

Faculdade de Direito da Universidade de Lisboa

Maritime spaces and Administrative Law

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The Law of the Sea: principles and rules of international source binding states and other subjects of international law regarding their relations on maritime/marine affairs.

- One of the oldest branches of International law.
- One of the most dynamic branches of International law (along with the environment, human rights and international economic law).

- UNCLOS 1982 underlying issues:

- Control over *offshore* natural resources.
- Exploration & exploitation of deep seabed and seafloor.
- Marine environment.
- States' powers over navigational issues.

>>> All these issues claim for administrative powers, because they claim for practical / effective results not merely dependent on private conduct (public initiatives and enforcement procedures).

- Administrative Law has a “colonizing” strength, even over Maritime Law (“administrative interventionism” — GABALDÓN GARCIA / RUIZ SOROA)
- Proliferation of by-laws and administrative powers in various aspects:
 - All the life of the ship, from its construction to the end of its life (registry, inspections and many others).
 - Even recognized organizations for certification can be an example of public functions by private parties.
 - The captain’s powers.
 - And so many others.

An Administrative Law of the Sea

- Public domain (property) over maritime spaces and the use of administrative powers to police it and protect it.
- The International Law of the Sea as a source of states' powers.
- The interpretation of national legislation in conformity with UNCLOS and other international conventions / rules.

Powers of the coastal state

- Internal waters:
 - Identical to the ones over land (public domain, depending on constitutional / administrative systems).
 - Administrative enforcement of exclusive fishing, flying and navigational rights.
- Territorial sea:
 - By-laws and administrative enforcement (art. 21 and 25 UNCLOS).
 - Maritime routes/lines.
 - The right of visit is exercised as an administrative power as well as the power of hot pursuit.
 - These powers are always exercised by maritime authorities.

Powers of the coastal state

- Contiguous zone is essentially a “police zone” (art. 33 UNCLOS).
- Archeological and historical goods (art. 303 UNCLOS): apprehension is an administrative with procedure.
- Also, administrative powers over the resources in the EEZ and the continental shelf.
 - The discretionary powers of the state regarding its capacity to use the resources in the EEZ.
 - Another example of discretionary powers: refusal of scientific research (art. 246, 5 and 6 UNCLOS).
- Even on High Seas: visit and capture of pirate ships are conducts of an administrative nature.
- The raising importance of an International Administrative Law associated with spaces belonging to mankind (the International Seabed Authority).

Other realities and examples

- Maritime spatial planning.
- Marine protected areas.
- Port State Control: the Australian example.
- Scientific research.
- Maritimes codes as a mix of Maritime Law and Administrative Law.

*A special branch of Administrative Law
laying on specific principles*

- Preservation / conservation of marine environment and ecosystems.
- Compatibility of uses (navigation, resources — energy, biology, fisheries).
- Spatial planning.
- Adequate administrative (domestic) organization.
- Complexity of public interests (national; international; mankind).
- Subordination to human rights (arts. 18/2, 24/2, 44, 98 UNCLOS).

