

CHALLENGES TO THE UNCLOS REGIME: NATIONAL LEGISLATION WHICH IS INCOMPATIBLE WITH INTERNATIONAL LAW

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Abstract

In recent years the UNCLOS regime for shipping, which is a compromise between coastal State and shipping interests, has been subjected to challenges by coastal States which have in some cases moved beyond the permissible scope of regulation over the territorial sea and Exclusive Economic Zone (EEZ). Examples include legislative initiatives which exceed international standards in MARPOL and unwarranted arrests and detentions of mariners. The recent introduction of the EU Directive On Ship Source Pollution, which can be seen as imposing rules beyond what is allowed under UNCLOS, is a significant example, involving an important regional bloc. This paper examines the implications of the trend towards expansion of coastal State jurisdiction over navigation in the EEZ and territorial sea, with a particular focus on the EU Directive and the recent decision of the European Court of Justice, which rejected a challenge launched by a coalition of shipping interests.

1. Introduction

The 1982 UN Convention on the Law of the Sea (UNCLOS) was premised on a broad compromise between the interests of coastal States that favoured expansion of jurisdiction, with respect to both geographic extent of maritime zones and the intensity of regulatory control permitted, and those of maritime nations arguing for preservation of freedom of the seas in naval operations, shipping, marine scientific research and, in some cases, resource exploitation. The end result allowed for the geographical expansion of coastal State jurisdiction, and recognized quite complete coastal State jurisdiction (in the form of “sovereign rights”¹) over resource exploitation and other economic uses. However, UNCLOS also imposed significant limits on the scope of coastal State powers to prescribe and enforce their laws over

¹ “Sovereign rights” over the resources of the Exclusive Economic Zone (EEZ) and continental shelf denotes a level of control short of full sovereignty but more complete than mere “jurisdiction”. See UNCLOS Arts. 56 (1) (EEZ) and 77(1) (continental shelf).

foreign actors in certain maritime zones. Among the most important of these limits, which were central to the overall compromise that made UNCLOS possible, are those which relate to pollution control and foreign flagged vessels navigating in a coastal State's zones.

This paper will briefly review the essential elements of the UNCLOS regime as it relates to coastal State jurisdiction over foreign vessels in the territorial sea and Exclusive Economic Zone (EEZ),² and consider some recent developments which may indicate a retreat from (or perhaps an attack upon) the structure which was agreed in UNCLOS. Some conclusions will be suggested as to the potential dangers of a departure from the UNCLOS approach, and the merits of the system which was negotiated over many years and agreed in 1982.

2. Coastal State Control Over Vessel-Source Pollution: The UNCLOS Regime

UNCLOS imposes general obligations on coastal States to preserve and protect the marine environment,³ and to act “through the competent international organization [*generally IMO*] or general diplomatic conference” to establish “international rules and standards to prevent, reduce and control pollution of the marine environment from vessels...”.⁴ Flag States are obligated to adopt laws and regulations for pollution control which “at least have the same effect” as those international rules and standards.⁵

For coastal States acting within their maritime zones, the picture is somewhat more complex, and an understanding of its proper scope requires clear distinctions, first between *prescriptive* (or legislative) jurisdiction and *enforcement* jurisdiction, and second among the different maritime zones.

² This paper will not deal with jurisdiction over incidents in internal waters (including ports), where the coastal State has full sovereignty and similar jurisdictional issues do not arise. UNCLOS also sets out a regime for port State jurisdiction over vessels voluntarily in port, for incidents that occurred elsewhere, including in areas beyond the maritime zones of the port State. This form of jurisdiction does not give rise to the same concerns as are set out in this paper, and accordingly will not be addressed. In addition, coastal State jurisdiction over serious pollution incidents involving marine casualties is not questioned, and is not dealt with here.

³ UNCLOS Art. 192.

⁴ UNCLOS Art. 211(1)

⁵ UNCLOS Art. 211 (2).

