The Law of the Sea Convention and the Integrated Regulation of the Oceans

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Abstract
This article explores the extent to which an integrated approach to oceans regulation is embodied within the Law of the Sea Convention, and how subsequent developments in international law and at a regional level have advanced this approach. By examining how integration operates normatively, spatially, sectorally, and temporally, as well as across intellectual disciplines and between multiple users, it suggests that considerable progress has been made in realising this fundamental goal. However, it also notes that until proper institutional support for integration is provided, we are unlikely to make more significant progress.

Keywords
Law of the Sea Convention (LOSC); integration; institutions

Introduction

Conscious that the problems of ocean space are closely interrelated and need to be considered as a whole, . . .

Despite its modest location within the preamble to the Law of the Sea Convention (LOSC), integration is an essential feature of the law of the sea. The call for integration does not of itself establish a legal requirement to adopt an ‘integrated approach’. It sets out a broad policy objective. Within the body of the LOSC a number of specific provisions allude to integration, but they do not establish a general requirement to integrate, nor do they flesh out the meaning of integration. At best, the LOSC indirectly or partially accommodates an integrated approach. In light of this, is it meaningful to talk of a legal duty to adopt an integrated approach? Or is it perhaps best conceived of as an organising principle akin to sustainable development? Or is it merely rhetoric? This article explores the meaning of integration and how it operates within

the law of the sea. In the 30 years since the adoption of the LOSC, integration has been improved through a number of instruments, especially at the regional and national level.

Integration in the LOSC

Integration can be conceptualised in six ways: normative, spatial, sectoral, disciplinary, temporal and ‘user’ integration. By understanding how integration operates in these ways, we can build up a better picture of the extent to which the LOSC has contributed to an integrated regime, and how integration can be strengthened.

Normative integration refers to the way in which legal norms should be considered as part of a system of rules; one which entails that the meaning and application of individual rules be considered in light of related rules. This approach is accommodated within Article 311 of the LOSC, and is an important feature of subsequent, related instruments, such as Article 4 of the Fish Stocks Agreement \(^2\) or Article 22(2) of the Convention on Biological Diversity.\(^3\) Normative integration cannot be assessed exclusively within the LOSC, although it is well served by its flexible and adaptive framework.

Spatial integration requires regulation according to the nature of activities and environments. Despite the zonal approach taken by the LOSC, mechanisms exist that facilitate regulation across different maritime zones. For example, Article 195 provides that States shall act so as not to transfer pollution from one area to another. Article 123 requires cooperation between States bordering enclosed or semi-enclosed seas in respect of living resources, protection of the marine environment, and scientific research. Cross-jurisdictional regulation of fisheries is required variously by Articles 63, 64, 66 and 67. Navigational rights are not identical in discrete maritime zones, hence the inclusion of regimes for innocent/transit/archipelagic passage and freedom of the high seas. However, the actual navigation of vessels is standardised through the Collision Regulations. Also, the fact that shipping regulation is predicated upon flag State jurisdiction generally ensures that spatial boundaries do not impede harmonised shipping rules, even if the responsibilities of some flag States are wanting. There have been regional deviations from generally accepted international standards for the regulation of shipping, for example, in the

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\(^3\) 31 ILM 818 (1992).