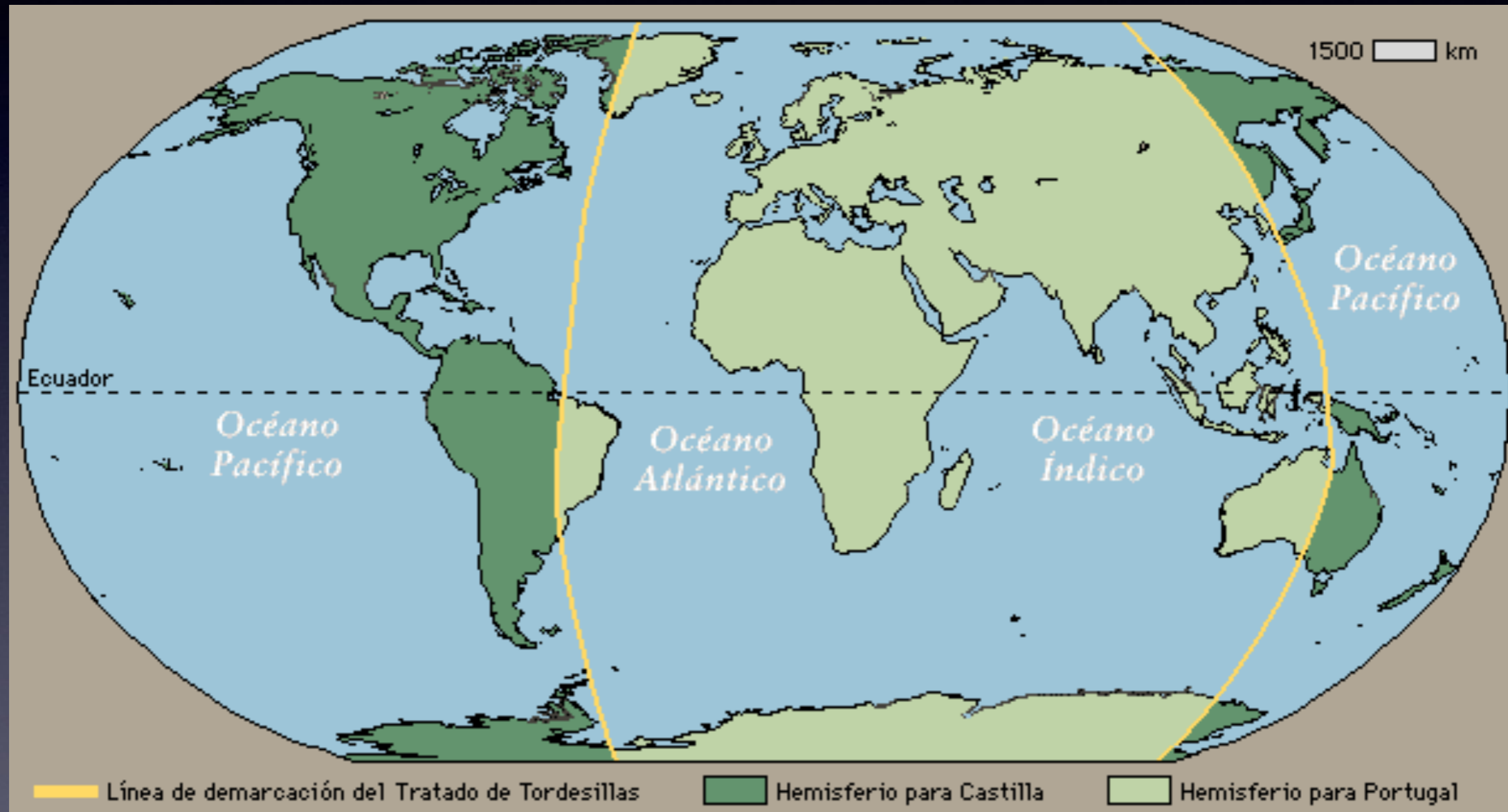
Portuguese laws & by-laws

- Limits of maritime spaces under national sovereignty / jurisdiction (Law 34/2006)
- Base lines (Decree-Law 495/85)
- Ownership/jurisdiction over hydrological resources (Law 54/2005)
- Use of hydrological resources (Decree-Law 226-A/2007)
- National Maritime Strategy
- Bases for Maritime Spatial Planning and its development (Law 17/2014; Decree-Law 38/2015).
- Administrative organization/bodies (...).

