

MAX-PLANCK-GESELLSCHAFT

International Max Planck Research School for Maritime Affairs
University of Hamburg


Universität Hamburg

Marine Scientific Research in the EU

Vasco Becker-Weinberg

MARCOM+ Interdisciplinary Dialogue Across Science Panel
2nd Meeting, Palma de Mallorca, 4-6 April 2011


MAX-PLANCK-GESELLSCHAFT

Marine Scientific Research in the EU


Universität Hamburg

Marine Scientific Research (“MSR”) and Int’l. Public Law:

1958 Geneva Convention on the Continental Shelf


- Coastal States have the right to participate on board foreign research vessels
- Coastal States’ prior consent is required for research on the continental shelf

1958 Geneva Convention on the High Seas


- MSR may be undertaken with due regard for the interests of other States

UNCLOS: background

- States exercise effective control beyond the territorial sea and consequently adopt complex regulations regarding MSR
- States became aware of the economic potential of the oceans and seas
- Technological development allows MSR at new depths and under most conditions
- Growing appreciation for and applicability of MSR results by States and int’l. orgs.
- Introduction of the EEZ and MSR legal regimes
- UNCLOS does not provide a definition of MSR and applies undetermined concepts



Marine Scientific Research in the EU



MAX-PLANCK-GESELLSCHAFT Universität Hamburg


UNCLOS: MSR legal regime

General principles


- All States and int'l. orgs. shall promote and facilitate the development and conduct of MSR and create favourable conditions for MSR
- MSR shall respect coastal States' sovereignty and have due regard for other States' interests
- MSR is not a legal basis for claims on marine environment or resources
- MSR must be conducted for mutual benefit and "*exclusively for peaceful purposes*"
- States and int'l. orgs. shall assist developing countries and cooperate with land-locked and geographical disadvantaged States
- In the water column beyond the EEZ and in the high seas there is freedom of MSR
- MSR in the Area follows certain particularities consistent with the Area legal regime

Guidelines

- MSR shall not unjustifiably interfere with coastal States and other legitimate uses
- MSR shall be considered together with other legitimate uses
- MSR shall apply appropriate scientific methods
- MSR shall comply with relevant regulations, ex. preservation of marine environment
- States and int'l orgs. have the duty to exchange information
- States and int'l orgs. are subject to responsibility and liability regime



Marine Scientific Research in the EU



MAX-PLANCK-GESELLSCHAFT Universität Hamburg


UNCLOS: MSR legal regime

Territorial Sea


- Coastal States have the exclusive right to regulate, authorize and conduct MSR

EEZ / Continental Shelf

- Coastal States have the right to regulate, authorize and conduct MSR
- Coastal States shall permit MSR "*in normal circumstances*"
- MSR shall be carried out exclusively for peaceful purposes and in order to increase scientific knowledge of the marine environment for the "*benefit of mankind*"
- Coastal States may withhold their consent:
 - if there is "*direct significance*" for the exploration and exploitation of natural resources unless beyond 200nm and outside areas where development is taking place
 - if there should be drilling in the continental shelf
 - if there should be construction of artificial islands
 - if applicant States or int'l. orgs. fail to provide information or comply with conditions established under coastal States' domestic law
- Consent will be implied if a coastal State fails to answer a MSR request in six months
- EU coastal States may not withhold consent in EU MSR project, if the coastal State approved the project when the decision was made or is willing to participate in it and did not object within four months of notification of MSR project



Marine Scientific Research in the EU



MAX-PLANCK-GESELLSCHAFT Universität Hamburg


UNCLOS: MSR legal regime

Duty to provide information


- States and int'l. orgs. Shall give coastal States a minimum prior notice of six months as of the expected starting date of the MSR project, referring:
 - the method and means to be used, including name, tonnage, type and class of vessels and a description of the scientific equipment
 - the precise geographical areas
 - dates of appearance and final departure of the research vessels or deployment of the equipment and its removal
 - the name of sponsoring institution, its director and the person in charge
 - the extent to which it is considered that coastal States should be able to participate or be represented in the MSR project

Rights of coastal States

- Participate or be represented in the MSR project without the obligation to contribute towards the costs of the MSR project. Scientists of coastal States will not be paid
- Receive preliminary reports
- Have access to and receive an assessment of all data and samples
- To be informed of major changes in the MSR project
- Other conditions established under domestic law



Marine Scientific Research in the EU



MAX-PLANCK-GESELLSCHAFT Universität Hamburg


UNCLOS: MSR legal regime

Suspension of MSR activities


- Coastal States may issue a request for suspension:
 - if research is not in compliance with the information provided in the MSR request and upon which consent was granted
 - in the event of failure to comply with additional rights of coastal States
 - pending the settlement of a dispute on MSR between coastal States/States-int'l. orgs.
- Coastal States may issue order of suspension or cessation upon failure to comply with suspension request

