

VARIA

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THE 3RD HAMBURG INTERNATIONAL ENVIRONMENTAL LAW CONFERENCE – THE CONFERENCE REPORT

On the 15th April 2016 in Hamburg the 3rd Hamburg International Environmental Law Conference was held. The title of the conference was “A Sea Change for Sustainable Ocean Resource Governance”. The Conference was one of the events which accompanied the Hamburg Days in the year 2016. The venue of the Conference was Bucerius Law School – the oldest and the most prestigious private faculty of law in Germany. The structure of the Conference covered the plenary sessions which took place until the afternoon and three parallel working groups which dealt with the three important aspects of contemporary environmental ocean governance regulation. The plenary sessions had two keynote speakers and each of the lectures was commented on by the invited guests. The parallel working groups sessions were taking place in the afternoon of the first day of the Conference. The first working group was dealing with the problem of Deep Sea Mining, the second working group focused on the Marine Energy Generation and the third one was discussing the most important issues connected with the Seabed Pipeline and Cable Systems. The second day session was held in German, was less formal and took the form of a discussion among the invited guests. The discussion was moderated by Kathrin Schmid – the reporter of NDR Info Radio, which was also broadcasting this part of the event. The subject of the discussion was “*Unsere Meere – nachhaltige Nutzung und Ökologische Entwicklung*” (“Our Oceans – sustainable resource management and ecological development”).

The Conference was opened by the Address of Welcome by the President of the International Tribunal for the Law of the Sea, Professor Vladimir V. Golitsyn. The President emphasised the role of science and research in finding the solutions to the contemporary problems connected with ocean governance. Among the risks and challenges the rising anthropopression and the new technological instruments of exploitation of ocean resources were mentioned. Professors Golitsyn's address was followed by the welcome addresses by organizers and the local government officials.

The first plenary session was opened by Gabriele Goettsche-Wanli, Director of the Division for Ocean Affairs and the Law of the Sea, United Nations, with the lecture "Sustainable Energy Generation from the Ocean" in which a new perspective for the oceans as sources of energy was presented. The traditional fossil fuels, which are commonly extracted from the underwater resources, are slowly losing their position towards the renewable energy generation from the physical and chemical reactions relating to the functioning of the oceans. In the opinion of Gabriele Goettsche-Wanli the oceans represent a vast and largely untapped source of energy. What is more, this energy can be used without raising as many eco-safety concerns as traditional fossil fuels. According to the speaker, the Global Ocean is about to change the way energy is generated globally, bringing the new time of energy security. The lecture also stressed the need to ensure the compatibility with marine ecosystems and all other legitimate interests and new forms of usage of the sea potential.

Henning Jessen, Associate Professor, while referring to the lecture of Director Goettsche-Wanli, touched upon the problem of the increasing competition for marine space. The multitude of potential uses of the marine environment creates the situation in which antropopression is noticeable not only towards the marine ecosystem, but even towards uses of the sea itself. The example presented covered the submarine pipelines and the cables construction and fishing, sea mining or even simple navigation. What is more, the rising energy demand results in undertaking more and more risky operations at sea, which poses danger both to the oceans environment and to the humans. Professor Jessen stressed the role of private actors in finding the optimal, efficient and sustainable solutions to solve the problem of competition for marine space. One of the solutions proposed by the speaker can be the development of ocean's corporate social responsibility in the field of the ocean management. The huge role, according to the Professor, is played also by the traditional regulation. The problem with the competitive uses of the oceans was also identified by the United Nations General Assembly, which in the year 2006 called for an integrated, interdisciplinary and intersectoral approach to the marine activities. UNCLOS was also presented as one of the basic instruments of striking a balance between different uses of the marine environment.

The above mentioned arguments were also supported by David Kenneth Leary, Associate Professor, who also found the sea as a valuable source of energy but was also able to see the risks which stem from the intensive use of the marine environment. In his view marine regulation is full of hard choices one of which is, as he mentioned, the need to find equilibrium between the right of an innocent passage and the right to regulate the coastal state. In the opinion of Professor Leary there is an urgent need of better regulation and development of the experimental marine technologies outside an individual state's jurisdiction. The development of regulation should on the one hand, support the development of the experimental marine technologies but on the other one, should also focus on channelling the liability of risky actions undertaken in the Area.

In the opinion of the author of this report the most promising lecture presented at the Conference was the lecture by Professor Rüdiger Wolfrum "Sustainable Management of Ocean Ecosystems". Professor Wolfrum unquestionably has met the expectations. The core of the lecture was a new initiative of the United Nations General Assembly of the 19th June 2015 which aims at developing an internationally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (A/RES/69/292). Professor Wolfrum stressed the importance of this new legal instrument and also referred to the negotiation processes of the earlier important international environmental legal acts to predict the paths which the negotiation processes would probably follow. According to the speaker, the new convention will be based on the concept of sustainable development, which was developed in the international law of the sea long before the 1992 Earth Summit or even before the Burthland Commission Report. UNCLOS is one of the documents where the idea of sustainable development has been present from the very beginning of its existence. Among the principles of sustainable development which should be reflected in international sea environment regulation the Professor mentions the principle of equitable use, the principle of integration, intergenerational and intragenerational equity, and the duty to exploit the marine environment in a rational manner. The sustainability of the marine ecosystem refers both to the renewable and non-renewable resources. Professor Wolfrum also mentioned the risk that in the case of creation of an effective instrument of regulation of the use and protection of the marine environment beyond national jurisdiction, the national regulations on the use of marine resources up to the borders of the continental shelf, could start serving as a kind of flags of convenience, engaged in the regulatory race to the bottom in order to attract the investments.