Coastal States, in the exercise of their sovereignty over the territorial sea, may adopt national laws and regulations for the prevention and control of marine pollution from foreign flagged vessels in innocent passage through that zone.⁶ This broad legislative jurisdiction is consistent with the status of the territorial sea as sovereign territory (subject to the right of innocent passage), but even here a limitation is imposed, in that the coastal State may not legislate with respect to “design, construction, manning or equipment of foreign ships”, except where they are prescribing “generally accepted international rules or standards.”⁷ The logic of this provision is clear – it would be impractical if not impossible for vessels navigating internationally to meet multiple national standards for essential characteristics such as design and construction, and the use of international standards makes international mobility possible.⁸

For the EEZ, the geographical breadth of coastal State legislative jurisdiction is increased, while its intensity is further limited. The coastal State may legislate in the EEZ for the regulation of pollution from foreign vessels, but only to the extent that its laws conform *and give effect to* “generally accepted international rules and standards”⁹. The crucial effect of this article is to require that a coastal State can only legislate for pollution control over foreign vessels if it is acting pursuant to a generally accepted international standard¹⁰; it is not enough to say that there is no international rule which prohibits the application of the national rule.

With respect to enforcement jurisdiction, in the territorial sea the coastal State may, where there are “clear grounds” for believing that a foreign vessel has violated either national laws or international rules and standards for pollution prevention and control, undertake physical inspection and, if the evidence warrants, initiate proceedings

⁶ UNCLOS Arts. 211(4), 21(1)(f).

⁷ UNCLOS Art. 21(2).

⁸ The coastal State is also under a duty not to hamper innocent passage (UNCLOS Arts. 24(1) and 211(4)), and not to discriminate against the vessels of particular States, or vessels carrying cargo to and from particular States, in its regulations (UNCLOS Art. 24(1)(b)).

⁹ UNCLOS Art. 211(5).

¹⁰ In most instances, the relevant international standard for ship-source pollution control is the *International Convention for the Prevention of Pollution From Ships, 1973* as modified by the Protocol of 1978 (MARPOL 73/78).

against the vessel (including detention),¹¹ without violating the right of innocent passage. If the act of pollution is “wilful and serious”, then the vessel’s passage is no longer considered to be innocent, and the coastal State has complete enforcement jurisdiction.¹²

In the EEZ, the enforcement jurisdiction of coastal States is far more restricted, and reflects a carefully negotiated set of provisions that highlight the importance attached to enforcement issues by maritime States. Where there are “clear grounds” to believe that a vessel¹³ has committed a violation of “violation of applicable international rules and standards” within the EEZ, the coastal State may demand information as to identity, registry and relevant information “required to establish whether a violation has occurred.”¹⁴ Where there are “clear grounds” for believing that there has been a violation of international standards “resulting in a substantial discharge causing or threatening significant pollution of the marine environment”, then the coastal State may undertake a physical inspection of the vessel *if* the vessel has refused to provide information, or if the information provided is at odds with the facts.¹⁵ Finally, where there is “clear objective evidence” that the vessel has, in the EEZ, committed a violation “resulting in a discharge causing major damage or threat of major damage to the coastline or related interests of the coastal State, or to any resources of its territorial sea or exclusive economic zone”, then the coastal State may institute proceedings, including detention of the vessel.¹⁶

Even in cases where enforcement jurisdiction allows for arrest of vessels for pollution infractions in the EEZ, further safeguards apply. First, UNCLOS permits the application of monetary penalties only for violations of national laws or international standards related to vessel-source pollution which occur beyond the territorial sea

¹¹ UNCLOS Art. 220(2). Note that the enforcement jurisdiction over vessels in the territorial sea, but where the alleged infraction occurred in the EEZ, is governed by the more restrictive rules applicable to the EEZ: UNCLOS Art. 220(3).

¹² UNCLOS Art. 19(2)(f).

¹³ This provision applies to violations occurring in the EEZ, though the vessel at time of apprehension might be navigating in either the EEZ or the territorial sea.

¹⁴ UNCLOS Art. 220(3).

¹⁵ UNCLOS Art. 220(5).

¹⁶ UNCLOS Art. 200(6).

(which would include the EEZ).¹⁷ Second, for many cases of detentions for pollution violations in the territorial sea, the detaining State will be obliged to promptly release the vessel and crew upon provision of a reasonable bond or other financial security.¹⁸

This summary does not cover all of the safeguards and procedures which may be relevant to pollution cases, but the broad outlines are clear. First, the legislative jurisdiction of coastal States in the EEZ (and to a lesser extent in the territorial sea) is significantly constrained by a requirement that generally accepted international rules and standards be applied (in furtherance of the objective of free international navigation, as suggested above). Second, the enforcement jurisdiction of coastal States in the EEZ (and to some extent in the territorial sea) is *graduated*, and escalates from information requests to inspection to detention and institution of proceedings based on criteria related to severity of the violation and its impact, and on the clarity and certainty of evidence. The clear intention is to avoid detention, and to rely instead on reporting to the flag State for enforcement. Third, the continued detention of vessels and crews, beyond what is required for investigation, is discouraged (with special remedies available for breach), and imprisonment or corporal punishment of crews is generally prohibited.

