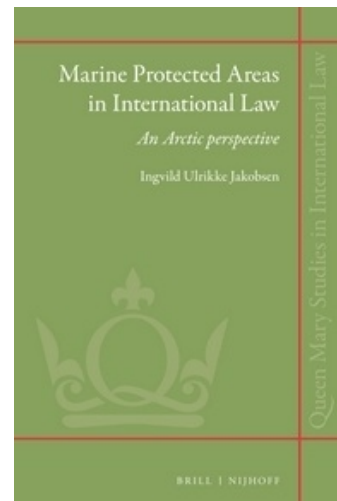


Book Review

Title : Marine Protected Areas in International Law: an Arctic Perspective
Author : Ingvild Ulrikke Jakobsen
Publisher : Brill Nijhoff, Leiden – Boston, 2016
Book Reviewer : Davina Oktivana*
DOI : <https://doi.org/10.22304/pjih.v4n2.a11>



Marine biodiversity has always become an interesting topic in the development of the law of the sea subject. Despite of human dependence on marine resources, human intervention has been proven as the major threats to the sustainability of marine biodiversity and marine environment protection. Human activities, such as over-exploitation, shipping pollution, the use of endangered fishing tools and above all, climate change, have changed the ecosystems extensively. One of the significant measures to prevent or broaden the catastrophe is the establishment of Marine Protected Areas (MPAs), which has been accepted as a tool for protection and conservation of marine biodiversity. The book provides a comprehensive observation and analysis of the MPAs' concept and its implementation, specifically in the Arctic. This book is based on Ingvild Ulrikke Jakobsen's PhD thesis at the University of Tromsø, Norway. Her concern is particularly based on the development of human activities in the Arctic, that will definitely affect the fragile marine environment and there is an increasing need to ensure environmental protection and conservation of marine biodiversity and ecosystems in the Arctic.

This book managed to explain clearly the legal development which has been shifted from a functional to a more integrated holistic approach of the marine environment and the development of the international legal framework of MPAs, including the influence of global politics: Agenda 21, the World Summit on Sustainable Development Plan of Implementation, and United Nations General Assembly Resolution A/Res./66/231 (24 December 2011) which address the question of conservation in areas beyond national jurisdiction. The contemporary environmental obligations, concepts, and principles, including the obligation to protect biodiversity, the ecosystem approach, sustainable development and the precautionary approach require a new and different approach than that reflected

through the traditional obligations of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). However, the 1982 UNCLOS is still considered as the cardinal guidance with respect to the conservation of marine resources and protection of marine environment, as relevant provisions are described delicately in this book. Notwithstanding the absence of legal definition, sufficient description of MPAs are formulated by International Union for the Conservation of Nature (IUCN), the Convention on Biological Diversity (CBD), and the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention). As a matter of fact, the legal obligation on conservation of marine biological diversity as stated above, are addressed to provide the establishment of MPAs. The establishment of MPAs relies on the purposes and objectives, for example protection of endangered species, maintenance or restoration of viable populations of species, nesting or breeding areas, protection of ecosystems and so forth, as well as the size, location, and regulation forms.

This book clarifies the legal rights and obligations of states under international law to establish MPAs in their maritime zones and the high seas, particularly conservation of the Arctic marine biological diversity as of significance not only for the Arctic region, but also for global biological diversity. The establishment of MPAs in maritime zones is subject to different legal regimes, legal rights, and legal obligation. The right to establish MPAs in territorial sea, for instance, is subject to the sovereignty of coastal State, in respect to the right of innocent passage through its territorial sea. This circumstance emerges the argument whether the coastal State has the legal authority to intervene when the passage tends to be endangered to its MPAs. The scope of innocent passage might have been influenced by the environmental obligations and principles on conservation of marine biodiversity and provide a wider scope for the coastal States in order to protect their marine environment. It leads to a broaden competence of the coastal States to adopt MPAs where shipping is prohibited or restricted.

Whilst the establishment of MPAs in the Exclusive Economic Zone (EEZ) has an enormous distinction due to its legal status and the economic interest of coastal state; states are entitled a sovereign right in the EEZ 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 which also comprises the continental shelf. Undoubtedly, it shows that the rights and duties of States in the EEZ attempt to balance the coastal states' need to control and protect their marine areas and resources. The obligations to protect and preserve marine environment in manner of establishing MPAs has become legitimate measures for complying the purposes. Apparently, the EEZ provisions provided in the 1982 UNCLOS as a legal basis for the establishment of MPAs remains debatable.

The arguments in this book have proven on the contrary, that the convention without any doubts provides a legal basis for MPAs established for the purpose of conservation of biodiversity. The provision has limitation on the basis of 'sovereign rights' status and jurisdiction of coastal state over the marine environment, however, the establishment of MPAs must take due regard to the rights and duties of other states when exercising their rights and duties in their EEZ. Additionally, the scope of the jurisdiction asserting that states shall refrain from unjustifiable interference with activities carried out by other states in the exercise of their rights and in pursuance of their duties in conformity with this Convention. Concerning the regulation of shipping in EEZ, the 1982 UNCLOS provides a provision of 'special area' in which special mandatory measures may be adopted to protect the area against vessel source pollution and a special treatment in an ice-covered area.

