

Legal Implications Arising From Transboundary Wind Wakes

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Eirik Finserås, Ignacio Herrera Anchustegui, Etienne Cheynet, Cristian Guillermo Gebhardt and Joachim Reuder, `Gone With the Wind? Wind Farm-Induced Wakes and Regulatory Gaps` (2024) 159 Marine Policy 105897



Why should we regulate wake effects?

- Wake effects can have indirect economic and environmental implications, increasing costs on consumers and impede with the energy transition
- Wake effects can give rise to legal conflict in consideration of wind resources having economic value
- Wake effects can cause a «race-to-the-water» phenomenon in which States rush development in order to reap benefits from best (yet) available wind resources



Are wake effects governed under international law?

- The United Nations Law of the Sea Convention 1982 (UNCLOS) provides rights and obligations on a resource-specific basis
 - I.e. there are different rights and obligations with respect to non-living (petroleum) and living (fisheries) resources
 - Elsewhere under international law, there are also specific rights and obligations applicable to shared resources (international watercourses)
- Article 56(1)(a) has a singular reference to renewable energy sources where States enjoy sovereign rights with respect to;

*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, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the **water, currents and winds***



What, then, are the limitations to offshore wind exploitation which is liable to cause wake effects?

- There is no express regulation for these likely effects under international law but one may be implied from UNCLOS 1982 on the basis of a 'good neighbourliness' principle

- Article 56(2);

*In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have **due regard** to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention (emphasis added)*

- In accordance with the Chagos Arbitration, this likely means that coastal States must consult other States in circumstances where offshore wind farms are likely to cause transboundary wake effects



Is the scarce regulation sufficient?

- There is widespread political will across North Sea coastal States to both develop offshore wind and to foster cooperation
 - Ostend Declaration 2023
 - North Seas Offshore Grid Initiative
- Existing political will should translate into framework agreements made on a bilateral and multilateral basis. States must look beyond political aspirations and strive for regulatory solutions to transboundary waters to optimise resource management and thereby a more seamless energy transition.





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