3. Derogations From The UNCLOS Regime?

The general structure of the regime above, which was clearly designed to protect shipping interests against multiple national rules and standards and unnecessary enforcement actions, and to protect masters and crews from scapegoating and excessive penalties in national courts, has in recent years come under increasing pressure from national and regional actions which can be seen as undermining some of these essential safeguards. This section briefly reviews a few examples of this trend.

Departures From MARPOL – The primary source of “international standards” for the control of vessel source pollution under UNCLOS is found in MARPOL and associated IMO-negotiated arrangements. Public pressures over major pollution

¹⁷ UNCLOS Art. 220(1). Non-monetary penalties may be assessed for violations in the territorial sea, but only for acts of wilful and serious pollution: Art. 220(2)

¹⁸ UNCLOS Art. 226(1)(b). This provision is reinforced by a special expedited procedure for prompt release cases to be heard, on a compulsory basis, at the International Tribunal for the Law of the Sea: see Art. 292.

incidents in one region, and persistent problems of non-compliance with bilge water dumping rules in another, have led to legislative initiatives which appear to depart from the use of MARPOL as the accepted international standard for these purposes.¹⁹

The 2005 EU Directive on ship-source pollution,²⁰ introduced in the wake of the sinking of the *Prestige* in 2002, imposed a number of new requirements for EU Member States which are of direct relevance to the UNCLOS regime for pollution control. First, the Directive limited the effect of certain exceptions to liability in MARPOL, with a resultant expansion of potential liability to additional parties beyond those set out in MARPOL.²¹ Second, the Directive in some cases removed the crucial distinction between accidental and deliberate discharges. The Directive was challenged in the English High Court of Justice²² by an industry coalition, which successfully sought a reference of the following issues to the European Court of Justice (ECJ):

- (1) Whether the EU can impose criminal liability for discharges from foreign flag ships on the high seas or in the Exclusive Economic Zone independently of MARPOL, thereby limiting MARPOL defences.
- (2) Whether the EU can legislate for discharges in territorial seas otherwise than in accordance with MARPOL, again limiting MARPOL defences and expanding parties who may be liable.
- (3) Whether the standard of criminal liability for discharges resulting from "serious negligence" breaches the right of innocent passage in the territorial sea.
- (4) Whether the standard of liability in the Directive of "serious negligence" satisfies the requirement of legal certainty.²³

¹⁹ These cases are offered as examples only, and do not by any means constitute an exhaustive list of instances in which States have gone beyond MARPOL in national legislation – see, e.g. the discussion of U.S. legislation at P.K. Mukherjee, "Criminalisation And Unfair Treatment: The Seafarer's Perspective", CMI Colloquium, Cape Town 2006, p. 5; available at <http://www.comitemaritime.org/Capetown/pdf/11.pdf>.

²⁰ Directive 2005/35.

²¹ MARPOL exempts liability in cases of discharges caused by damage to equipment, where reasonable precautions were taken to minimize damage and there was no intent or recklessness on the part of master or owner. The Directive added a standard of "serious negligence" which would apply to parties not included in the MARPOL regulation, such as surveyors, charterers, ship managers and salvors.

²² *The Queen* on the application of *INTERTANKO, INTERCARGO, The Greek Shipping Cooperation Committee, Lloyd's Register, The International Salvage Union v. The Secretary of State for Transport* [2006] EWHC 1577 (Admin)

²³ Joint Press Release of Industry Coalition, June 3, 2008. An additional ground of reference, unrelated to the UNCLOS issues, was that the introduction of a standard of "serious negligence" did not satisfy requirements for legal certainty.

