POLAR SCIENCE IN THE NORTH AND SOUTH: TAILORING LESSONS FROM ANTARCTICA TO IMPROVE RELIABILITY OF LEGAL ACCESS FOR MARINE SCIENTIFIC RESEARCH (MSR) TO THE ARCTIC OCEAN

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A. Introduction

Faced with an increasingly accessible and warming Arctic, the arctic states have turned a decidedly cold shoulder to the Antarctic Treaty System (ATS) as a governance model. Yet in the wake of the International Polar Year (IPY) 2007–2009 they still lack the kind of reliable research access to each others’ exclusive economic zones (EEZs) and continental shelves in the Arctic Ocean that could contribute to better understanding of global change. Is there anything to be learned from the ATS on this very narrow question, without adopting the ATS model wholesale? On paper, each of the arctic littoral states—Canada, Denmark/Greenland, Norway, the Russian Federation and the United States—follow the rules in Part XIII of the UN Convention on the Law of the Sea, which sets out the coastal state consent regime for such “Marine Scientific Research”. From the field, however, scientists report a lack of consistent information about and application of those rules from one country to the next. This paper examines whether

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1 Antarctic Treaty, 1 December 1959, UNTS Vol. 402 No. 5778 (in force 23 June 1961); Article 1 (e) of the Protocol on Environmental Protection to the Antarctic Treaty (“Madrid Protocol”) defines the ATS as “the Antarctic Treaty, the measures in effect under that Treaty, its associated separate international instruments in force and the measures in effect under those instruments”.


3 Three comprehensive overviews of legal issues relating to Part XIII of the LOS Convention are A. H. A. Soons, Marine Scientific Research and the Law of the Sea (1982); F. Wegelein, Marine scientific research: the operation and status of research
drawing upon a limited selection of ATS components and principles regarding scientific cooperation might help resolve problems of reliable access for scientists engaged in marine research in the Arctic. It concludes that core principles adopted by the international science community, practiced by scientists in the Arctic and Antarctic, and expressed in multi- and bilateral agreements between many of the arctic states can provide a solid foundation for better access reliability. Specifically, it proposes a non-binding statement of common precepts to strengthen and build on the existing LOS coastal state consent regime for marine scientific research to EEZs and continental shelves in the Arctic. Rüdiger Wolfrum’s definitive corpus of work on the Antarctic Treaty System⁴ offers a clear lens for examining how to improve access to the Arctic for Marine Scientific Research.⁵


⁵ Wolfrum’s exemplary examination of the Antarctic Treaty System and its significance for public international law began, of course, with his Habilitation or post-doctoral thesis on the development of an administration for Antarctica, the first title in supra note 4. It is also informed by his lifelong commitment to public service which, for many years, was manifested in his membership on delegations and tribunals relevant to Antarctica, e.g. the 4th Special Consultative Meeting concerning Antarctic mineral resource activities (1983–1988); Chairman of the Legal Working Group of the Antarctic Treaty Consultative Meetings preparing an Annex to the Protocol on