



Presentation Abstract

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Energy at sea: A New Challenge?

Energy issues appear at the forefront of both doctrinal analysis and practical considerations in recent times. New areas have opened up for the extraction of fossil fuels, both on land with the commercial exploitation of shale gas and at sea with the discovery of extensive natural gas and oil reserves situated under the continental shelf in places such as the Eastern Mediterranean or Brazil. These new areas of production create further the prospect of an increasing network of pipelines, again both on land and underwater, that would crisscross the oceans, transferring energy to areas far remote from the original place of production and creating both a security and an environmental hazard. On the other hand, the future remains steadily focused on the generation of renewable energy, which lays at the heart of the climate change negotiations globally and the energy policy of the European Union regionally. Indeed, renewable energy constitutes the core of the UN Global Sustainable Energy Initiative, recently announced by the UN Secretary-General Ban Ki-moon, which aims to ensure universal access to modern energy services, double the global rate of improvement of energy efficiency and double the share of renewable energy in the global energy mix.¹ It is in this context that the vast potential of the seas for the generation of renewable energy comes to the fore. Analyses of the renewable energy generation potential of the oceans suggest harnessable energy far in excess of global electricity demands. These resources include the generation of electricity from offshore wind, tides, currents and waves as well as capturing usable power from ocean thermal energy gradients.

This contribution will concentrate on a discussion of the legal regime governing offshore energy production and transport in international law, as the development and operation of such projects face a highly complex, extremely specialized and fragmented web of legal regimes.

Three major areas of applicable rules may be readily identified. Firstly, the law of the sea regulates the overall placement of energy-generation installations and energy-transporting pipelines in the marine area. The delimitation of maritime areas of coastal State sovereignty or jurisdiction is the necessary prerequisite for any exploration and exploitation of offshore resources. Likewise, energy activities intersect with other uses of the seas, such as navigation, fisheries or tourism. The Law of the Sea Convention sets out the framework for energy activities; but does it cover the whole picture?

Secondly, international environmental law regulations play an increasingly important role in the overall placement and regulation of offshore energy projects. Such concerns go beyond the by now customary obligations to prevent pollution of the marine environment to also include wider fisheries and biodiversity concerns. The latter may be addressed with the creation of Particularly Sensitive Sea Areas or Marine Protected Areas within waters under coastal State jurisdiction or even in the high seas, under diverse conventional regimes of global and regional dimensions. Lack of coordination between institutions with differing mandates poses a challenge of both a doctrinal and practical character.

¹ 'Sustainable Energy For All, A Vision Statement by Ban Ki-moon, United Nations Secretary General', November 2011, available on <http://www.un.org/wcm/content/site/sustainableenergyforall/home/documents>.

Thirdly, the rules on energy financing, which include issues of investing in energy infrastructure, are an indispensable part of the regulation of energy activities. Especially in the EU context, elaborate rules on the interconnectivity of energy networks and the creation and operation of smart grids perplex the situation further. The overarching objective of energy efficiency, including the major issue of the tax treatment of alternative energy sources, play an increasingly important role in shaping domestic and regional energy policies and legislations.

It is readily evident from this enumeration that the regulation of offshore energy resources requires the accommodation of many conflicting claims or concerns or equally urgent claims for fisheries, tourism and investment, all in a global environment of the ongoing financial crisis. I will concentrate in the present context on LOS issues with the occasional foray into other regimes, especially environmental considerations.