The possibility to establish MPAs in continental shelf is supposedly designed in respect with the activities of exploration and exploitation marine resources (referred to mineral and other non-living resources together with living organism belonging to sedentary species) in the seabed and subsoil. Other states have certain rights to engage in activities on the continental shelf such as laying pipes and cables. When coastal States establish MPAs in continental shelf such as restricting fishing activities in high seas, it should also consider the conflicting interest which might emerge, due to the fact that the protection measure is likely to interfere with the freedoms of the high seas. In such a manner, it appears to be more relevant and appropriate if the measures are taken by Regional Fisheries Management Organization (RFMO). It is a challenging question whether the coastal State is competent to establish MPAs and adopt protective measures to conserve biological diversity or seabed ecosystems on the extended continental shelf, regarding that the coastal State does not have such jurisdiction. Further, it comes with the conclusion that the coastal States have jurisdiction to establish MPAs to conserve biological diversity on the continental shelf for the purpose of protecting the biological diversity or an ecosystem on the extended continental shelf, to be legitimate, is of vital importance for protecting the interests of the coastal State.

While on the subject of MPAs establishment in high seas is a different matter, due to the fact that international political development and recognition are needed to adopt MPAs on the high seas. On the other hand, it still raises a legal question as to if and how MPAs may legally be established. The 1982 UNCLOS does not explicitly provide a legal basis for the establishment of MPAs, nevertheless all states are under a general obligation to protect the marine environment, which encourages the use of area-based management measures. Again, as no states have sovereignty or sovereign rights over marine resources on the high seas, no states are entitled unilaterally to define and designate high seas areas as MPAs or to adopt regulations on foreign vessels or other activities.

This situation enhances a question, whether states may enter into agreements to designate MPAs on the high seas and where specific conservation measures apply. The 1982 UNCLOS allows and requires cooperation between states on global and regional levels in the management and conservation of living resources in the high seas. Limited to prohibitions or restrictions of fisheries have also been established by such organizations on the high seas in the Mediterranean, the North-East Atlantic and in Antarctica. In the regional scale, the cooperation is important to be achieved regarding the identical of environmental issues and interests. The nature of the problems and the geographical and ecological characteristics may also be such that a regional approach will be a more effective way to safeguard the marine environment. This book describes precisely the approach, mechanism, regulations, classifications, and the structures in OSPAR as well as the Arctic Council regarding the establishment of MPAs. The discussion of MPAs is also an important lesson to be taken for the development of Association of South East Asian Nations (ASEAN) in managing biological diversity.

Considering the navigation in MPAs, the regulations provided by International Maritime Organization (IMO) must have been taken into account. IMO has developed and adopted numerous regulations to achieve its objective of maritime safety and environmental protection, including a broad range of protective measures such as discharge standards, CDEM (construction, design, equipment, and manning) standards, or routing measures, which may be adopted by the coastal states to protect the MPAs, for instance, marine environment through International Convention for the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978 (MARPOL 73/78) maritime safety through International Convention for the Safety of Life at Sea (SOLAS Convention), and avoiding ship collisions through the International Regulations for Preventing Collisions at Sea (COLREG Convention). IMO also enacted the International Code for Ships Operating in Polar Waters (Polar Code) to regulate shipping in the Arctic and Antarctica, in order to protect the vulnerable environment in the region. Despite the right of innocent passage, coastal state has to consider the impacts of shipping activities in MPAs, which may cause a serious threat. This book proposed the alternative measures, as follow: (i) ban on navigation; (ii) routing measures; (iii) discharges; (iv) CDEM standards; and (v) prior notification, and the implementation of the measures in territorial sea and EEZ.

Regardless the MPAs as a significant tool for the conservation of marine biodiversity at both the global and regional level is indubitable, they are rarely effective. One of the major problems is the lack of proper legal framework. It can be assumed that the establishment and effective management of MPAs depend on the political will to designate areas in which to prohibit or restrict human activities for environmental purposes. The conflict between economic interest and the need to

conserve marine resources and to protect marine environment have always occurred. Another problem in ensuring effectively managed MPAs is the lack of mechanisms for sufficient compliance with the obligations or enforcing the regulations adopted within the MPAs. Hence, further cooperation through IMO to develop and adapt necessary measures are a better chance in establishing effectively managed MPAs, considering MPAs in the Arctic is established to protect marine environment from shipping activities.

Without a doubt, I would therefore recommend this book as a resource for teachers, lecturers, students, international and domestic legal practitioners, as well as for those who works for government and the parliament and looking to implement an enhanced of MPAs.