CHAPTER 20

Regional Cooperations in Marine Environmental Law

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1 Introduction

International law is characterized by the concept of State sovereignty and the principle that in general every State is equal.1 The lack of hierarchy embodied in the notion of sovereignty emphasizes the importance of cooperation among States in addressing international issues. In this respect, cooperation comprises “the effort of States to accomplish an objective by joint action (Joint Undertakings), where the activity of a single State cannot achieve the same result.”2 As far as these joint undertakings occur on a regional and not on a global level, they are referred to as ‘regional cooperations’.3 Agreeing on joint actions, however, is generally a challenge in international law. The timeframe of negotiations to conclude agreements such as the 1982 United Nations Convention on the Law of the Sea4 (UNCLOS) alongside subsequent obstacles

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Regional Cooperations in Marine Environmental Law

concerning proper implementation, compliance and enforcement, show the reservations which exist among States. It stands to reason that consent on joint actions is easier to achieve among States if a certain problem affects these States specifically, as is often the case within certain geographical regions.⁵

The UNCLOS addresses the relevance of regional cooperation among States expressly in several provisions. With regard to the marine environment, Article 197 UNCLOS stipulates that

States shall cooperate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features.

The UNCLOS thereby demonstrates the critical role that regional cooperations should play in the protection of the marine environment in cases where regional features are affected and where specific factual challenges exist. Littoral States within a specific marine region, by way of example, share common marine environmental challenges, such as pollution in adjacent sea areas, due to their spatial proximity. Pollution, however, does not observe man-made borders, illustrating that joint actions are required in order to achieve effective solutions. Such shared challenges can thus provide a basis for joint courses of action, enhancing the possibility of agreement in relation to specific undertakings.

In respect of regional features, Article 123 UNCLOS explicates that

States bordering an enclosed or semi-enclosed sea should cooperate with each other in the existence of their rights and in the performance of their duties under this Convention.

Although critical voices point to the problems resulting from the fragmentation of international law, several regional approaches have shown themselves