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The European Union and Conservation of Marine Living Resources in Antarctica

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What is the European Union?



The EU as a Global Actor

The EU considers itself (JOIN (2016) 49 on International ocean governance: an agenda for the future of our oceans):

- “well placed to shape international ocean governance on the basis of its experience in developing a sustainable approach to ocean management, notably through its environmental policy, integrated maritime policy, reformed common fisheries policy, action against illegal, unregulated and unreported (IUU) fishing and maritime transport policy.”

The EU in Antarctica: a strong presence

- Heroic Age of Antarctic Exploration: Belgium, *UK*, France, Germany, Sweden, *Norway*
- Territorial claims: France, *UK, Norway*
- Antarctic Treaty Consultative Parties: Belgium, Bulgaria, Czech Republic, Finland, France, Germany, Italy, Netherlands, Poland, Sweden, Spain, *UK*
- Non-consultative parties: Denmark, Greece, Hungary, Portugal, Romania

The EU's Arctic Policy (2008 -2016)

- Inter-Departments (Directorate-Generals) service group within the European Commission on Arctic policy
(Energy, Environment, Maritime Affairs and Fisheries, Mobility and Transport, Research)
- COM(2008) 763 final, the European Union and the Arctic Region
 - Protecting and preserving the Arctic in unison with its population
 - Promoting sustainable use of resources
 - Contributing to **enhanced Arctic multilateral governance**

The EU's Arctic Policy: JOIN(2012) 19 final

- The European Union wants to engage more with Arctic partners to increase its awareness of their concerns and to address common challenges in a collaborative manner.
- Knowledge; Responsibility; **Engagement**
- **Taking a comprehensive approach to Arctic issues:** Shipping and maritime safety, sustainable development, climate change, reducing uncertainties.....

The EU's Arctic Policy: JOIN(2016) 21

- Climate change (CO₂ and Black Carbon)
- Sustainable development
- European Arctic
- Research, Science and Innovation

Why should the EU act?

- International fisheries law so far is not completely useless but in general failed to achieve sustainable fisheries (Churchill, 2014)
- Opportunities and **responsibility** for the EU to take actions/initiatives
- The Union shall contribute to the sustainable development of the Earth in its relations with the wider world (Art.3 (5), Treaty on the European Union)

The EU and CCAMLR

- REIO clause
- Contracting Party, together with Belgium, France, Germany, Italy, Poland, Spain, Sweden, *UK and Norway*
- Legal basis: Consolidated Versions of the Treaty on the Functioning of the European Union, [2010] OJ C83/47, Article 3 (1) (d): The Union shall have exclusive competence in the conservation of marine biological resources under the common fisheries policy

The EU as a normative power

- Manners (2002) argues that the EU, owing to its particular historical evolution, its hybrid polity, and its constitutional configuration, has a normatively different basis for its external affairs than States do.
- The EU is expected to project its core norms: peace, liberty, democracy, human rights and rule of law outside the EU
- In addition to core norms, there are arguably four minor norms – social solidarity, anti-discrimination, sustainable development and good governance

Coordination Process

- **Community position (matters of EU's exclusive competence)**
- coordinated position (matters of member States' exclusive competence)
- common position (matters of shared competence between the EU and member States)
- **Duty of loyalty** – Commission v Greece Case C-45/07
The mere fact that the Union is not a member of an international organization in no way authorizes a Member State, acting individually in the context of its participation in an international organization, to assume obligations likely to affect Community rules promulgated for the attainment of the objectives of the Treaty

The EU as a market power

- Damro believes that because it is fundamentally a large single market with significant institutional features and competing interest groups, the EU could be best understood as a market power that exercises its power through the externalization of economic and social market-related policies and regulatory measures.

- The Brussels Effect (Bradford, 2012)

Market power, Regulatory capacity, Preference for strict rules, Capacity for effective law enforcement

External dimension of CFP

- Council Regulation (EC) 1005/2008 IUU Fishing
- The Regulation establishes various EU-wide mechanisms to prevent, deter, and eliminate IUU fishing, and to prevent the continued import of IUU fish into the EU market.
- an obligation for fishery products coming into the EU to be accompanied by a validated catch certificate
- The EU IUU Regulation establishes a system of conditional access, using potential sanctions attached to their trade agreements as an incentive to ensure that states with vested interests in trading their fish on the EU market are compliant

Conclusions

- A strong presence and potential
- A clear policy objective is needed
- Brussels effect?
- Shaping international legal order with domestic efforts