The ECJ, in its decision of June 3, 2008,²⁴ found that the validity of the Directive could not be determined by reference to its compatibility with MARPOL, as the European Community (EC) is not party to MARPOL. Furthermore, although the EC is a party to UNCLOS, it was found that the Convention regulates relationships between States, and not between States and individuals (i.e. ships and crews). As a result, it declined to find the Directive was invalid on either ground, and the EU was cleared to proceed to implementation, which would require legislation of the provisions by Member States. This ruling raises a number of difficulties, such as the position of EU Member States which are party to MARPOL potentially being required to breach their treaty obligations in order to comply with the Directive.

The implications for the consistency of the international legal regime, in an industry which relies above all on consistency and uniformity across jurisdictions, are troubling. The scope of criminal liability, with its impact on seafarers, is left to uncertain application in national courts. Furthermore, if there are conflicts between MARPOL and the Directive, are EU States expected to renounce the latter, thus undermining an effective and longstanding global regime for pollution control? Conflicts between the two regimes (regional and global) may yet surface in another context – what will be the position if a non-EU flag vessel is subject to penalties in an EU State which may be inconsistent with MARPOL and/or UNCLOS? If this matter proceeds to dispute settlement under Part XV of UNCLOS, will the EU State be caught between its regional obligations and the provisions of MARPOL and UNCLOS?

More fundamentally, the ECJ approach does not seem to reconcile with the underlying nature of coastal State jurisdiction over pollution control in the EEZ, as described above. That is, it is not enough to say that the EU is not party to MARPOL, or even to argue that the Directive is *not inconsistent* with MARPOL. EU member States, in legislating to apply the Directive, are only compliant with UNCLOS if they can show that they are acting pursuant to a generally accepted international standard, and in this case MARPOL is the only candidate for such a standard. Thus, the status

²⁴ *Intertanko and Others v Secretary of State for Transport*, ECJ Case C-308/06, June 3, 2008.

of the EU as a party or non-party to MARPOL is irrelevant – if these States implement anything other than the agreed international standard they are outside the legislative jurisdiction over the EEZ, as assigned to coastal States in UNCLOS.

In another example of a coastal State regulation which may extend beyond the confines of MARPOL (and thus of UNCLOS), the Canadian government in 2005 responded to a perceived problem with seabird oiling caused by oily bilge water dumping by amending the *Migratory Birds Convention Act (MBCA)*²⁵. The amended Act, which applies in the EEZ, makes it an offence for any person or vessel to “deposit a substance that is harmful to migratory birds, or permit such a substance to be deposited, in waters or an area frequented by migratory birds...” (see s. 5.1(1)). MARPOL-compliant discharges, such as permissible levels of oily bilge water, would be protected by a separate provision exempting “authorized” discharges under the *Canada Shipping Act 2001*, which applies MARPOL standards.²⁶ However, the broad language of the prohibition, which would apply to substances other than oil, comes up against the requirement under UNCLOS that such measures must be made pursuant to an internationally accepted standard, and there is no indication of what international rule or standard this provision is implementing.

Furthermore, the *MBCA* provides that masters, chief engineers, owners and operators in a position to influence relevant policies or activities “shall take all reasonable care to ensure that the vessel and all persons on board the vessel comply with section 5.1.”, and failure to take such care is itself an offence.²⁷ This section allows for liability without intent or recklessness, and the penalties include the possibility of imprisonment, all of which raises the potential for conflicts with both the MARPOL regime and the UNCLOS prohibition on non-monetary penalties.

²⁵ *Migratory Birds Convention Act, 1994*, R.S.C. 1994, c. 22, as am. by S.C. 2005, c. 23.

²⁶ *MBCA* s. 5.1(3)(a). Discharges within permitted concentrations are authorized under the *Regulations for the Prevention of Pollution from Ships and for Dangerous Chemicals (SOR/2007-86*, made under the *Canada Shipping Act 2001*.

²⁷ *MBCA* s.5.4. Section 13.1(1.8) provides that a party is not guilty of an offence if they can show they exercised due diligence to prevent the commission of the offence. The interaction of this defence with s. 5.4 is unclear, however, as the offence under s. 5.4 is in itself the failure to take reasonable care to ensure that the vessel and all on board comply with the Act.

