

RIGHTS AND DUTIES OF STATE PARTIES TO UNCLOS III REGARDING MARINE POLLUTION PREVENTION: A GLOBAL LEGAL PERSPECTIVE WITH REGARDS TO VESSEL BASED POLLUTION AND OCEAN DUMPING

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Abstract - This paper reviews the global governance framework of marine pollution specially by vessels and dumping under the United Nations Convention on the Law of the Sea (UNCLOS) 1982, which is considered as the most comprehensive unified international regime that addresses the nations' rights towards the better governance of the world ocean. Part XII of UNCLOS is devoted for the "protection and preservation of the marine environment", where section V addresses the international rules and national legislations and section VI addresses enforcement of rules and regulations by States, with respect to pollution prevention and control. UNCLOS recognizes six categories of marine pollution, of which pollution by vessels and by dumping have been specially focused in this paper. Ocean going vessels may deliberately or accidentally discharge pollutants in to the sea and to address the issue, Generally Accepted International Rules and Standards (GAIRS) have been set up by the International Maritime Organization and UNCLOS have provided Flag, Coastal and Port States' jurisdiction in terms of rights and duties. UNCLOS defines "Dumping" as the deliberate disposals of wastes from manmade structures at sea and there are provisions for States parties in order to prevent, reduce and control pollution of the marine environment by dumping. For both sources, enforcement powers have been provided for Flag, Coastal, Port or any other State that has connection to the pollution activity.

Keywords - Marine Pollution, UNCLOS, Vessels, Dumping

I. INTRODUCTION

Being born from customary law and treaties, international environmental law has been given life by many

conferences and events. Even though there are many other elements derived at such conferences, the 1982 UNCLOS is considered as the most comprehensive unified international regime, which addresses the nations' rights towards the better governance of the world ocean (Hollis & Rosen, 2010).

UNCLOS defines marine pollution as the anthropogenic introduction of hazardous wastes to the marine environment, causing harmful impacts on marine and human life, hindrance to marine activities and deterioration of water quality (UNCLOS-Article 1(1)(4)). Part XII is devoted for the "protection and preservation of the marine environment", where section V addresses the international rules and national legislations and section VI addresses States enforcements, with respect to pollution activities (UNCLOS-Part XII). Section V categorizes marine pollution sources in to six groups, namely land based sources, seabed activities, activities in the Area, dumping, from vessels and atmosphere (Article 207 to 212 respectively). To limit the scope of this article, only two sources of marine pollution; vessel based and dumping, have been taken in to consideration (Article 211 and Article 210 respectively). Article 194 describes general obligations of all States, which requires individual or joint measures, prevention of pollution of other States, avoiding unjustifiable interferences and preservation of fragile ecosystems. Article 216 provides the enforcement authority in terms of ocean dumping to be born by Flag States with regards to vessels flying its flag, Coastal States with regards to dumping within its maritime zones and any other State with regards to loading waste within its territory or offshore terminals. Article 217, Article 218 and Article 220 provides authority to Flag States, Port States and Coastal States to enforce rules and regulations to control vessel based marine pollution.

II. OBJECTIVES

The main objective of this paper is to provide the reader a comprehensive understanding of the international legal order to prevent, reduce and control marine environmental pollution from vessels and ocean dumping.

III. METHODOLOGY

1982 United Nations Convention on the Law of the Sea (UNCLOS) has been mainly referred in this qualitative study. Relevant Parts, Sections and Provisions have been extracted from the convention and elaborated to justify the argument that UNCLOS stipulates orders for States parties to individually and collaboratively act in order to protect the marine environment from pollution. Some other published materials have been referred to extract secondary information that supports these justifications.

IV. RESULTS

A. *Pollution from vessels:*

Ocean going vessels may deliberately or accidentally discharge pollutants in to the sea (Jin-Tan, 2006) and there are two ways to address the issue under international law (Bodansky, 1991).

- Establishing Generally Accepted International Rules and Standards (GAIRS) by IMO including,
- Discharge standards
- Construction, Design, Equipment and Manning standards (CDEM)
- Navigational standards
- Governing Flag, Coastal and Port States' jurisdiction (prescriptive, enforce, adjudicate).

The first way of addressing the issue of marine pollution from vessels is the duty of the States. According to the Article 94 of UNCLOS III, Flag States shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag. The existing Flag States obligations are reaffirmed and tightened by UNCLOS III, while new improved roles have been assigned for Port States and Coastal States (Jin-Tan, 1997). However, there is a perennial conflict between the strict Coastal States regulations to protect their marine environment and other States, who find Coastal States regulations a threat for freedom of navigation (Jin-Tan, 1997).

