

# MEAs Governing Vessel Operations: The Role and Challenges of Enforcement

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## International Agreement: MARPOL Protocol

- International Convention for the Prevention of Pollution From Ships (MARPOL Convention), London, 1973
- Protocol of 1978 Relating to the MARPOL Convention (MARPOL Protocol)
- United States signed in 1978; Senate ratified
- UNCLOS has some application in defining scope of enforcement and obligations of flag, port and coastal states

## United States Compliance With Obligations Under MARPOL

- Clean Water Act predated MARPOL but not an adequate to implement protocol
- 1980 – act to prevent pollution from ships (APPS) enacted to satisfy protocol obligations
- Coast guard promulgated extensive regulations implementing MARPOL
- Coast guard integrates MARPOL requirements into vessel inspection regime

## Early Enforcement Efforts in United States Under MARPOL

- Deficiencies identified in CG inspections
  - Absence of required logs, disposal records
  - Inoperability of required pollution prevention equipment
- Referral of more significant violations to flag states
- Net effect: no significant enforcement actions

## Early Vessel Pollution Enforcement Cases in United States

- Prosecutions resulting from catastrophic marine casualties
- 1993 – 1997
  - Several cruise ship plastics violations
  - Inland water oil and plastics discharge
  - Tanker oil discharge on high seas
- In sum: serious but apparently isolated violations

## U.S. v. Royal Caribbean Cruises, Ltd. An Illusion Dispelled

- In 1996, RCCL operated one of largest cruise ship fleets in world
- Enjoyed positive environmental image
- Criminal case developed from proactive Coast Guard surveillance operation
  - One vessel discharge in San Juan, Puerto Rico
- Uncovered systematic by-passing of OWS and falsification of ORB

## U.S. v. RCCL – cont'd

- Investigation revealed systematic, fleet-wide violations
  - Variety of by-pass mechanisms to discharge oil
  - Routine log book falsification to conceal
  - Routine discharge of hazardous wastes
- Guilty pleas to criminal violations of APPS and variety of other offenses in 6 districts
- \$ 27 million dollar criminal fine

## New Skepticism Regarding MARPOL Enforcement Needs

- Flag state enforcement clearly inadequate
- Enhanced Coast Guard inspections
  - Data comparison and analysis
  - Internal inspection of pipes around OWS
  - Holds on vessels to permit inspection
- 1997 – 2001 several similar prosecutions
- 2001 Priority boardings of all ships in one of largest fleets of container ships in world

## Challenges of MARPOL Enforcement Case

- Vessels are mobile
- Records dispersed around globe
- Discharges on high seas
- Foreign national crew members
- Quasi-military command structure
- Owners, operators, charterers, employers can be difficult to trace

## Challenges of MARPOL Enforcement Regime

- Effective enforcement in any state requires coordination among states:
  - Records of inspections, disposals, crew members and enforcement actions
  - Real-time coordination of investigations
- Flag, port and coastal states must perform obligations under UNCLOS
- New Annexes being negotiated for air emissions and ballast water (Invasive species)

## Conclusions

- Enforcement must be component of implementation from day one
- Must scrutinize apparent compliance
- Globalization of enforcement under MARPOL
- Protection of coastal waters and high seas dependent on all parties to agreement

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