Criminalisation and Detention of Seafarers - Despite the restrictions on detention during investigation and the prohibition on non-monetary penalties for pollution offences, both found in UNCLOS, it is not uncommon for seafarers to be confronted with the prospect of prolonged pre-trial detention and possible penal sanctions for actions which, at their worst, involve negligence and not intent. A study by the CMI International Working Group on the Fair Treatment of Seafarers, based on a survey of 52 countries, showed that a number of States allowed for penal sanctions in cases of pollution in the territorial sea, whether or not the “wilful and serious” standard had been met:

...[T]he responses given by Australia, Canada, France, the United Kingdom and the United States indicate that seafarers may be subject to criminal liability and penal prosecution in respect of pollution incidents in the territorial sea even in circumstances where the pollution is attributable to negligence and there is no proof of wilful behaviour.²⁸

High-profile examples of the detention and potential criminalization of seafarers include the *Prestige* and the *Erika*. The *Prestige* was a tanker which sank in severe weather conditions off Spain in 2002, causing significant pollution, after it had been refused refuge in Spanish ports. The master, Capt. Mangouras, was detained in prison for almost 3 months, and subsequently held in Spain until being allowed to return home to Greece in 2005 pending trial on charges entailing a possibility of a significant jail sentence. The *Erika* broke up and sank in the Bay of Biscay on 12 December 1999, and the master was detained and imprisoned by the French authorities, before being released from prison on 23 December, 1999 and being allowed to leave France in February of 2000. These cases are prominent examples of a problem manifested in a number of situations, including the *Tasman Spirit* (Pakistan) and the *Hebei Spirit* (South Korea), in which unjustified or unnecessarily extended detentions have given rise to concerns about the potential scapegoating of seafarers in the face of political pressure after highly visible oil spills.²⁹

Particularly Sensitive Sea Areas (PSSAs) - A PSSA is a sea area identified as requiring “special protection through action by IMO because of its significance for recognized ecological, socio-economic, or scientific attributes where such

²⁸ P.K. Mukherjee, *supra* note 19, p. 5.

²⁹ *Ibid.*

attributes may be vulnerable to damage by international shipping activities.”³⁰ Within a PSSA “specific measures can be used to control ...maritime activities”, including “routeing measures, strict application of MARPOL discharge and equipment requirements for ships, such as oil tankers; and installation of Vessel Traffic Services (VTS).”³¹ In recent years, the designation of a PSSA covering “Western European Waters” (2004), encompassing a large area from the south of Portugal to the Hebrides, and waters to the west of Ireland, gave rise to concerns about the use of this concept beyond its originally-intended purpose. As one industry group stated, the “Western European PSSA did not cover any particularly sensitive waters and could therefore undermine the whole concept as well as devalue the significance of ...areas currently designated as PSSAs...”³²

Another instance of a PSSA-related issue is the compulsory pilotage scheme imposed by Australia in 2006 in the Torres Strait, following on from an expansion of the Great Barrier Reef PSSA into this region. The scheme was protested by the U.S. and Singapore, and the debate over the validity of the compulsory pilotage, including whether it was specifically authorized by IMO, illustrates the complexity and sensitivity of such actions.³³

While the merits of any particular PSSA proposal are beyond the scope of this paper, what is of concern from an industry perspective is that a measure originally designed to protect specific and well-defined vulnerable ecosystems from identifiable harm from shipping not be used as a “back-door” means for increased regulation of very extensive marine areas.

³⁰ Revised Guidelines For The Identification And Designation Of Particularly Sensitive Sea Areas, IMO Assembly Resolution A 24/Res.982, 6 February 2006, Annex para. 1.2. PSSAs are distinct from “Special Areas” under MARPOL, which are designated areas within which more intensive regulatory measures are applied.

³¹ www.imo.org.

³² Statement of BIMCO Executive Committee, Feb. 26, 2004; available at: http://www.bimco.com/Members%20Area/News/General_News/2004/02/0226-BIMCO%20Executive%20Committee%20Meeting%20in%20Hong%20Kong.aspx.

³³ For an Australian summary of the development of the regime, including the arguments both pro and con, see “Compulsory Pilotage in the Torres Strait”, *Semaphore* 7/2007, available at http://www.navy.gov.au/Publication:Semaphore - Issue 7, 2007#cite_note-6.

