



# MULTIPLE LAYERS OF REGULATION: FOCUS ON THE BALTIC SEA REGION

#BALEXSeminar

BALEX RESEARCH SEMINAR  
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10:15-10:30 Prof. **Jussi Tapani**: Opening of the seminar

10:30-11:15 Dr. **Marja Lehto**: Multilayerism in the Baltic Sea Governance: How Can and Should International Law Deal with Regional Specificities?

11:15-12:00 Prof. **Mike Elliott**: From Science to Governance: The Demands and Constraints of Policy-makers in Managing the Baltic Sea

12:00-13:00 Lunch

13:00-13:45 Dr. **Anne Christine Brusendorff**: Multiple Legal Layers and Policies: What Approaches Work for the Baltic Sea?

# **Multilayerism in the Baltic Sea Governance**

How Can and Should International Law  
Deal with Regional Specificities?

**Marja Lehto**

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Member of UN International Law Commission

# Regional approaches to international law-making

- Regionalism as a challenge or threat to the unity of international law? Example: the UN Law of the Sea Convention (UNCLOS) of 1982
- The UNCLOS negotiations were directed by an attempt to create a comprehensive set of general rules concerning the uses of the sea – 'a constitution for the Oceans'. In that sense, the aim was to call a halt to the process of regionalization of the law of the sea.
- The UNCLOS also represents a particular way of dealing with such pressures and tensions. The different and often conflicting interests regarding the different uses of the sea were, to a large extent, accommodated and balanced against each other in the new rules for the oceans.

# How regional and global norms can relate?

- Regional norms may often be enacted precisely to **support and strengthen** global norms.
  - Regional law-making may also represent **a first step** toward global regulation.
  - Regional law-making may, however, also seek to **re-interpret** global norms.
  - Or, finally, it can amount to a **deliberate counter-movement** against more universal law and an expression of different objectives.
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- Source: Dirk Pulkowski, Theoretical Premises of 'Regionalism and the Unity of International law', Conference Paper No. 16/2012, ESIL 5<sup>th</sup> Biennial Conference, Valencia, Spain, 13–15 September 2012.

# Table based on Pulkowski's list

	Regional	Global
Harmonious	'Laboratory'	Implementation
Deviation	'Lex specialis'	Re- interpretation

# Helsinki Convention of 1974

- The Baltic Sea was the first region in the world to conclude a regional convention for the protection of the marine environment, already in 1974, which was in the very early stages of the development of international environmental law and the protection of the marine environment.
- For the first time ever, all the sources of pollution around an entire sea were made subject to a single convention that was signed by all coastal states.
- The case can be made that the Helsinki Convention has provided a model for other regional seas arrangements and inspiration to UNEP. Therefore it qualifies as an example of a regional 'laboratory for global norms'.

# 'Laboratory'

	Regional	Global
Harmonious	Helsinki Convention 1974	Implementation
Deviation	'Lex specialis'	Re- interpretation

# Helsinki Convention 1992

- HELCOM is a strong regional actor which has survived and even profited from the 'Europeanization' of the Baltic Sea after 1992.
- At the same time, an important part of HELCOM work implement and support broader efforts to uphold international environmental law obligations.
- The 1992 Convention is therefore proposed as an example of the implementation of global norms at the regional level.



# Implementation

	Regional	Global
Harmonious	Helsinki Convention 1974	Helsinki Convention 1992-
Deviation	'Lex specialis'	Re- interpretation

# Mare clausum

- Issues of military security in the Baltic Sea have drawn attention recently, but the new concerns and policy recommendations have not yet led to legal initiatives.
- As a historic example of ‘regional lex specialis’, reference can be made to the Soviet doctrine of closed seas, which it advocated for the Baltic Sea as well as for some other regional seas.
- The Soviet Union claimed that the Baltic Sea as a regional water body in which warships of non-Baltic countries should be prohibited.
- Even this example does not represent a ‘regional approach’, as it was advocated only by one coastal state, albeit one that controlled at the time the coasts from Carelia to the Gulf of Lübeck.

# Regional 'lex specialis'

	Regional	Global
Harmonious	Helsinki Convention 1974	Helsinki Convention 1992-
Deviation	'Mare clausum'	Re- interpretation

# Regime of straits

- UNCLOS considerably strengthened the rights of passage in international straits, which limited the rights of control of coastal states.
- Denmark, Finland and Sweden contributed actively to the drafting of an exception to the relevant Article. It has been widely agreed that the Danish Straits and Ahvenanrauma qualify as 'historic straits' in the sense of this exception.
- This example represents re-interpretation of existing rules but also, and as much, active involvement in crafting the rule so that it is capable of taking into account regional specificities.

# Re-interpretation

	Regional	Global
Harmonious	Helsinki Convention 1974	Helsinki Convention 1992 -
Deviation	'Mare clausum'	Regime of straits