

Enforcement of international maritime legal instruments

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Compliance

International regulations, rules and standards alone, however perfect they may be, are not sufficient

Effectiveness depends on the ensurance of compliance

Enforcement instruments are an indispensable complement to legislation

Enforcement obligation

SOLAS, STCW, MARPOL:

Undertake to

- give effect to the provisions
- Promulgate all laws, decrees, orders and regulations and take all other steps which are necessary to give the convention full and complete effect

Outline

- General principles
- Enforcement by the flag State
- Enforcement by the port State
- Enforcement by the coastal State
- Additional enforcement measures and safeguards
- Maritime administration

General principles

The meaning of „enforcement“

New American Oxford Dictionary:

The act of compelling observance of or compliance with a law, rule or obligation

Who has to enforce international instruments?

International organisations?

Contracting States themselves?

Matter of sovereignty: normally States preserve enforcement for themselves

Consequently enforcement measures are to be based on domestic law

Enforcement as a matter of international law

Establishing an obligation to enforce international regulations

Giving power to States as far as the sovereignty of other States may be affected

Twofold interest:

- Strict and effective enforcement
- Limitation of interference with sovereignty of other States

Enforcement jurisdiction of States

States' powers are based on two main principles which are resulting from the sovereignty of States:

- the principle of territoriality: the State has the territorial jurisdiction and exercises it by addressing anybody in the territory
- the principle of personality: the State may exercise jurisdiction with respect to nationals without being restricted to the territory

Flag State principle

Third principle or modification of the principle of personality:

States are empowered to exercise enforcement measures with regard to ships flying their flag, wherever they are sailing

Legal basis: Art. 92, 94 UNCLOS

Vessels under a foreign flag

Maritime zones:

- Internal waters: full sovereignty (Art. 2 para 1 UNCLOS)
- Territorial sea: sovereignty limited by right of innocent passage (Art. 17 UNCLOS)
- Contiguous zone: certain control measures (Art. 33 UNCLOS)
- Exclusive economic zone: only those rights and powers as provided for by UNCLOS (Art. 55 UNCLOS)
- High seas: freedom of navigation; only in very limited cases as provided for by UNCLOS (Art. 99 et seq. UNCLOS)

Enforcement by the flag State

Art. 94 UNCLOS: Flag State duties

1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.
2. In particular every State shall:
 - (a) maintain a register of ships containing the names and particulars of ships flying its flag, and
 - (b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.
3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to:
 - (a) the construction, equipment and seaworthiness of ships;
 - (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;
 - (c) the use of signals, the maintenance of communications and the prevention of collisions.

Measures to be taken (Art. 94 para 4 UNCLOS)

To ensure

- Surveys by a qualified surveyor
- Nautical charts and publication, navigational equipment on board, appropriate for safe navigation
- Appropriate qualification of masters, officers and crew
- Masters, officers and crew are fully conversant and required to observe the international applicable regulations

State is required to conform to generally accepted international regulations, procedures and practices

Specific requirements with regard to pollution prevention

Art. 211 para 2 UNCLOS:

- Adopt laws and regulations for the prevention of pollution from ships flying their flag; must have the same effect as that of generally accepted international rules and standards

Art. 217 UNCLOS:

- Ensure compliance by vessels flying their flag with the applicable international rules and standards
- Accordingly adopt law and regulations
- Take other measures necessary for the implementation
- In particular ensure that ships are prohibited from sailing until they comply with the international rules and standards
- Ensure that ships carry on board certificates as required by international regulations
- In case of a violation immediate investigations and, if appropriate, institute proceedings (also MARPOL regulation)
- Adequate penalties to discourage violations

MLC: Specific enforcement provisions

Art. 5 Maritime Labour Convention:

- Implement and enforce laws and other regulations adopted to fulfil the commitments with respect to ships and seafarers under its jurisdiction
- Measures include regular inspections, reporting, monitoring and legal proceedings
- Ensure that ships carry a maritime labour certificate and a declaration of maritime labour compliance
- Prohibit violations and establish sanctions

Further specifications under Reg. 5.1: effective system for inspection and certification of labour conditions

Enforcement by the port State

Domestic Requirements

Right to establish minimum requirements for vessels entering into their ports, internal waters and offshore terminals and enforce the relevant domestic regulations

Own interest of the State to prevent accidents and pollution (labour?)