Emerging Arctic Issues - Arctic marine issues have been of increasing international interest in recent years, with the prospect of increased shipping opportunities due to the reduction of sea ice in the summer, and the steps taken by Arctic littoral States to develop and assert their claims to the extended continental shelf in this potentially resource-rich region. While it may be too early to assess the long-term practical impacts of these developments, it is clear that issues related to the extent of coastal State jurisdiction will be central to the legal regime that emerges in the Arctic. Two such issues are the right of foreign ships to pass through waters claimed by Canada in its Arctic archipelago, and the proposed extension of the *Arctic Waters Pollution Prevention Act* (AWPPA)³⁴ (originally passed in 1970) to 200 nautical miles from shore.

In 1986 Canada enclosed its Arctic archipelago with straight baselines, confirming a claim to the waters within, including the North West Passage, as internal waters. This action was protested by the U.S. and other States (including the EU). A full examination of this dispute is beyond the scope of this paper, but its resolution, and the legitimacy of Canadian claims to be able to exclude or extensively regulate vessel traffic in the area, will depend on the categorization of the waters and the accompanying jurisdictional entitlements under UNCLOS. If these waters are internal waters by virtue of a Canadian “historic waters” entitlement, then vessel traffic may be fully regulated under the sovereignty of the coastal State. If they are internal waters only by virtue of the straight baseline designation of 1986, then under UNCLOS there would still exist a right of innocent passage through these waters.³⁵

If all or some of the waters of the North West Passage are found not to be internal waters (should the baseline system be determined to be invalid), then there would be a further question as to whether the waters were simply territorial sea areas subject to innocent passage, or a strait used for international navigation and thus subject to the somewhat more extensive right of strait passage under UNCLOS.³⁶

³⁴ *Arctic Waters Pollution Prevention Act*, R.S.C. 1985 c. A-12.

³⁵ UNCLOS Art. 8 (2) provides that the right of innocent passage survives in waters newly enclosed by straight baselines.

³⁶ UNCLOS Part III.

A further issue of coastal State jurisdiction in the Arctic concerns the application of the *AWPPA*. This Act, which applies out to 100 nautical miles from shore, makes provision for a number of measures to control shipping in those waters, including regulatory power over design and construction standards, separate waste deposit rules and special powers to create shipping safety control zones, within which more extensive inspection powers apply. Canada views these powers as justified under Art. 234 of UNCLOS, which allows for coastal States to apply pollution prevention and control measures in ice-covered waters (subject to a due regard for navigation).

The Canadian government has recently announced its intention to expand the geographic scope of the *AWPPA* out to 200 nautical miles, and to similarly extend vessel reporting requirements under *NORDREG* (the Arctic marine traffic system in Canadian waters).³⁷ These extensions may give rise to conflict over the exact nature of coastal State jurisdictional entitlements to regulate shipping in Arctic waters, replicating the issues that have already arisen in other regions, and which are discussed above.

4. Conclusions

The examples discussed in this paper, although not all are definitively violations of UNCLOS, nor equally serious in the extent to which they derogate from the regime of coastal State control over foreign shipping, do indicate trends which should be of concern both to the shipping industry and to States. The detention of seafarers, and the imposition of penal sanctions for unintentional acts of pollution, was obviously a matter which was given careful attention in UNCLOS, and fully dealt with by the prohibition on non-monetary penalties in most cases and by the limitations on coastal State powers of detention. The increasing tendency to subject seafarers to this type of treatment highlights the danger that they will become scapegoats, even in the absence of fault, to appease public pressure over pollution damage.

³⁷ *Backgrounder - Extending the Jurisdiction of Canadian Environment and Shipping Laws in the Arctic*, Prime Minister's Office, Ottawa, Aug. 27, 2008. Available at: <http://pm.gc.ca/eng/media.asp?id=2246>.

The UNCLOS requirement that coastal State pollution control measures in the EEZ be restricted to those which give effect to generally accepted rules and standards is another essential element of the Convention's regime for shipping. The alternative, which may be emerging as some States and regional blocs impose requirements not found in MARPOL 73/78 or other widely accepted agreements, would be to create multiple requirements and regimes which must be met by an industry that relies on its ability to move freely. Departures from a global pollution control regime comprising MARPOL (and other agreements negotiated under IMO auspices) would threaten the stability and long-term sustainability of the UNCLOS regime for shipping, which explicitly relies on such global standards. The UNCLOS compromise, with the expansion of coastal State geographic control balanced by the use of international rules and standards, reflects the reality of a shipping industry that is inherently global and cannot operate effectively under a patchwork of regional and national legal regimes with varying standards.