The Arctic Ocean, Environmental Stewardship and Law of the Sea

Professor Tore Henriksen
Halifax 27 October 2016
«...The Arctic Ocean is a unique ecosystem, which the five coastal states have a stewardship role in protecting...»
Stewardship: Rhetoric or a legal concept?

Stewardship in national legislation:
Norwegian Constitution (Section 112): “...Natural resources shall be managed on the basis of comprehensive long-term considerations, which will safeguard this right for future generations as well”.

Stewardship and the law of the sea: Is it more than a political argument, is it relevant concept under the law of the sea?

Stewardship and the Arctic Ocean: Is stewardship really exercised?
What is (environmental) stewardship?

The management of common natural resources by government on behalf of the community.

Elements:
- The object
- The dutyholder
- The beneficiaries
- Values to be promoted
Stewardship in international environmental law

Examples:

- A responsibility for states to care for the nature for the benefit of humankind

- What would stewardship add?
  - Duty of action
  - The dual role taking care of and legitimate interest in maintaining nature

- “...safeguarding for future generations the great natural resources represented by the whale stocks.” (1946 International Whaling Commission)

- “....maintain and enhance his ability to use natural resources in a manner which ensures the preservation of the species and ecosystems for the benefit of present and future generations...” (1982 World Charter)

- The conservation of biological diversity and “...change in the Earth’s climate and its adverse effects are a common concern of humankind” (1992 Convention on Biodiversity and Framework Convention on Climate Change)
Stewardship and law of the sea

UN Convention on the Law of the Sea:

• Common heritage of mankind: Deep-sea area beyond national jurisdiction

• Obligation to protect and preserve the marine environment:
  • The object: The marine environment: All marine space, its physical and biological components.
  • Values/beneficiaries: Protection and preservation of marine environment «... takes into account the interests of mankind as a whole,...»
The legal framework for exercise of environmental stewardship

Zonal approach

Sectoral approach:
- Marine Resources
- Navigation
- Marine Scientific Research
- Protection of the marine environment (sources approach)
Cooperation: Bridging the zonal approach

“States shall cooperate on a global basis and, as appropriate, on a regional basis, [...] in formulating and elaborating international rules, standards and recommended practices and procedures [...], for the protection and preservation of the marine environment,...” (UNCLOS Article 197)
Bridding the different sectors and jurisdictions

How to meet the piecemeal responsibility of states:

• New approaches are required [...] that are integrated in content and are precautionary and anticipatory in ambit (Rio 1992, Agenda 21, 17.1)
• 1992 Convention on Biodiversity (ecosystem approach)
• 1995 Fish Stocks Agreement (integration of environmental factors in conservation)
• Need to be considered as a whole through an integrated, interdisciplinary and intersectoral approach, and reaffirming the need to improve cooperation and coordination at the national, regional and global levels, (UNGA 61/222)
• Regional Sea Agreements (e.g. OSPAR Annex V)

Stewardship: Offers a description of the legal responsibilities (the duality of rights and obligations) with respect to the environment as a whole. It requires States to look beyond sectors and jurisdictions.
Arctic Ocean and Stewardship

Stewardship role of the region:
• «Unique position to address these possibilities and challenges»
• Special obligation of coastal States of a semi-/enclosed sea (Article 123)

From Arctic 5 to Arctic Council:
• Environment is one of the common issues for the Arctic Council to address
• The «principle locus for cooperative stewardship»?
• Policy-shaping through producing scientific-synthesis reports
• Towards policy-making?
• Assisting the Arctic States in coordinating/exercise of stewardship
Conclusions

• Stewardship as a description of the overall obligations of states to protect and preserve the marine environment

• Important in informing on the requirement of integration between the different sectoral regimes

• **Coastal States of a region:** A special responsibility to initiate and ensure adoption of positive measures to preserve the marine environment and measures to prevent pollution and other activities that may harm the sea or ocean

• **Arctic:** Use of the stewardship concept as far as it serves the interests of the Arctic coastal States.