

RIGHTS AND RESPONSIBILITIES FOR MARINE SCIENTIFIC RESEARCH BY PRIVATE ENTITIES ON THE HIGH SEAS

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TODAY'S FOCUS

- Marine scientific research (MSR) costs, logistics and UNCLOS drafter's intent:
 - Majority of cases include a 'researching state'.
- But:
 - A non-governmental organization wishes to unilaterally experiment in addressing pollution?
 - A person wishes to access marine genetic resources in the high seas for purposes of research on genetic/biochemical composition?
 - A fishing community and commercial venture unilaterally experiment with geoengineering?

Whose Right and Responsibility It Is Anyway?

PRESENTATION OUTLINE



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- Today's Focus: Private entities conducting high seas research for private ends.
- Rights: MSR and other high seas freedoms.
- Responsibilities: MSR and other high seas freedoms.
- Post-UNCLOS Responses:
 - Draft BBNJ Agreement.
 - Ocean Cleanup.
- Concluding Thoughts.

PRIVATE ENTITIES: LIMITS OF UNCLOS RIGHT TO CONDUCT MSR

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- Freedoms of the High Seas: **States**.
- (a) freedom of navigation; (f) freedom of scientific research.
- Exceptional: Germany (right) & *SCS Arbitration* (responsibilities).

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- Right to Conduct MSR in the High Seas: **States**.
- Proposals to include natural or juridical persons not taken forward.
- Traditionally defined thematically: the objective of the study.

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- Right to Conduct MSR in the High Seas: **Researching State**.
- Responsible for ensuring compliance for marine scientific research, *whether undertaken by them or on their behalf*.
- Private Entities for Private Ends; Not MSR for purposes of Part XIII. Previous drafts rejected.