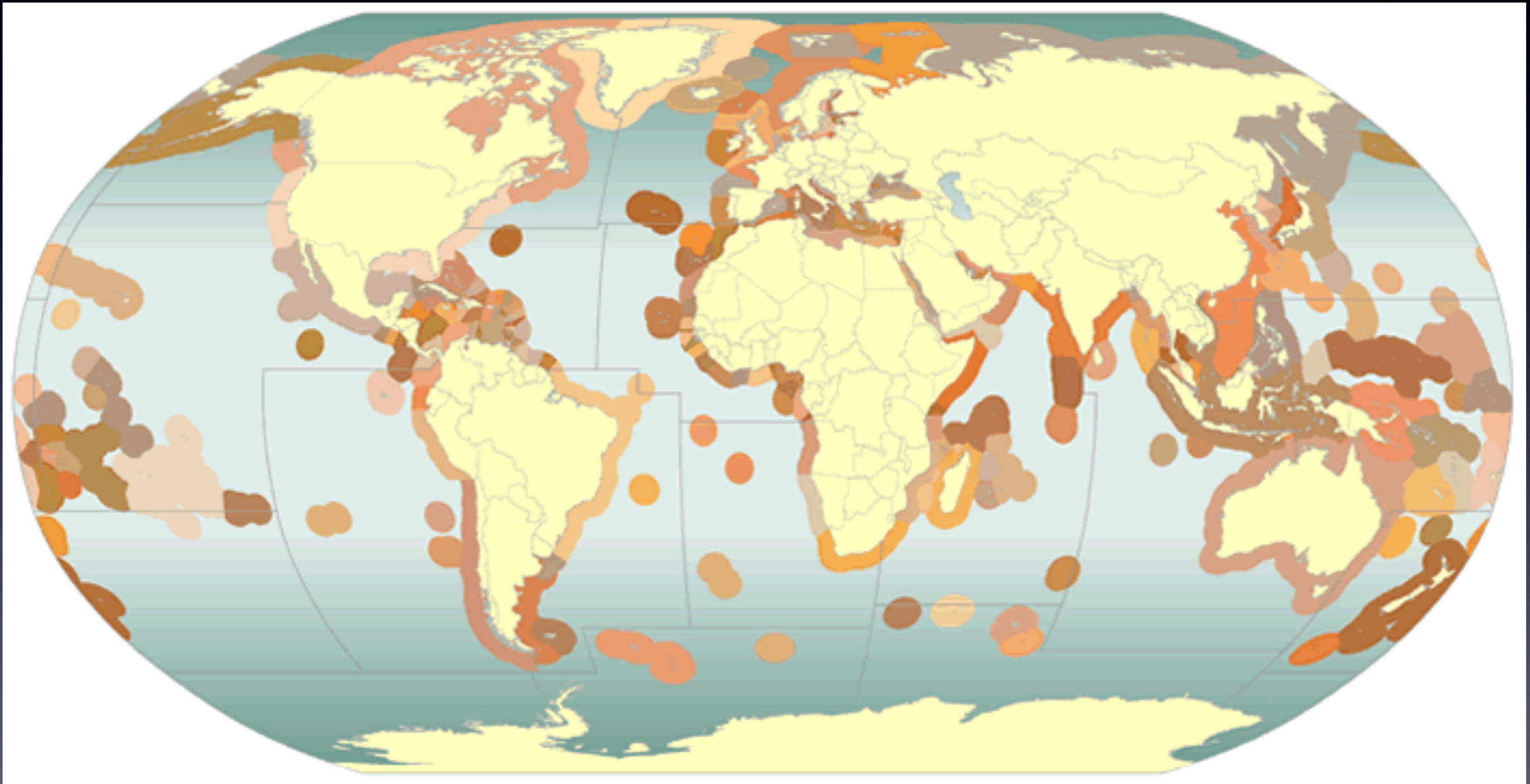
Prospective issues:

- Leveraging Global Administrative Law?
- Helping to merge International Law and domestic law as two levels of a same legal order?
- Regulation of cross-boarder issues related to global goods.

