Energy at Sea

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Energy at Sea

Something old, something new?

- Offshore installations: articles 60 and 80 LOSC
- Pipelines: articles 112 and 79 LOSC
- Alternative sources: art. 56 para. 1(a) LOSC
  “...production of energy from the water, currents and winds....”
- Pollution: art. 1 para. 1(4) LOSC
  “...the introduction of energy...”
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I. Offshore installations

- Placement:
  Maritime zones: continental shelf: art.80 LOSC
  EEZ: art. 60 LOSC
  high seas: art. 87 par.a 1(d)
  Area: ?

Due regard to other users: navigation
fishing
specially protected areas /PSSAs
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I. Offshore installations (cont’d)

- Operation:
  - Safety zones
  - Security concerns: SUA Protocol
  - Discharge standards / pollution regulation
    - Mediterranean Offshore Protocol
    - EU Regulations and Directives
    - Industry (self-)regulation?
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I. Offshore installations (cont’d):

• Location: a single jurisdiction
  The coastal State has regulatory powers
  The coastal State has enforcement powers
  The coastal State is responsible for any pollution caused Platforms in the Area?

• Delimitation: a prerequisite
  Offshore installations as ‘relevant circumstances’?
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II. Pipelines

• Placement:
  1. Continental shelf: art. 79 LOSC
    ▪ A negative aspect - in principle:
      “... the coastal State may not impede the laying or maintenance of ... cables or pipelines”
    ▪ A positive aspect - in practice:
      “The delineation of the course for the laying of such pipelines on the continental shelf is subject to the consent of the coastal State.”
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II. Pipelines (cont’d)

• Placement (cont’d):
  1. High seas:
    ▪ A right of passage: art. 112 LOSC
      “All States are entitled to lay submarine cables and pipelines on the bed of the high seas beyond the continental shelf.”
    ▪ A duty to control: arts 113-115
      “Every State shall adopt the laws and regulations necessary to provide that the ... breaking or injury of a submarine pipeline or high-voltage power cable, shall be a punishable offence”.
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III. Alternative sources of energy:

• Placement:
  1. EEZ: art. 56
     “sovereign rights for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds”
     cf. Offshore installations on the continental shelf
  2. Territorial Sea
  3. High Seas?
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Common elements:

1. Environmental requirements
   EIA - *Pulp Mills* case (2010)
   Conventional regimes: Aarhus Convention

2. Jurisdiction:
   Maritime zones: coastal State jurisdiction
   High seas: flag State jurisdiction

Area?
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Challenges:

• Due regard to other uses of the sea
  ▪ Depending on the type: installation - pipeline - devices
  ▪ Depending on the size: cable - pipeline - installation
  ▪ Depending on the position: anchored - floating
  ▪ Depending on the function: oil transport - electricity

• Distinction by categories
• Decision on a case-by-case approach
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Challenges (cont’d):

- Due regard = negation of a right?
  - Security zones
  - Specially protected areas
    - By unilateral action of the State: ecological zones
    - By operation of a conventional regime: SPAMIs
    - Areas beyond national jurisdiction: a new instrument?