

Centre for Oceans Law & Policy
Global Challenges and Freedom of Navigation

**Panel VI: Balancing Marine Environment and
Freedom of Navigation**

**Responsibility of Flag States for
Pollution of the High Seas**

Robert Beckman

**Director, Centre for International Law
National University of Singapore**

Question to be examined

- Are Flag States internationally responsible if vessels flying their flag pollute the high seas by dumping or illegal discharges?

General Principles Governing Ships on the High Seas

- Freedom of navigation is a freedom of the high seas
- Ships on the high seas are subject to the exclusive jurisdiction of the flag State
- No State may exercise jurisdiction over a foreign ship on the high seas without the consent of the flag State

State Responsibility for Pollution of the High Seas by Dumping

Global Rules and Standards on Ocean Dumping

UNCLOS Article 210

- 1. States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment by dumping.
- 2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.
- 6. National laws, regulations and measures shall be no less effective in preventing, reducing and controlling pollution than the **global rules and standards**.

Enforcement of Global Rules and Standards on Dumping

UNCLOS Article 216

- 1. Laws and regulations adopted in accordance with this Convention and applicable international rules and standards established through competent international organizations or diplomatic conference for the prevention, reduction and control of pollution by dumping shall be enforced:
 - (b) by the flag State with regard to vessels flying its flag

Global Rules and Standards on Ocean Dumping

- **1972 London Convention: Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter**
 - EIF 30 August 1975 / Parties: 87
- **1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972**
 - EIF 24 March 2006 / Parties 42
- **Bottom Line: all parties to UNCLOS must have laws and regulations regulating or preventing the dumping waste in the high seas by vessels flying their flag**

Article 48 of 2001 ILC Articles on the Responsibility of States

Article 48. *Invocation of Responsibility by a State other than an Injured State*

- 1. Any State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragraph 2 if:
 - (a) The obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group; or
 - (b) The obligation breached is owed to the international community as a whole.

Remedies available to the State invoking responsibility

- 2. Any State entitled to invoke responsibility under paragraph 1 may claim from the responsible State:
 - a) Cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with article 30; and
 - b) Performance of the obligation of reparation in accordance with the preceding articles, in the interest of the injured State or of the beneficiaries of the obligation breached.

Invocation of UNCLOS Dispute Settlement Procedures

UNCLOS Article 286

- Any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to the section 1, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section
- In other words, the compulsory procedures entailing binding decisions can be unilaterally invoked by either party to the dispute

Responsibility for Dumping on the High Seas

- If a State Party to UNCLOS fails to pass laws and regulations governing the dumping of waste at sea, and a ship flying its flag dumps prohibited waste in the high seas, the flag State is responsible for its failure to regulate the activity
- Any State Party to UNCLOS can invoke the responsibility of the flag State
- If a dispute arises between the two States concerning the interpretation or application of Articles 210 and 216, the dispute can be referred to arbitration or adjudication as provided in section 2 of Part XV

State Responsibility for Pollution of the High Seas by Illegal Discharges of Oil or Noxious Substances

International Rules and Standards on Ship-Source Pollution

UNCLOS Art 211 (1)

- States, acting through the competent international organization or general diplomatic conference, shall establish **international rules and standards** to prevent, reduce and control pollution of the marine environment from vessels and promote the adoption, in the same manner, wherever appropriate, of **routeing systems** designed to minimize the threat of accidents which might cause pollution of the marine environment, . . . Such rules and standards shall, in the same manner, be re-examined from time to time as necessary.

Flag States and International Rules and Standards

UNCLOS Art. 211 (2)

2. States shall adopt laws and regulations for the prevention, reduction and control of pollution of the marine environment from vessels flying their flag or of their registry.

Such laws and regulations shall at least have the same effect as that of **generally accepted international rules and standards** established through the competent international organization or general diplomatic conference.

Generally Accepted International Rules and Standards

- **MARPOL Convention:** International Convention for the Prevention of Pollution from Ships, 1973, which has been amended by the Protocols of 1978 and 1997 and kept updated by other amendments
- International Convention for the Safety of Life at Sea (SOLAS)
- International Bulk Chemical Code (IBC Code)

Annexes to MARPOL

- Annex I. Prevention of pollution by oil
- Annex II. Control of pollution by noxious liquid substances
- Annex III: Prevention of Pollution By Harmful Substances In Packaged Form
- Annex IV. Prevention of pollution by sewage from ships
- Annex V. Prevention of pollution by garbage from ships
- Annex VI. Regulations for the Prevention of Air Pollution from Ships

UNCLOS Article 217. Enforcement by Flag States

1. States shall ensure compliance by vessels flying their flag or of their registry with applicable international rules and standards . . .
and shall accordingly adopt laws and regulations and take other measures necessary for their implementation.

Flag States shall provide for the effective enforcement of such rules, standards, laws and regulations, irrespective of where a violation occurs.

UNCLOS Article 217. Enforcement by Flag States

2. States shall, in particular, take appropriate measures in order to ensure that vessels flying their flag or of their registry are prohibited from sailing, until they can proceed to sea in compliance with the requirements of the international rules and standards referred to in paragraph 1, including requirements in respect of design, construction, equipment and manning of vessels.
3. States shall ensure that vessels flying their flag or of their registry carry on board certificates required by and issued pursuant to international rules and standards referred to in paragraph 1.

UNCLOS Article 217. Enforcement by Flag States

- 6. States shall, at the written request of any State, investigate any violation alleged to have been committed by vessels flying their flag.

If satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, flag States shall without delay institute such proceedings in accordance with their laws.

Remedies for Illegal Discharges on the High Seas

- If a vessel of State A illegally discharges oil or noxious substances into the high seas in violation of the international rules established in UNCLOS and MARPOL, another State Party to UNCLOS can request the flag State to investigate
- The Flag State is required to inform the requesting State and the IMO of the action taken and its outcome
- If a dispute arises between the Flag State and the requesting State concerning the interpretation or application of the provisions of UNCLOS on vessel-source pollution, the requesting State could invoke the compulsory binding dispute settlement procedures in Section 2 of Part XV

Flag State Responsibility

- If a Flag State fails to adopt laws and regulations as required by Article 211,
or if it fails to enforce such laws and regulations as required by Article 217,
and as a result of such failure, ships flying its flag illegally discharge oil or noxious substances into the high seas,
any State party to UNCLOS can invoke the responsibility of the flag State
- In such case, the analysis would be the same as in the case of pollution of the high seas by dumping

Conclusions

Conclusions

- It is often assumed that it is not possible to take measures against Flag States who do not take their responsibilities under UNCLOS seriously and whose vessels pollute the high seas by dumping or illegal discharges
- If States interested in protecting the marine environment of the high seas are willing to incur the cost, it is possible to invoke the responsibility of Flag States and hold them to account
- This requires States to utilize the provisions of UNCLOS together with the 2001 ILC Articles on the Responsibility of States for Internationally Wrongful Acts

Thanks for Your Attention

Robert Beckman

Director, Centre for International Law

National University of Singapore

Email: cildir@nus.edu.sg

Website: www.cil.nus.edu.sg