

NMMU Coastal and Marine Research Symposium

'the extent of jurisdiction South African organs of State have at sea'

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for tomorrow



INTRODUCTION

- The extent of South Africa's jurisdiction over the sea is not expressly and sufficiently provided by South African law.

RESEARCH TOPICS

a) Organs of state

- The meaning of the words “organs of state” as they appear in section 239 of the Constitution and reflected in legal precedents.

b) Territory

- The concept of territory as it currently exists, in terms of law: what does it entail, and the extent to which it is provided in law.

c) The sea

- International law and its regulation of the sea.
- State's jurisdictional claim over the sea.

OPERATION PHAKISA

- What is Operation Phakisa?
 - Operation Phakisa is an initiative led by the South African government.
 - Operation Phakisa focuses on unlocking the economic potential of South Africa's oceans, which have the potential of contributing 177 billion rands to GDP by 2033.
- Maritime Court?
 - The Marine Protection Services and Governance final lab report provided that to execute a coordinated enforcement programme the re-opening of environmental courts as maritime courts is one of the possible solutions.

HISTORY OF ENVIRONMENTAL COURTS

- They were two “environmental courts”:
 - 1) Hermanus, opened in 2003
 - 2) Port Elizabeth, opened in 2007
- Why were they opened?
 - Growth in environmental related offences, particularly abalone poaching.
 - Abalone a valuable natural resource in the sea was under threat.

HISTORY OF ENVIRONMENTAL COURTS (cont)

- Successes of the two courts
 - Initial conviction rate of environmental crimes was at 10%
 - Conviction rate improved by more than 85%
 - Increased number of cases being heard and an unprecedented prosecution of environmental crimes
- Why were they closed?
 - No empowering Act of Parliament
 - Pilot projects that never became permanent
 - No sufficient number of prosecutors trained in environmental law
 - Lack of financial and human resources

SOUTH AFRICA'S SPATIAL JURISDICTION

- Starts from its land and extends to its maritime zones
- Territorial maritime zones: *internal waters and territorial sea*
 - Part of South Africa's territory
 - South Africa has sovereign jurisdiction
- Non-territorial maritime zones: *contiguous zone, maritime cultural zone, exclusive economic zone, continental shelf, and high seas*
 - In these maritime zones South Africa's jurisdiction is limited and varies
 - How is the jurisdiction limited or varied?
 - i. Contiguous zone: powers to prevent contraventions of fiscal law, custom, emigration, immigration or sanitary law
 - ii. Maritime cultural zone: powers and rights over objects of an archaeological or historical nature
 - iii. Exclusive economic zone: sovereign rights and powers over all natural resources
 - iv. Continental shelf: rights and powers over natural resources for the purposes of exploration and exploitation
 - v. High seas: no jurisdiction, except for South African ships

SOUTH AFRICAN JUDICIAL SYSTEM

- Section 166 of the Constitution provides that our courts are:
 - i. Constitutional Court
 - Highest court with adjudicative jurisdiction over the entire national territory
 - ii. Supreme Court of Appeal
 - Court of appeal
 - iii. High Court
 - Provincial adjudicative jurisdiction
 - iv. Magistrates' Court
 - Regional or district adjudicative jurisdiction
 - v. Specialised Courts
 - Adjudicative jurisdiction determined by an Act of Parliament
 - Admiralty court is an example

MARINE LEGISLATION

- They are many Acts of Parliament that regulate South Africa's interests at sea and thus extend its jurisdiction, *inter alia*:
 - i. Marine Living Resources Act 18 of 1998
 - ii. National Environmental Management: Integrated Coastal Management Act 24 of 2008
 - iii. Marine Pollution (Control and Civil Liability) Act 16 of 1998
 - iv. Merchant Shipping Act 57 of 1951
 - v. Marine Traffic Act 2 of 1981
 - vi. Magistrates Court Act 32 of 1994 and the Superior Courts Act 10 of 2013 ordinarily grants jurisdiction to the Magistrate's Court and High Court
- All the above Acts of Parliament have punishable acts or omissions committed either by any person within South Africa's coastal waters, or outside South African coastal waters by a South African or any person on-board a South African vessel.
- South African courts are given jurisdiction to hear these matters.

CONCLUSION

- The United Nations Law of the Sea convention grants South Africa, as a coastal State, jurisdiction over all maritime zones, within the limitations provided.
- All the maritime zones, except for the high seas, are part of South African law through the Maritime Zones Act 15 of 1994.
- Various Act of Parliaments extend South African Court's spatial jurisdiction to hear matters that are outside of the provisions reflected in the Magistrates' Court Act and the Superior Courts Act.
- My view is that we do not need a dedicated maritime court as existing courts are already granted jurisdiction by various Act of Parliament.
 - There is an Admiralty Court that deals with maritime claims.
 - Furthermore, the Magistrates' Court and High Court are granted jurisdiction by the various marine legislation.
 - We need a consolidated legal framework, rather than an *ad hoc* approach of granting jurisdiction to the various courts.
 - A maritime court would be justified should the existing courts have a backlog due to not being capacitated enough in terms of expertise, infrastructure, resources and time.

Way forward towards LLM

- Expand further from LLB treatise by:
 - Broadening the focus from courts to organs of state, which have a wider meaning in terms of the Constitution.
 - A more in-depth analysis on territory in the sea as reflected in South African law and international law.
 - A more in-depth analysis on the sea, in particular States jurisdiction, as regulated by South African and international law.
 - Producing a coherent understanding based on the research topics on the extend South Africa and its organs of state can exercise their powers at sea.