1) **Duties and rights of Flag States:**

- Flag States have the right for innocent passage in the Territorial Sea (TS) of other States (UNCLOS-Article 17), freedom of navigation and other lawful activities in other States' EEZ with due regards (UNCLOS-Article 58) and freedom of the high seas (UNCLOS-Article 87).
- Flag States bear the duty to prevent, reduce and control pollution from vessels flying their flag or of their registry.
- Flag States shall ensure the safety of their ships at sea by Seaworthy construction, Internationally approved crew training standards and Measures to prevent collisions (UNCLOS-Article 94(3)(a),(b),(c)),
- Flag States are obliged to;
- Adopt national laws and regulations, which at least have the same effect as GAIRS (UNCLOS-Article 211(2)).
- Enforce regulations to ensure compliance (UNCLOS-Article 217(1)) and make vessels prohibited from sailing if the compliance is unsatisfactory (UNCLOS-Article 217(2))
- Inspection and verification of onboard certificates (UNCLOS-Article 217(3))
- Investigation of regulation violations (UNCLOS-Article 217(4))
- Request assistance of other States for cooperation in investigations (UNCLOS-Article 217(5))
- Institute legal proceedings against the vessels committed the violation, if sufficient evidences are available (UNCLOS-Article 217(6)) and make those information available for all States (UNCLOS-Article 210(7))
- Provide adequate penalties to discourage violations (UNCLOS-Article 217(8))

2) **Duties and rights of Coastal States:**

Coastal States, as the direct victims, have the greatest interest in pollution prevention (Bodansky, 1991), and claim the right to exploit the natural resources within their environmental policies (UNCLOS-Article 193), (UNCLOS-Article 56(1)(a),(b)(iii)). Coastal State's jurisdictions differ according to the maritime zones.

Territorial sea

Sovereignty rights allow, rules to be legislated and enforced to prevent, reduce and control of pollution from foreign vessels but that should not violate their right of innocent passage (UNCLOS-Article 211(4))

EEZ

- Regulations may be enforced in accordance with GAIRS (UNCLOS-Article 211(5)).
- Under special circumstances, special mandatory measures may be adopted for pollution prevention of clearly defined areas of the EEZ (UNCLOS-Article 211(6))
- However, those rules must balance both Coastal and FlagStates’ interests. Coastal States interest over environment protection weakens with the distance from the shore while Flag State’s interest in freedom of navigation increases(Bernhardt, 1980).
- With regards to marine pollution prevention, Coastal States may:
- Institute proceedings against vessels for regulation violations at the TS and the EEZ (UNCLOS-Article 220(1)).
- Require information from vessels, if there is clear belief of violation of rules while navigating in the TS or EEZ (UNCLOS-Article 220(3)).
- Physically inspect vessels that are suspected to violate international rules while navigating in the TS and the EEZ (UNCLOS-Article 220(2),(5))
- Detain vessels with clear evidences of regulation violations at TS or EEZ, (UNCLOS-Article 220(6)),
- Release those vessels with appropriate procedures (UNCLOS-Article 220(7)).

3) Duties and rights of PortStates:

A significant feature of the UNCLOS III is the expansion of Port State jurisdictions(Churchill & Lowe, 1988).

- Port States have the right to undertake investigations of vessels and institute proceedings for discharge violations outside of its TS, EEZ and high seas or investigate for violations at another State only at request (UNCLOS-Article 218(1),(2)) and may take administrative measures against violations of GAIRS (UNCLOS-Article 219).
- Investigation records should be transmitted on request and on Coastal State’s request, the proceedings may be suspended and evidence and bonds shall be transmitted (UNCLOS-Article 218(4)).

B)Ocean Dumping

UNCLOS defines “Dumping” as the deliberate disposals of wastes from manmade structures at sea including themselves (UNCLOS-Article 1(5)). In order to prevent,

reduce and control pollution of the marine environment by dumping, States shall, (UNCLOS-Article 210)

- Adopt national laws and measures not less effective than existing regional and global regulations.
- Establish permission criteria for dumping in to the TS, EEZ and the continental shelf (CS)
- Re examine the global and regional regulations and standards time to time
- Adopted laws and regulations shall be enforced by the Flag States with regard to vessels flying their Flag or by Coastal States with regard to dumping at its TS, EEZ or the CS (UNCLOS-Article 216). Coastal States have the right to permit dumping after due considerations of impacts (UNCLOS-Article 210(5)). Any other States may enforce jurisdictions, if wastes are loaded from there.

V. DISCUSSION AND CONCLUSION

UNCLOS offers different legal provisions for vessel source pollution and dumping. Basically, the definition of “Dumping”, which is voluntary, doesn’t include any operationally generated wastes (UNCLOS-Article 5(b)), thereby refers to only deliberate disposals. Therefore, Dumping is controllable by setting up of permissible standards.

For vessel source pollution, Coastal States have no obligation to implement international rules and standards in their national legislations if they are not party to the respective treaties and Flag States have the primary prescriptive and enforcement powers over their vessels(Marsden & Varner, 2012). Coastal States cannot set rules for discharge standards for vessels in accordance with GAIRS. Due to the international nature of shipping business, Flag States argued that more uniform international standards are required rather than “patchwork quilt” type potentially conflicting national regulations(Bodansky, 1991). However, vessels registered in convenience registries with high freedom from Flag States control are accountable for the highest rate of discharge violations (Jin-Tan, 1997). . Regarding dumping, Coastal States bear the duty of regulations including permission criteria for dumping at their TS, EEZ and CS. Other than this, GAIRS are different for the two regimes, where for vessel source pollution, the paramount legal instrument is MARPOL 73/78 and for dumping, it is the 1972, London convention(Nordquist, et al., 2012).

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