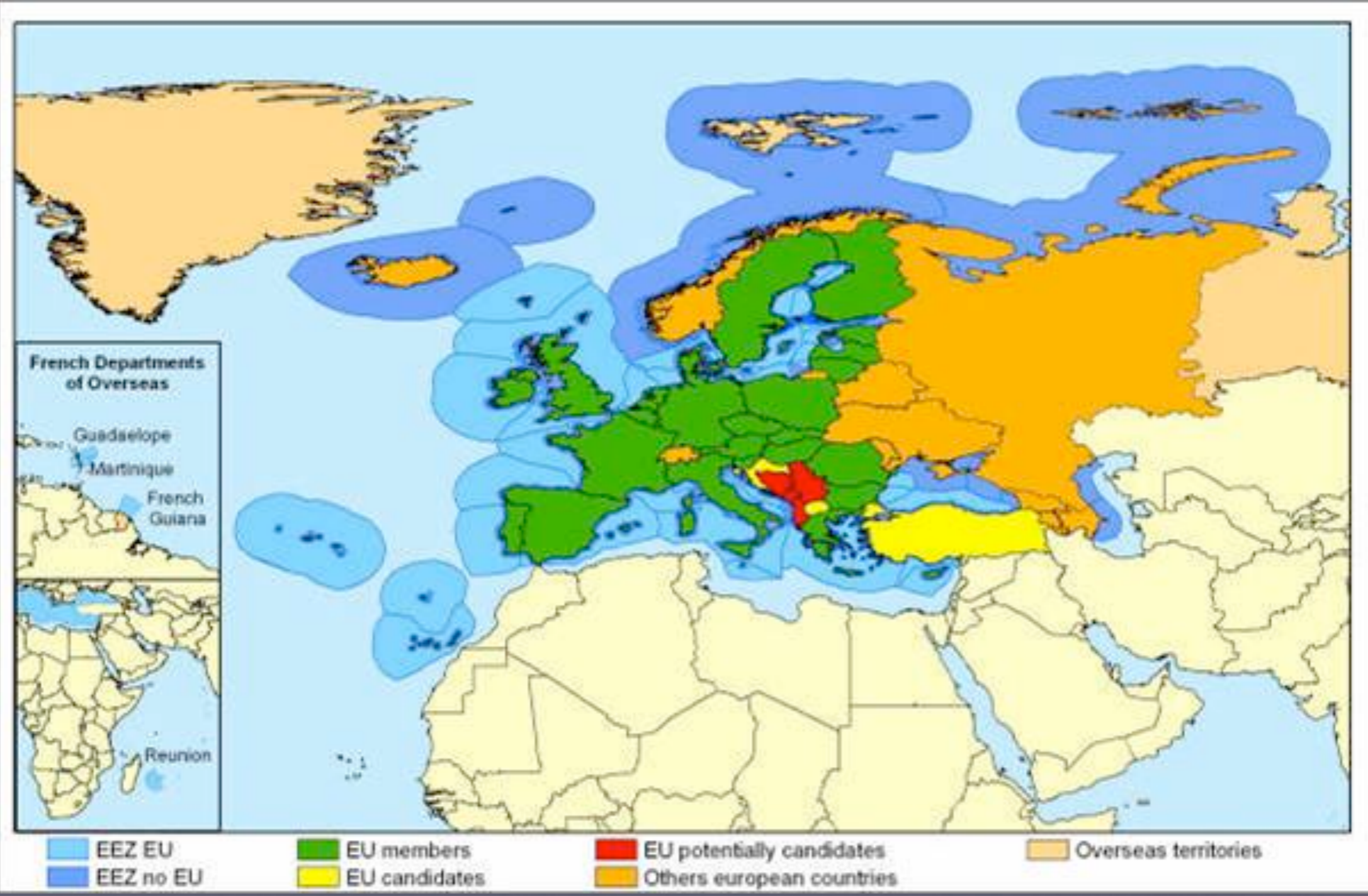
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ZEE's hoje



ZEE's Europa



Fonte: Compiled by author from National Legislation-DOALOS/OLA-United Nations and Sea around us Project, University of British Columbia