Professor David Freestone referring to the lecture delivered by Professor Wolfrum indicated the role of the international documents which try to explain or

adopt the general concept of sustainable development to more specific conditions. One of such attempts is, according to Professor Freestone, the New Delhi Declaration on Principles of International Law Relating to Sustainable Development. The Professor was trying to connect the principles of the New Delhi Declaration with the relevant norms under UNCLOS.

The second commentator in the session, Professor Yoshifumi Tanaka, mentioned the important problem of normativity in the context of sustainable development. In his view sustainable development does not have the qualifications needed to classify it as a principle of law. However, the lack of normativity of sustainable development does not impede the role of this concept in balancing important elements which construct sustainable development. Professor Tanaka also stressed the role of the evolutionary interpretation of sustainable development. Sustainable development as a “living” concept is a mechanism which aims to merge the recent developments in the fields of law and science. The similar evolutionary interpretation, according to Professor Tanaka, should also be given to UNCLOS, whenever the conditions for the use of the evolutionary interpretation are fulfilled.

The second part of the first day of the Conference was arranged as the working groups discussion. The author of this report was attending the Seabed Pipeline and Cable Systems Working Group. The invited speakers were Professor Robert C. Beckman and Douglas Burnett. They presented the lectures relating to the different specificity of submarine cables and pipelines. According to Professor Robert C. Beckmann the current technological developments put underwater telecommunication cables in the centre of critical infrastructure. They are responsible for almost 99% of transcontinental information flows and for the moment technically cannot be substituted with any other infrastructure, like satellites. Marine environment zoning creates different freedoms and duties connected with submarine cables and pipelines. The main problems in the development of underwater cables and pipelines are, according to the speakers, the lack of international legal standing by private companies which lay and own underwater cables and pipelines. As a problem the Professor mentioned also the underdeveloped system of international conventions which would govern the operation and development of submarine cables and pipelines, despite the fact that Article 208 of UNCLOS calls for such multilateral actions.

Douglas P. Burnett stressed the deep technical and environmental hazard differences between the construction and operation of submarine pipelines, submarine energy cables and submarine optical fiber cables used for data exchange. In his opinion this difference should be better reflected in international law. He suggested the need to create the separate legal regulatory regime for each of those three types of undertakings. Burnett also indicated that despite the insufficient

development of international hard law which would regulate the functioning of submarine cables and pipelines a vast group of soft law instruments in this area existed. What is more, some of the rules were created by the cable operating, and cable setting companies themselves. The huge problem, according to Douglas P. Burnett, remains the possible terrorist attack on critical infrastructure of the submarine cables and pipelines, which in the opinion of Mr Burnett, lack proper anti-terrorist protection. He added that according to the law of war submarine cables were the legitimate war targets.

In the panel there was a “Polish element”, as doctor Maciej Nyka underlined the need for cooperation in the use of marine resources and the need to coordinate the investment initiatives at sea, by giving the negative example of the Nord Stream and the Nord Stream 2 pipelines and their impact on the development of Szczecin and Świnoujście harbours and the newly developed LNG terminal in Świnoujście. By executing the legitimate rights of Germany at the German territorial waters the environmental, energetic and political risks have been created. In the opinion of doctor Nyka the problem could have been avoided within the frames of the sincere cooperation of the neighbouring countries which share and will have to share the marine resources in the future.

The last day of the Conference consisted of one session. As mentioned before, this was a day of a discussion panel. The scientific advisory board members of the Conference were summarizing and critically reflecting the results of the first day’s discussions. Professor Axel Proels, when summarising the Conference, stressed the role of the integrated approach as the instrument of solving the conflicts of demands and resources. In his opinion, the integrated approach creates the problems mainly at the global level, whereas locally the problems are not so noticeable. The Professor stressed also the importance of natural sciences in environmental rule making. Stefan Wenzel – Minister for the Environment Energy and Climate Protection of Lower Saxony emphasised the crucial role of the sea to the wealth and development of Hamburg. He mentioned the most crucial environmental problems relating to the marine economy of Hamburg and Lower Saxony. The important role of marine spatial planning for the development of the marine economy was also mentioned by the speaker. The Minister mentioned, as the future challenges, the protection of marine resources outside the states’ jurisdictions, the Paris climate change agreement and its implementation, the development of the instruments of liability in international protection of the marine environment. The next commentator, Professor Uwe Janisch, indicated the need to enhance the intragenerational equity in the use of marine resources. The third world countries are negotiating the deals with the multinational corporations, which can abuse the political, legal and social underdevelopment of such countries in order to perform less sustainable marine environment activities. The Professor underlined also the

role of the International Seabed Authority in ensuring intergenerational and intragenerational equity in the management of the Area. He also stressed the need to move towards the “zero waste marine technology” in the use of marine resources. Professor dr Konrad Ott (Professor for Philosophy and Environmental Ethics) warned against the illusion of the unlimited potential of marine resources. He stressed the role of environmental ethics in solving the problem of competition in the use of marine resources. Professor Ott also underlined that apart from the potential resources and riches, which could be extracted from the marine environment, there are profits and joys from the fact of living in the unspoiled nature. In the opinion of Professor Ott due to the intensive development of maritime law, we are now facing the historical “window of opportunity” to include environmental ethics into the regulations of the activities at sea.