is put on their disability to act as a sovereign state. The Pacific basin is full of non-sovereign states, which can be, for instance, free associated states, dependent territories, special collectivities, unincorporated territories, commonwealth with another state, etc.

⁵¹ N. Maclellan, *op. cit.*

⁵² Charter of the Pacific Islands Development Forum of 4 September 2015.

Futuna.⁵³

France is promoting itself along with its vision for the Pacific Ocean as a stable state of inclusive and stabilizing mediating power⁵⁴. The Pacific region is a priority and a crucial partner for French diplomacy. French regional engagement since 2018⁵⁵ can be summed up to 4 pillars: 1) involvement in settling regional crises (shipping routes, counterterrorism, radicalization and organized crime), 2) strengthening strategic global partnerships in the region (increasing partnership with China⁵⁶), 3) maintaining the development of multilateralism through a greater role in regional organizations, 4) promoting climate change, biodiversity, healthcare, education, digital technology, high-quality infrastructure⁵⁷.

Does the notion “ocean power” still implies “colonial power”? Successive governments in Paris were reluctant to accept the UN decision of inscription of New Caledonia and French Polynesia on a special list. This list is supervised by the Special Committee on Decolonisation, responsible for legal protection of non-self-governing territories (NSGT). Inscription onto the NSGT list assumes slow but gradual legal steps to finally achieved independence. This process cannot be hampered by former metropolises. Thus, the UN servants need to monitor the accomplishing of the following legal phases.⁵⁸ However, from the French perspective, this international process is inconsistent and anyhow in favour to the French interest in the Pacific. Due to this, the government in Paris was ignoring, postponing, or even acting to turn the resolution into fiasco.⁵⁹

Ocean policy presented by the French government can be summed up to the words said by the former Minister of Overseas George Pau-Langevin. In 2014 she assumed: “France has been a world leader in the strategic domains of nuclear power, nuclear weapons, aeronautics and space technology, and telecommunications. It must be, and the government shares and promotes this

⁵³ Attachment to the PIDF Charter: Schedule 2: Foundational PIDF Members and Development Partners.

⁵⁴ Ministère de l’Europe et des Affaires étrangères, *La zone indopacifique: une priorité pour la France*: <https://www.diplomatie.gouv.fr/fr/dossiers-pays/asie-oceanie/la-zone-indopacifique-une-priorite-pour-la-france/> (March 21st, 2020).

⁵⁵ Since the speech of Emmanuel Macron in Garden Island naval base in Sydney, 2 May 2018.

⁵⁶ A. du Chéné, “Le Pacifique et la France”, *La France et les Outre-mers*, Hèrmes, 2002, No. 32–33.

⁵⁷ *Ibidem*.

⁵⁸ G. Fry, S. Tarte, *The New Pacific Diplomacy*, Australian National University Press, Canberra 2015.

⁵⁹ J-M. Regnault, *L’ONU, la France et les Décolonisations Tardives: l’exemple des Terres Françaises d’Océanie*, Presses universitaires d’Aix-Marseille, Aix-en-Provence 2013; P. Roger, “Colonisation: les propos inédits de Macron font polémique”, *Le Monde*, 16.02.2017 ; N. Maclellan, *op. cit.*

ambition, a leader around oceans policy. I'm convinced that France can be a world leader in the global development of sustainable growth - "blue growth" (...) As well as traditional economic activities (fisheries and aquaculture, maritime transport), other activities can take place in the same domain: renewable offshore energy, offshore exploration for hydrocarbons, deep water seabed mineral resources, blue biotechnologies and more".⁶⁰

