

Marine Scientific Research in the Outer Continental Shelf:

Between Coastal State
Regulation and High Seas
Freedom?

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Outer Continental Shelf Sector: Continental Shelf beyond 200M

- Sea-bed and subsoil subject to coastal State sovereign rights and jurisdiction, under Part VI of the 1982 UNCLOS;
- Superjacent water column subject to High Seas regime under Part VII of the 1982 UNCLOS.

Marine Scientific Research (MSR) in the Outer Continental Shelf (OCS) Sector?

Part XIII of the 1982 UNCLOS,
especially Article 246.6

How would an international lawyer
interpret this provision?

International Law Approach to Interpretation of Treaty Provisions?

- Embodied in Articles 31 & 32 of the Vienna Convention on the Law of Treaties, 1969;
- Ordinary meaning of the words/phrases;
- Object and purpose of the treaty;
- As a supplementary/secondary rule/tie-breaker(?): reference to the *travaux preparatoires*;

Part XIII on MSR: A Balancing Act?

Between:

- Freedom of MSR, embodied in Part VII High Seas Regime; and
- Coastal State regulation under Part VI Continental Shelf Regime;
- High Seas MSR regime, subject to Parts VI (Continental Shelf) and XIII (MSR)

Article 246 of Part XIII of the 1982 UNCLOS

- Article 246: Coastal State consent and regulation of MSR in EEZ and CS, BUT:
- Consent is presumed/IMPLIED, and should not be delayed or denied unreasonably (Arts. 246.2 & 246.3)
- Discretion to withhold consent re-instated where coastal State's sovereign rights in CS/EEZ are impinged (Art.246.5(a) – (d))
- Discretion to withhold consent withdrawn (again) for MSR projects in OCS area, even if they have direct significance for resource exploitation, outside specifically designated areas (Art.246.6)

Article 247 of Part XIII

- Article 247 confirms that Article 246.6 is designed to subsume MSR rights to coastal State sovereign rights, BUT with a *quantitative* restriction – only possible for coastal State to withhold consent in specified OCS sea-bed areas.

Further International Legal Authorities for consideration?

- Legislative History of MSR regime:
- 1) High Seas & Continental Shelf Conventions, 1958;
- 2) UNCLOS, III negotiations, 1973-82;
- State Practice:
- US Survey of Excessive LOS Claims suggests States are abiding by UNCLOS regime

State Practice:

- US Survey of Excessive LOS Claims suggests coastal States are abiding by UNCLOS MSR regime;
- IOC/ABELOS Questionnaires on State Practice on Part XIII suggest otherwise:
- Majority of Coastal States are reluctant to apply the 'implied consent' regime.

Conclusions

- There is a real danger that the MSR regime for the OCS sector under Article 246.6 will be subsumed within the EEZ/CS MSR regime under the rest of Article 246, especially that of Article 246.5;
- Thus, there is/will be a *qualitative* increase in coastal State jurisdiction, beyond the terms of UNCLOS, 1982.