Applicable international rules and standards

In addition: enforcement power with regard to compliance with applicable international rules and standards

Reason: Flag States do not always exercise their jurisdiction effectively (sub standard ships)

Port State does not primarily act in its own interest, but as an „agent“ or „trustee“ on behalf of the community of States or the responsible flag State

Port State regulations - UNCLOS

Only with regard to prevention and control of pollution of the marine environment (prevention of accidents and discharges)

Art. 218:

Investigation and proceedings with respect of discharges

Art. 219:

Prevent vessel from sailing, if vessel violates applicable international rules and standards relating to seaworthiness

Other port State regulations

Reg I-19 Annex to SOLAS, Art. 5 MARPOL, Art. X
STCW:

- Valid certificates
- Inspection of the ship if clear grounds for non-compliance
- Prevent vessel from sailing
- Avoid undue delay

Other port State regulations - MLC

Art. 5 para 4:

Inspection to determine whether ship is in compliance with the requirements

- Certificates
- Further inspection if clear grounds or a complaint that working and living conditions do not conform to the requirements
- Prevent from sailing in case of hazardous conditions or serious or repeated breach of the requirements
- Avoid undue delay

Port State Control Agreements

Are port States obliged or only authorised to take enforcement measures?

Interest in harmonised port State control

Regional MoUs on harmonised port State control concluded by the responsible maritime administrations

Paris MoU

Black Sea MoU

EU Directive on port State control

Enforcement by the coastal State

Power of coastal States

Interest in enforcement: coastal area may be affected by violation of anti-pollution regulations

UNCLOS provides enforcement powers

Obligation or authorisation?

Powers differ dependent on the maritime zones

Measures to prevent pollution incl. prevention of accidents and prohibition of discharges

Measures in case of a pollution incident or violation of anti-pollution regulations

Internal waters

All measures prescribed under domestic law
Violations of anti-pollution regulations
committed in internal waters may also be
prosecuted in the territorial sea

Territorial sea

Limited by the principle of innocent passage:

Foreign vessels must „only“ comply with international standards concerning construction, design, equipment or manning (art. 21, para. 2)

more stringent operational requirements possible as long as they do not hamper the innocent passage (Art. 21, para. 1 f, Art. 24, para. 1)

Violations occurred in the territorial sea (Art. 220):

- vessel voluntarily in port: right to institute proceedings
- vessel sailing in the territorial sea: action in case of clear grounds:
 - a) physical inspection
 - b) if evidence, proceedings including detention
- No restriction in case of a wilful and serious pollution (no innocent passage, art. 19, para. 2 (h))

Exclusive economic zone

No sovereignty, but certain rights and jurisdiction

principle of freedom of navigation

Coastal States may adopt anti-pollution laws and regulations conforming to and giving effect to generally accepted international rules and standards (Art. 211, para. 5)

no preventive measures against foreign vessels

Violations in the EEZ

Vessel voluntarily in port: right to institute proceedings

Vessel sailing in the territorial sea or the EEZ: action in case of clear grounds:

- require information
- physical inspection, when the violation results in a substantial discharge causing or threatening significant pollution, and only under the condition that the vessel has refused to give information or the information is manifestly wrong (Art. 220, para. 5)

Major damage of the coastline or related interests of the coastal State, or to any resources of its territorial sea or exclusive economic zone: institute proceedings including detention, if clear evidence

MARPOL-regulations

Art. 6 MARPOL:

In any port and offshore terminal inspection to verify whether the ship has illegally discharged any harmful substances

Report to be forwarded to the flag State administration

Additional enforcement measures and safeguards

Additional measures

Marine casualty investigation, for ships under the national flag obligatory (Art. 94, para 7 UNCLOS, Reg I-21 Annex to SOLAS, Art. 12 MARPOL, Reg 5.1.6 MLC)

Response to and combat of pollution incidents, in EEZ based on Intervention Convention (cf. Art. 221 UNCLOS)

Safeguards

Regulated by Art. 223 et seq.:

- Protect the rights and interests of other States
- avoid misuse of the additional rights
- interfere in navigation as little as possible
- priority of the flag State 's responsibility
- no discrimination of foreign vessels

Maritime Administration

Maritime administration building

Requirements:

- Adoption of necessary laws and regulations incl. sanctions for violations
- Register for Ships under national flag
- Maritime Safety administration (surveys, inspection, certificates, control)
- Police or Coast Guard
- Administrative and criminal prosecution of violations
- Port State control capacities
- Investigation of marine casualties
- Response organisation for pollution incidents

Questions?