One of the ideas pushed at the UN forum is transferring international legal right over so-called "high seas pockets" in the Pacific to the sole use of the Pacific island states.⁶¹ High seas pockets are areas of ocean just beyond the territorial waters of a handful of Pacific island nations.⁶² Due to overfishing and downsizing of the EEZs, the Pacific island states amended their national jurisdictions. Licensing conditions begin to require from foreign vessels in order to fish within their EEZs to commit not to fish in certain high seas pockets. That was just a voluntary decision, and not a breach of the freedom of the seas. Those vessels were still able to fish on the high seas, but they would be refused to fish in the more productive EEZs. That was the moment when in 2008 the high seas pockets were established as the legal instrument within the regional organizations, being the Western and Central Pacific Fisheries Commission (WCPFC).⁶³

This idea, however, is controversial across the different UN members (being at the further stage also voters if such draft would be presented). The only beneficiary parties would be islands, where they would be given fishing access to the areas between their EEZs. According to art 1(1) of UNCLOS the seabed and ocean floor and subsoil thereof, outside the scope of national jurisdiction are called "the Area". The high seas are all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. This layer of the sea is open to all states, thus *de iure* accessible for all humankind. According to UNCLOS, every

⁶⁰ G. Pau-Langevin, *Speech to French Senate Debate on "les Zones Économiques Exclusives Ultramarines"*, 18.06.2014.

⁶¹ Q. Hanich, M. Tsamenyi and H. Parris, "Sovereignty and cooperation in regional Pacific tuna fisheries management: Politics, economics, conservation and the vessel day scheme", *Australian Journal of Maritime & Ocean Affairs*, 2014, no. 2; V. Allain et al, *Overview of tuna fisheries, stock status and management framework in the Western and Central Pacific Ocean*, in: *Fisheries in the Pacific*, S. Pauwels, E. Fache (ed.), Cahiers du Credo, Marseille 2016, p. 19-48

⁶² M. Bittman, "Time to boycott tuna again?" *The New York Times*, 20.09.2011.

⁶³ W. Gullet and Q. Hanich, *Rethinking High Seas Fishing*, in: *Global Commons and the Law of the Sea*

K. Zou (ed.), Brill, Leiden 2008, p.121; E. Gilman, Western and Central Pacific High Seas (ABNJ) Closures for the Purse Seine Skipjack Tuna Fishery (December 2012), website: <https://sites.google.com/site/publicationsericgilman/home/mitigating-adverse-ecological-effects-of-tuna-fisheries-on-the-pelagic-ecosystem/western-and-central-pacific-high-seas-closures-for-the-purse-seine-skipjack-tuna-fishery> (March 21st, 2020).

state has the right to use the Area for peaceful purposes, including those countries from outside the region or land-locked states or geographically disadvantaged states. Hence, France is unwilling to support the idea of high seas pockets due to the clear breach of the freedom of the seas. It will eventually open rather peculiar “Pandora’s box”. Other states would then most probably put forward new claims, having political or geographical issues while wanting to protect their rights to the ocean⁶⁴.

Another geopolitical fact here is that France is the 2nd largest EEZ owner worldwide. It does give to the French State a label of the “ocean empire” across both rich and poorly developing countries. It shall not be surprising that France does not push the issue of disappearing EEZs to the international fora.⁶⁵ As indeed it can afford losing some of its islands and thus EEZs. Rising sea level will not, at this time and scope, obstacle or make serious problems for economy or strategic matters to Paris⁶⁶.

Finally, what is also constantly underlined by the French decision makers and politicians is the membership to the EU. That excuse might also be used when postponing any official statements regarding the ocean policy.⁶⁷ When a legal dilemma is not “on table” of the European Union negotiations, for instance EEZs or high seas pockets, France shall wait while not initiate the talks. The government in Paris emphasises its tight links with the EU, thus will not step out an European agenda⁶⁸. As it seems easy to predict, at this moment of international relations across Europe most of the states are not interested into discussing the ocean issues when struggling with other socio-economic problems. France is fully aware of that, therefore will not launch discussion over deep sea and fishing legal dilemmas across the EU having no ally.

