



The International Law of Offshore Constructions

Cutting Through Fragmented Legal Regimes towards Better Governance

Dr. Seline Trevisanut

Marie Curie Fellow (NILOS) – s.trevisanut@uu.nl



Overview of this presentation

- Background
- Research Question(s)
- Perspective and method
- Partial Concluding Remarks
- Pending Questions



Background

- Recent major spills:
 - *Montara* platform (2009)
 - *Deepwater Horizon* rig (2010)
- Not only oil spills, but also marine debris (2011 UNSG Report on Ocean Affairs and Law of the Sea)
- Offshore renewable energy industry is expanding (ocean wind; marine hydrokinetic; OTEC)



- Fragmented legal framework
 - No specific international treaty
 - Sectorial fragmentation
 - Geographical fragmentation
 - Fragmentation among different fields of law



Research Question(s)

General (theoretical) question:

Do we need a new law of the sea in order to deal with the challenges posed by the new uses of the oceans?



- UNOCPOLOS 13th session (May-June 2012) on “Marine Renewable Energies”

3 main challenges:

- Environmental challenges
- Economic and institutional challenges
- Social challenges



Sub-question:

Is the existing fragmentation of the applicable legal framework (and related institutional framework) detrimental to the protection of the marine environment?



Perspective and method

- Public International Perspective
- 3 main problems/issues:
 - standards and procedures of impact assessment for the construction and the operation
 - standards and procedures for decommissioning
 - role of private actors in both the decision-making and the implementation of the relevant obligations



- 3 regulatory levels
 - “Universal” International Law
 - Regional International Law
 - Bilateral Agreements
- 4 main fields of law
 - Law of the Sea
 - Environmental Law
 - International Economic Law
 - International Energy Law



- “Universal” International Law Instruments
 - Law of the Sea
 - LOSC
 - Pollution (MARPOL, London Dumping Convention, IMO documents, etc.)
 - Liability (LLMC 1976, CLC 1992, 2001 Bunker Oil Convention)
 - Marine Scientific Research
 - Speculative issue: constructions in the Area
 - The protection of the cultural heritage of mankind



- The international environmental law
 - The law of natural resources
 - Climate change law

- The international economic law
 - Green conditionality in IMF
 - Green concerns in multilateral investment treaties/mechanisms (ETC, MIGA)

- The International energy law
 - Oil and gas law
 - Renewable energy law
 - The role of the International Energy Agency



- Regional context (European-centered)
 - OSPAR Convention (North-East Atlantic)
 - Barcelona Convention (Mediterranean Sea)
 - Helsinki Convention (Baltic Sea)
 - European Union law
 - EU maritime policy, environmental policy and energy policy
 - Green loans of the European Investment Bank (EIB)



- Bilateral Agreements
 - Joint Development Agreements
 - which create a common institutional body
 - which do not create a common institutional body
 - Bilateral Investment Treaties
 - Environmental protection clauses



Partial Concluding Remarks

- The protection of the marine environment might suffer from emission reduction schemes
- There is a plethora of fora dealing with this sector but there is no communication between them



Pending Questions

- Definition of “offshore constructions”
- Security Concerns (including energy security)
- Settlement of Disputes/ Enforcement mechanisms



Thank you for your attention!