HS MSR BY PRIVATE ENTITIES

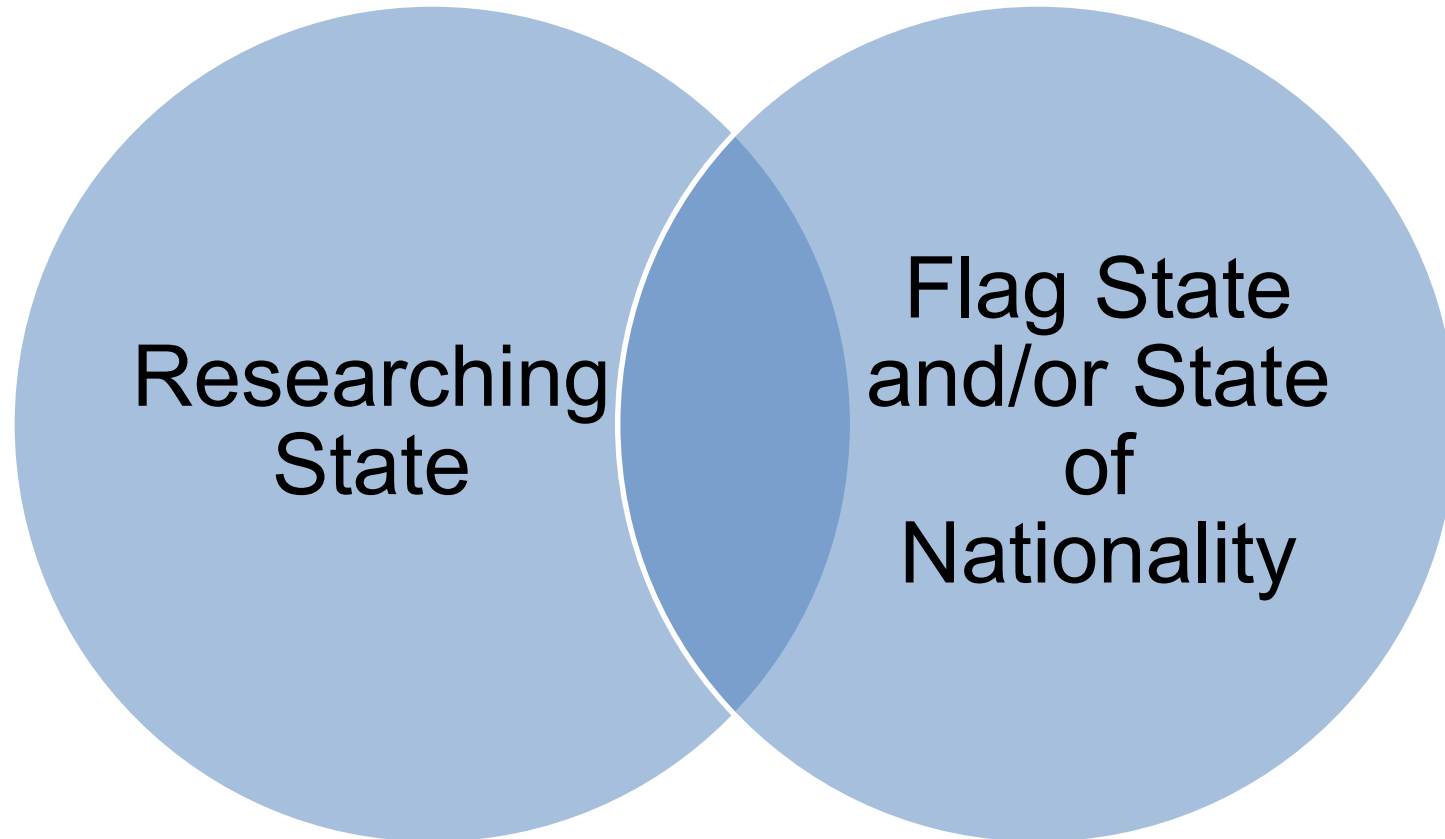
PRIVATE ENTITIES: LIMITS OF UNCLOS HIGH SEAS FREEDOMS

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- Freedoms of the High Seas: **Flag State / State of Nationality**.
- (a) freedom of navigation; (f) freedom of scientific research.
- *Arctic Sunrise*: 'an international lawful use of the sea related to the freedom of navigation'.

- No researching state = not MSR for purposes of Part XIII. Equally presupposed in subsequent treaties.
- However, research activities may fall within another state's lawful uses of the high seas.
- In contrast to the Area, no applicable obligation to prohibit nationals acting on the high seas.
- Prohibition provision was removed in drafting process.

STATE RESPONSIBILITIES: MSR ON BEHALF OF A STATE



STATE RESPONSIBILITIES: MSR FOR PRIVATE ENDS

- Majority of responsibilities are concurrent – remain in play.
- Exceptional obligations only applicable to researching states cannot apply without consent.
 - Ensure conducted with appropriate methods and means (Article 240(b)).
 - Ensure publication and dissemination of major programmes and resulting knowledge (Article 244(1)).

**Flag State
and/or State
of Nationality**

OCEAN CLEANUP AGREEMENT



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- 2018 *Agreement Between The Netherlands and Ocean Cleanup*.
- Part XIII is applied by analogy.
- Novel 'system' but arguably more important is the activity is not conducted 'on behalf' of a state.
- The Netherlands nonetheless recognises its due diligence obligations: activities under its jurisdiction or control.
- Filling the 'researching state' gaps:
 - Article 6.1 Transparency concerning activities.

DRAFT BBNJ AGREEMENT

- Patch for marine genetic resources?
 - Utilization.
 - Marine scientific research in general.
- State of Nationality:
 - Activities by states and ‘their natural or juridical persons’.
 - Notification and results of research.
- Flag State:
 - More detailed EIA requirements for activities carried out ‘under their jurisdiction or control’.
 - ‘Authorised activities’.

THANK YOU

- Treat like cases alike?
- *SRFC Advisory Opinion*: Rights entail responsibilities.
 - Majority of states lack implementing legislation for Part XII. Are contractual arrangements sufficient to meet due diligence obligations?
- Next steps: continued patchwork response or a permit scheme for all high seas research?
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