5. Conclusion

France is the 2nd largest ocean power having most 11 million km² of exclusive economic zones, where it can freely fish, conduct research, use the seabed minerals, and eventually trade in rights to fish to foreign vessels or make available those areas with extra charge. Being ocean power, the French State can afford consequences of ocean change. Global warming and sea level rise over the past

⁶⁴ Interview with the author made with Serge Segura, Ambassador of the Republic of France to the Oceans, Paris 12.03.2020.

⁶⁵ *Ibidem*.

⁶⁶ Interviews made by the author during her research stay at Institut du Pacifique and Institut de relations internationales et stratégiques in March 2020.

⁶⁷ Conference organized by Ministère de la Transition écologique et solidaire, *Ensemble, protéger la biodiversité marine! Connaître pour agir*, Paris, 12 March 2020.

⁶⁸ Interview with the author made with Serge Segura...

decade have affected mainly small island states in the South Pacific. The area, where the most of the French EEZs are located, is suffering from tidal surges, coastal erosion, submersion of atolls, destruction of food crops, reduced water supply, and harm to marine species because of the rising sea temperature. But besides ocean change geophysical implications, being sea level rise, increased storm intensity and severe weather, as well as changes in biodiversity, there are many legal dilemmas touch the socio-economic aspects.

The legal connotation can be stored into three units: those relating to the theoretical approach to sovereignty of the submerged states; international legal and economic consequences of diminution or final deprivation of the exclusive economic zones, and finally a legal status of the people forced to leave their places of residence due to the rising sea level. Sadly, scholars, politicians and activists, at the regional and global lever put together solutions and arguments, albeit mostly incompatible ones. Legal connotations of ocean change are well-known to the government in Paris. However, it is not the rushing problem according to the French representatives. The situation might and definitely will change in the nearest future, when their overseas collectivities, especially three COM in the Pacific, will suffer due to ocean change.

FRANCUSKA KAO DRUGA VELIKA OKEANSKA SILA - PRAVNE KONOTACIJE OKEANSKE PROMJENE DRŽAVE FRANCUSKE

Sažetak

Francuska, kao jedna od najvećih ekonomija i najutjecajnijih država kako u Evropskoj uniji, tako i na globalnom nivou, ostaje okeanska sila. Uprkos činjenici da kolonijalne metropole više ne postoje, budući da Specijalni odbor Ujedinjenih naroda za dekolonizaciju više *de facto* ne djeluje, Francuska zadržava svoja prekomorska područja. Samo u regiji Tihog okeana, Francuska država upravlja Francuskom Polinezijom, Novom Kaledonijom, te Wallisom i Futunom. Francuski prekomorski kolektivitet u indo-pacifičkoj regiji smatran je od strane Pariza geostrateškim područjem. To proizlazi iz činjenice ogromnih pomorskih teritorija. 93% francuske Ekskluzivne ekonomske zone (EEZs) nalazi se u Indijskom i Tihom okeanu. U samoj regiji živi 1,5 miliona Francuza i 8000 vojnika stacioniranih u regiji. Nakon promjene globalnog okreta s euroatlantskog na Tihi okean, područje je postalo i strateško težište globalne privrede. Osim toga, pomorski trgovinski putevi koji povezuju Evropu i Perzijski zaljev, preko Indijskog okeana i jugoistočne Azije, s Tihim okeanom, postali su ključni za globalnu ekonomiju i sigurnost. Promjene okeana su zauzvrat najveća prijetnja čovječanstvu, posebno onima koji žive na otocima i u delta zemljama. Predviđeni i očekivani (ponekad već primijećeni) gubitak teritorija, a samim tim i suverenitet potopljenih država, još je problem, posebno u Tihom okeanu. Francuska, kao druga najveća okeanska sila, nakon SAD-a, svjesna je smanjenja EEZ-a i mogućih političkih tenzija između Pariza i njegovih kolektiviteta.

Ključne riječi: Francuska, Pariz, okean, klimatske promjene, okeanske promjene, EEZ, Pacifik.