

# CIL-NCLOS Workshop

## Protection of the Marine Environment and Shipping Contemporary Challenges and New Approaches

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### Session 1. Setting the Stage

## IMO's Environmental Protection Mandate

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# 1982 UNCLOS and IMO Conventions

- **Inter-Governmental Maritime Consultative Organization (IMCO)** established at UN Maritime Conference in 1947
- 9 years of negotiations at Third UN Conference from 1973 to 1982 took place when IMCO agreed on its major conventions on Safety of Navigation & Protection of Marine Environment
- COLREGS 1972, MARPOL 1973/78, SOLAS 1974
- Drafters of UNCLOS recognized that IMO Conventions were universally accepted and regularly updated through the “tacit acceptance” procedures in IMO Conventions
- Therefore, IMO contains numerous provisions which incorporate IMO Conventions by Reference

# Drivers of IMO's Measures on Environmental Protection

## 1. Responses to Disasters

- e.g., *Torrey Canyon* Oil Spill in 1967 led to:
- 1969 Intervention Convention
- 1969 Civil Liability Convention
- 1971 Fund Convention
- 1973 MARPOL

## 1. Responses to Increased Concern for Environment

- 1972 Stockholm Conference on the Human Environment, etc

## 1. Responses to Developments in Science & Technology

- Development of super tankers
- Development of new fuels

# IMO's Environmental Protection Mandate

- **Marine Environment Protection Committee (MEPC)** was established in **1975** by the **9<sup>th</sup>** IMO Assembly
- Acknowledged that pollution of the marine environment from shipping should be part of IMO's Agenda
  - 1. Rules to prevent and control pollution** of the marine environment from the operation of ships
  - 2. Liability and Compensation schemes** for pollution of marine environment from oil carried by Ships
  - 3. MARPOL Special Areas, Emission Control Areas and PSSAs** to reduce threat of pollution in sensitive sea areas

## Article 94. Duties of the Flag State

1. Every State shall **effectively exercise its jurisdiction and control** in administrative, technical and social matters over ships flying its flag.
4. Such measures shall include those necessary to ensure: . . .
  - c) That the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe **the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.**

# IMO Mandate on Ship-Source Pollution

## Article 211. Pollution from Vessels

- 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 **routing 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.

## Article 211. Pollution from Vessels

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

# Article 217. Enforcement by Flag States

4. States shall ensure compliance by vessels flying their flag or of their registry with **applicable international rules and standards**, established through the competent international organization or general diplomatic conference,
  - and with their laws and regulations adopted in accordance with this Convention for the prevention, reduction and control of pollution of the marine environment from vessels
  - 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.

# Article 218. Enforcement by Port States

1. When a vessel is voluntarily within a port or at an off-shore terminal of a State,
  - that State may undertake investigations and, where the evidence so warrants,
  - institute proceedings in respect of any discharge from that vessel outside the internal waters, territorial sea or exclusive economic zone of that State
  - in violation of applicable international rules and standards established through the competent international organization or general diplomatic conference.

# 2024 ITLOS Advisory Opinion on Change and International Law

- Stated that although “generally accepted international rules and standards” is not defined in the LOSC,
- they may refer to those rules and standards “contained in international legal instruments that are accepted by a sufficiently large number of States” which “must be established through the competent international organization or general diplomatic conference”.
- It further clarified that the **IMO** is the competent international organization mandated by the LOSC to regulate commercial shipping activities
- and that only rules and standards which satisfy these requirements would qualify as GAIRS.

**Thanks for Your Attention**

**Prof Robert Beckman**