

Panel 4C – Compromise, Cooperation and the Implementation / Development of Oceans Law in the 21st Century

Speakers: Anna-Maria Hubert, Assistant Professor, University of Calgary
Aldo Chircop, Chair of the Comité Maritime International's International Working Group on Polar Shipping
David VanderZwaag, Professor, Dalhousie University

The oceans are a shared resource. Their exploration, use and protection are human endeavors that require cooperation on an international level. Many aspects of this cooperation are regulated by the United Nations Convention on the Law of the Sea (LOSC).

Professor Anna-Maria Hubert drew attention to the importance and the drawbacks of maritime scientific research; she focused on Canada's role in facilitating research opportunities and preventing negative impacts on the maritime environment at the same time. The development of new technologies and the importance of offshore resources lead to a continued interest in maritime research. Within the exclusive economic zone and on the continental shelf, foreign research vessels need the consent of the coastal state to conduct scientific research. As a result, while coastal states have privileged rights of governance and access in relation to these areas, they also have an enhanced responsibility to preserve the maritime environment. Many research methods can be destructive to the environment, as they often introduce physical, chemical or acoustic stimulants into the sea. To further complicate the assessment, not all consequences of new research methods can be adequately predicted. The dangers of intensive maritime research need to be weighed against a genuine need for information about the maritime environment in order to provide for its adequate protection. Coastal states' decisions about whether to consent to marine scientific research in areas under their jurisdiction are governed by national laws and policies, and in the majority of cases, consent for research will depend upon adequate protection of the environment. The LOSC does not provide a guarantee that consent will be given for maritime research, but it will in most cases not be withheld without good reason.

Dr. Aldo Chircop discussed about the exploration and use of natural resources which are situated on Canada's extended continental shelf. The extended continental shelf, the part of the shelf beyond the exclusive economic zone, is considered to be part of the common heritage of mankind. The LOSC defines the jurisdiction and duties of the coastal state regarding this area. In general, Canada benefits from the extension of its jurisdiction there. . Nonetheless, according to article 82 of the LOSC, the coastal state is under a duty to make payments to the International Seabed Authority for the exploitation of resources on the extended continental shelf. While the payments are meant to offset the benefit of having access to the resources located on the continental shelf, there are several concerns with this provision. A primary concern is the calculation of the payments. Article 82 stipulates that payments are calculated as a percentage of production. Unfortunately, no international consensus exists on the exact calculation of these payments. Canada as a federal state faces an additional problem. It is not clear whether the duty of payment falls on the federal state or the province. Internationally the duty falls on the state; however, internally the provinces collect the royalties for commercial production.

Professor David VanderZwaag discussed international agreements and controversies related to the Arctic Ocean. The Arctic Ocean is currently covered with ice. In this regard, climate

change poses an increasingly pressing question: When will it melt? If the arctic ice recedes there will be new demand for fishing and shipping in the Arctic Ocean. The LOSC provides only a basic framework for this particular issue. In 2008, the five coastal states of the Arctic Ocean, Canada, Denmark, Norway, Russia and the United States decided during the Arctic Ocean Conference to cooperate in the governance of the area. A very important issue is the preservation of the unique environment of the Arctic Ocean. Globally this mainly means keeping the temperatures in the region low, by mitigating climate change. Specifically in the region of the Arctic Ocean the Polar Code is a forward-looking instrument that regulates present and future ship traffic. Most important for environmental purposes, it limits the discharge of waste into the Arctic Ocean, even though it does not fully prohibit the practice. The Arctic Council is another institution invested in the protection of the Arctic Ocean, especially in relation to high sea areas. However non-members of the Arctic Council, such as China, Japan, South Korea or the EU might become interested in the area if the ice recedes further. Currently, there are approximately twelve known species of fish in the Arctic Ocean, but presumably more could be discovered. Some efforts have been made to designate the Arctic Ocean as a Particularly Sensitive Sea Area, which would increase the protection of the region. Some areas of the Arctic Ocean are already protected by regional agreements. The special nature of the Arctic Sea, however, requires a unique regime of international protection. Canada as a coastal state of the Arctic Ocean has a vested interest in facilitating international cooperation in this matter.

By Hannah Roggendorf, LL.M. candidate McGill University