Current Legal Developments
London Convention and London Protocol

New Regulation of Marine Geo-engineering and Ocean Fertilization

The London Convention 1972 (LC)¹ and its 1996 London Protocol (LP)² provide the specific global framework for the protection of the marine environment against pollution from dumping of wastes and other matter at sea, consistent with the overarching 1982 UN Convention on the Law of the Sea (LOSC).³ Designed to build on experience gained from the operation of the LC, and developments in knowledge about the oceans and in international environmental law, the LP, which entered into force on 24 March 2006, is intended to replace the LC. As of 18 October 2013, the LC and the LP have 87 and 43 states-parties, respectively. Their meetings are run jointly and concurrently. This paper explains the significance of amendments to the LP to include marine geo-engineering activities, and outlines some of the consequences of this for the development of the law of the sea.

Background

In 2007, in light of proposals to “sow” large sea areas with nutrients to assess their effects, if any, on phytoplankton productivity and carbon sequestration, an activity known as “ocean fertilization” (OF),⁴ the LC/LP parties decided

⁴ For a discussion of the various forms of ocean fertilization (OF) and its status in international environmental law, see P Verlaan, ‘Geo-engineering, the Law of the Sea, and Climate Change’ (2009) Carbon and Climate Law Review 446–458. See also R Rayfuse, M Lawrence, K Gjerde, ‘Ocean Fertilization and Climate Change: The Need to Regulate Emerging High
that OF fell within their competence and required regulation. In 2008, in a joint Resolution that is not legally binding and adopted by consensus, the LC/LP parties defined and essentially prohibited OF, except for an OF-related activity new to both international law and the law of the sea, i.e., “legitimate scientific research.” They further agreed to consider a potential legally binding resolution or amendment to the LP, and the LC/LP Scientific Groups (SG) began developing a draft Assessment Framework for Scientific Research Involving Ocean Fertilization (OFAF). The OFAF was completed in 2010 and adopted by consensus in a second joint Resolution that is not legally binding. The 2010 Resolution also affirmed the LC/LP parties’ commitment “to work towards providing a global, transparent, and effective control and regulatory mechanism for ocean fertilization activities and other activities that fall within the scope of the London Convention and the London Protocol and have the potential to cause harm to the marine environment.”

The work on developing legally binding options to regulate OF continued; the reader is referred to the Consultative Meetings Reports for 2009, 2010 and 2011 and the supporting documents cited there for an instructive view

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6 “…any activity undertaken by humans with the principal intention of stimulating primary productivity in the ocean….”; Res. LC-LP.1(2008) para. 2 and note 3.

7 Res. LC-LP.1(2008).

8 Ibid., Preamble, last chapeau, and para. 8.

9 Report of the 30th Consultative Meeting of Contracting Parties to the [LC] and the 3rd Meeting of Contracting Parties to the [LP], Doc LC 30/16, 19 December 2008.

10 Res. LC-LP.1(2008), paras. 4, 5, and 7.