Cessation of MSR activities

- Coastal States may issue a request for cessation:
 - if research not in compliance with the information provided in the MSR request and upon which consent was granted
 - in the event of significant alteration of research project or activities
 - in the event of failure to comply with request for suspension
- Coastal States may issue order of cessation upon failure to comply with request



Marine Scientific Research in the EU




EU and MSR:

Facts


- EU coastal Member States border the Mediterranean, Baltic, Black and Caribbean Seas and the Arctic, Atlantic, Indian and Pacific Oceans
- EU coastal Member States have jurisdiction over one of the largest EEZ of the world
- EU coastal Member States have signed over 60 maritime boundary delimitation agreements without any reference to MSR cooperation

EU legal guidelines

- EU Member States and the EU are parties to UNCLOS
- EU has exclusive competence to adopt the rules and regulations and to enter into external undertakings with third States or competent int'l. orgs. on conservation and management of sea fishing resources
- EU has shared competence on matters not directly related to the conservation and management of sea fishing, ex. research and technological development
- EU has exclusive competence on maritime transport, safety of shipping and prevention of marine pollution to the extent that such provisions affect common rules established by the EU
- Member States have exclusive competence in MSR




Marine Scientific Research in the EU




EU and MSR:

EU legal guidelines (continuation)

- EU promotes cooperation on research and technological development with non-member countries and int'l. orgs. as a complement to Member States' activities, by implementing programmes and promoting cooperation within the EU and with third States and int'l. orgs. and dissemination and optimisation of the results of activities
- EU shall promote scientific and technological advancement
- Member States should refrain from any measure which could jeopardize the attainment of the EU objectives on research and technological development
- EU shall define and pursue common policies and actions, and work for a high degree of cooperation in all fields of international relations, in order to help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources
- EU has competence to define and implement programmes in the areas of research, technological development and space, so long that it does not prevent Member States from exercising their own competence
- EU undertakes to strengthen the scientific and technological bases of the EU by achieving a European research area in which researchers, scientific knowledge and technology circulate freely



Marine Scientific Research in the EU



MAX-PLANCK-GESELLSCHAFT Universität Hamburg

EU and regional cooperation on MSR:

1976 Barcelona Convention and Protocols


- Subsidiary applicability of UNCLOS
- States shall cooperate bilaterally or through regional or int'l. orgs. in science and technology and exchange data and scientific and technical information
- States shall coordinate and promote research programmes
- States shall establish integrated coastal zone management considering cross-sectorally organized institutional coordination of the various administrative services and regional and local authorities competent in coastal zones
- States shall develop scientific research on integrated coastal management through specialized research centres

1995 Barcelona Declaration of the Euro-Med Conference


- States shall cooperate and promote research for mutual advantage
- States shall promote exchanges of experience in scientific sectors transfer of technology, and adopt policies to reduce the gap between States
- States shall increase participation in joint research projects

2004 Agreement/General Fisheries Commission for the Mediterranean

- States shall undertake research and development activities in the areas of fisheries and the protection of living marine resources



Marine Scientific Research in the EU



MAX-PLANCK-GESELLSCHAFT Universität Hamburg

EU and regional cooperation on MSR:

1992 OSPAR Convention (North-East Atlantic):

- States shall establish complementary or joint programmes of scientific or technical research and transmit to the Commission the respective results and details of other relevant programmes of scientific and technical research
- States shall carry out necessary research to assess the quality of the marine environment and to increase knowledge and scientific understanding of the same
- The Commission has the duty to define and implement programmes of collaborative monitoring and assessment-related research

1992 Helsinki Convention (Baltic Sea):

- The Commission has the duty to promote scientific and technological research
- The Commission shall seek the services of competent organizations to collaborate in scientific and technological research
- States undertake to cooperate in the fields of science, technology and other research, and to exchange data and other scientific information and harmonize their policies with respect to permission procedures for conducting such activities

1992 Bucharest Convention (Black Sea): [EU is not yet a member]

- States shall cooperate in scientific research to protect and preserve the marine environment, undertake joint programmes and exchange information



MAX-PLANCK-GESELLSCHAFT

Marine Scientific Research in the EU



Conclusions:

- EU/Member States should create the adequate official channels to fulfil the obligations established by UNCLOS, EU law and regional legal regimes regarding promotion and creation of favourable conditions for MSR
- EU/Member States should promote the harmonisation of legal and administrative domestic procedures applicable to MSR as referred in the European Strategy for Marine and Maritime Research
- EU/Member States should further establish guidelines in order to promote a swift submission and review of MSR requests and to avoid delay and unjustified refusals
- EU/Member States should have particular concern for the coordination of domestic legal regimes applicable to responsibility and liability regarding MSR
- EU/Member States should agree on guidelines regarding EU-MSR in the Area
- EU/Member States should also approve guidelines regarding the exchange and ownership of data and scientific information obtained as a result of MSR activities



MAX-PLANCK-GESELLSCHAFT

International Max Planck Research School for Maritime Affairs University of Hamburg



Thank you. Questions?