

Enforcement @ Sea: expect the unexpected ?

Philippe VINCENT

University of Liège

13/12/2012

Where do the Directives apply ?

- “the European Territory of the Member States to which the Treaty applies”.
- Territorial waters
- A European act can have extraterritorial application: *Kramer* case (1976): “it follows (...) from the very nature of things that the rule-making authority of the Community *ratione materiae* also extends – in so far as the Member States have similar authority under public international law – to fishing on the high seas”.

- Offshore waters:
 - Commission communication regarding fisheries management and nature conservation in the Marine environment COM 363(1999)
 - Council Conclusions on the Strategy for the Integration of Environmental Concerns and Sustainable development into the Common Fisheries policy, Luxembourg, 25 April 2001
 - ECJ 20.10.2005, case C-06/04

Article 56 UNCLOS

- “In the exclusive economic zone, the coastal State has:
- (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
- (b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:
 - (i) the establishment and use of artificial islands, installations and structures;
 - (ii) marine scientific research;
 - **(iii) the protection and preservation of the marine environment.**
- Not all member States have declared a EEZ.

Article 61(3) UNCLOS

- « In taking (stock conservation measures) the coastal state shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened ».

Article 77 UNCLOS

- 1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.
- 2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.
- 3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.
- 4. The natural resources referred to in this Part consist of the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the sea-bed or are unable to move except in constant physical contact with the sea-bed or the subsoil.

Article 192 UNCLOS

- « States have the obligation to protect and preserve the marine environment ».
- « The measures taken in accordance with this part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened and endangered species and other forms of marine life » (article 194(5) UNCLOS).

Fisheries

- CFP: duty and jurisdiction do not rest with the same body.
- Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy:
 - Fisheries within the territorial seas: article 9
 - National emergency measures : article 8
 - European emergency measures : article 7
 - + General measures to limit the impact of fishing activities on vulnerable marine species.

Proposal COM(2011) 425 for a Regulation of the European Parliament and of the Council on the Common Fisheries Policy

Article 12

Compliance with obligations under Union environmental legislation

1. In special areas of conservation within the meaning of Article 6 of Directive 92/43/EEC, of Article 4 of Directive 2009/147/EC and of Article 13(4) of Directive 2008/56/EC, fishing activities shall be conducted by Member States in such a way so as to alleviate the impact from fishing activities in such special areas of conservation.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 55, to specify fishing related measures to alleviate the impact of fishing activities in special areas of conservation.

Article 17

Conservation measures adopted in accordance with multiannual plans

1. In a multiannual plan established pursuant to Articles 9, 10 and 11 Member States may be authorised to adopt measures, in accordance with that multiannual plan, which specify the conservation measures applicable to vessels flying their flag in relation to stocks in Union waters for which they have been allocated fishing opportunities.

Article 26

Member State measures within the 12 nautical mile zone

1. A Member State may take non-discriminatory measures for the conservation and management of fish stocks **and to minimise the effect of fishing on the conservation of marine eco-systems** within 12 nautical miles of its baselines provided that the Union has not adopted measures addressing conservation and management specifically for that area. The Member State measures shall be compatible with the objectives set out in Articles 2 and 3 and no less stringent than those in existing Union legislation.
2. Where conservation and management measures to be adopted by a Member State are liable to affect fishing vessels of other Member States, such measures shall be adopted only after consulting the Commission, the relevant Member States and relevant Advisory Councils on a draft of the measures accompanied by an explanatory memorandum.

Pollution by ships

- Coastal State competent
- Several relevant regional seas conventions, have developed strategies to reduce pollution in the sea.

Pollution resulting from the exploitation of the continental shelf

- Article 77 UNCLOS

Navigation

- Lack of competence: article 58 (1) of UNCLOS:
« In the EEZ all states (...) enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation (...) ».

Article 78 (2): “The exercise of the rights of the coastal state over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in this Convention”.

- “Particularly Sensitive Sea Area”

Leisure

- Very limited powers

Conclusions

- The jurisdiction of the coastal State is subject to the rights of other States arising from UNCLOS.