



Presentation Abstract

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Climate Change and Ocean Governance

The Law of the Sea Convention was negotiated at a time when climate change was not yet part of the international environmental agenda. Nevertheless, it is not a static or immutable legal regime and it is not difficult to apply Part XII to greenhouse gas emissions and climate change insofar as they affect the marine environment. For that reason the UNFCCC institutions and the international standards they adopt are, in effect, part of the architecture of ocean governance.

However, it is doubtful whether viewing climate change through the law of the marine environment greatly alters the overall picture. This is not to argue that the UNFCCC regime is a self-contained regime separate from UNCLOS. On the contrary, the problem is precisely the inter-relationship between the two. It is characteristic of most environmental regulatory treaties that they build upon the due diligence obligation and require parties to take internationally agreed measures or apply international rules and standards. Once those measures, rules or standards are agreed it is very difficult to sustain the argument that the due diligence obligation has some separate and if necessary stronger character. Due diligence inevitably represents a compromise between what is possible and what is economically acceptable – a compromise fatally reflected in the UNFCCC and Kyoto. Reformulating that problem in terms of the precautionary principle or approach does not change things. The UNFCCC already acknowledges the applicability of the precautionary approach, but that has not resulted in States going any faster or any further. They can legitimately say that what has been agreed represents their adoption of a precautionary approach. Is any international court likely to disagree?

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