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ARCOPOL Platform

Legal Consequences for HNS Spill across Partner Countries

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19 May 2015

ARCOPOL Platform aims to further improve maritime safety in the Atlantic area and reinforce the protection of coastal regions from maritime pollution. This paper discusses the legal issues surrounding HNS spill, including jurisdiction of coastal States over vessels in transit and liability, focussing on post 2000 treaty and regulation changes at both EU and international level.

ARCOPOL Platform: Legal consequences of HNS spill across partner countries[1]

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'*Naufragium sibi quisque facit*' (Each man makes his own shipwreck) – Marcus Annaeus Lucan

Introduction

The safety of shipping in European waters is of crucial global importance: 90 percent of the European Union's trade with third countries is seaborne.[2] Protecting coastal States against the consequences of HNS spill, given the high volume of traffic on the seas, is equally important. The risk of accidents due to the concentration of traffic in the main European seaways is particularly high in areas where the traffic converges, such as the Dover Strait or the Strait of Gibraltar. Furthermore, the environmental consequences of an accident at sea, which can also occur outside areas of high traffic density (as in the incidents involving the ships *Erika* and *Prestige*), can be disastrous for the economy and the environment of the Member States concerned. A number of legal issues will be explored in the course of this paper. In this legal analysis on the consequences of HNS spill on ARCOPOL partner countries, I will focus on spills caused by vessels in transit. I will examine the legal issues that arose as a result of some of the highest profile spills, including the *Erika* and the *Prestige*. I will look at current applicable treaties and analyse the main EU and international laws and regulations in force. I will explore how the limited control over foreign ships in transit under the UN Law of the Sea Convention[3], or UNCLOS as it is better known, appears to conflict with the general duties of all states to protect and preserve the marine environment, to prevent maritime accidents and to take all necessary measures to minimise to the fullest possible extent pollution from vessels. I will examine the issue of criminal and civil liability and the current situation on same. I will explore how action taken by the EU, in particular the EU Commission and European Parliament post *Prestige* helped change the international landscape of safety in maritime shipping, acting as a catalyst for new regulation. I will make recommendations on what partner countries may consider in order to protect their environment and their economy should the need arise in the event of a major HNS spill.

The IMO

As a specialized agency of the United Nations, IMO is the global standard-setting authority for the safety, security and environmental performance of international shipping. Its main role is to create a regulatory framework for the shipping industry that is fair and effective, universally adopted and universally implemented.[4] The International Convention for the Prevention of Pollution from Ships (MARPOL) is the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes.[5]

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[1] ARCOPOL Partner countries: Ireland, UK, Spain, Portugal & France

[2] See COM (2002) 681, note 17 above, and European Community Shipowner Associations (ECSA), Annual Report 2003-2004, available at: www.ecsa.be/ar/Rapport%202003-2004.pdf.

[3] United Nations Convention on the Law of the Sea, 10 December 1982

[4] http://www.imo.org/About/Pages/Default.aspx Ireland joined the IMO in1951, Spain joined 1962, France joined 1952, Portugal joined 1976, UK joined 1949.

[5] The MARPOL Convention was adopted on 2 November 1973 at IMO. The Protocol of 1978 was adopted in response to a spate of tanker accidents in 1976-1977. As the 1973 MARPOL Convention had not yet entered

The IMO HNS Convention 2010

The International Maritime Organization (IMO) or its Secretary-General acts as depositary for a number of multilateral international instruments. In discharging these depositary responsibilities, the Secretary-General notifies the Governments concerned of signatures or the deposit of formal instruments in respect of the various international acts, of the entry into force of these acts, and of the receipt of other notifications and declarations in relation to them.[6] Hazardous and Noxious Substances or HNS are defined in the IMO HNS Convention.[7] This is based on lists of individual substances identified in a number of IMO Conventions and codes designed to ensure maritime safety and the prevention of pollution. HNS includes a wide range of substances with varying properties and hazards, including bulk and packaged goods. Bulk can include solids, liquids gas, liquefied gas and oils. The situation for chemical, or hazardous and noxious substances (HNS), spill risk and incidents is less well defined than that for oils. Essentially the volume of transport of chemicals is less than that for oils (especially when one considers the fuel oils that all large ships carry for propulsion) but the wide range of chemicals transported includes some that, if released, have the potential for causing much greater environmental damage.[8]

Bulk

	Can be found in
I **Oils**	Regulation I Appendix I MARPOL 73/78
II **Liquids**	Regulation 1.10 Annex II MARPOL 73/78
III **Liquids**	Chapter 17 of IBC Code
V **Gases**	Liquefied Gases - Chapter 19 of IGC Code
VI **Liquids**	Flashpoint not exceeding 60°C
VII **Solids**	Both in IMSBC Code and IMDG Code (1996) in packaged form

Packaged goods

	Can be found in
IV	IMDG Code

[9]

For the purposes of the HNS Protocol10, a Hazardous and Noxious Substance is defined as any substance other than oil which, if introduced into the marine environment is likely to create hazards

into force, the 1978 MARPOL Protocol absorbed the parent Convention. The combined instrument entered into force on 2 October 1983. In 1997, a Protocol was adopted to amend the Convention and a new Annex VI was added which entered into force on 19 May 2005.

[6] http://www.imo.org/About/Conventions/StatusOfConventions/Documents/Status%20-%202015.pdf, pg.2

[7] The treaty was adopted on 30 April 2010 and was open for signature from 1 November 2010 to 31 October 2011.

[8] 'Accidental spills at sea – Risk, impact, mitigation and the need for co-ordinated post-incident monitoring', Mark F. Kirby & Robin J. Law, Marine Pollution Bulletin 60 (2010) 797–803

[9] http://www.hnsconvention.org/Pages/Reporting.aspx, website accessed on 04 April 2015.

to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea. It should be noted that the definition of an HNS as defined by the OPRC-HNS Protocol 2000 differs widely from the definition of an HNS under the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances (HNS) by sea, otherwise known as the HNS Convention.

By 2009, the original 1996 HNS Convention had still not entered into force due to an insufficient number of State ratifications. In 2010, a second international conference adopted a protocol to the convention, which came to be known as 2010 HNS Protocol. The protocol was designed to overcome some implementation problems that had discouraged states from ratifying the original convention. It contains much of the original material from the 1996 Convention, but the liability scheme which previously deterred states from ratification, has been changed. Before this Convention can enter force, a number of criteria need to be met including that 12 IMO States must sign up. Under the 2010 Protocol, if damage is caused by bulk HNS, compensation would first be sought from the ship owner, up to a maximum limit of 100 million Special Drawing Rights (SDR) (approx US$150 million). The treaty also introduces strict liability for the shipowner and a system of compulsory insurance and insurance certificates. Eight countries in total have signed the Convention. France is the only ARCOPOL partner that has signed the 2010 Convention. The Convention has not yet entered into force. ARCOPOL partner states could consider enacting domestic legislation to give effect to part of the convention, even if there are legal issues surrounding the signing or ratification of the Convention as a whole.

Recent high profile HNS spills

The Erika

The sinking of the oil tanker Erika off the French coast in December 1999 spurred new developments in the establishment of Europe's maritime safety and pollution policy. The incident happened not in French territorial waters, but in its Exclusive Economic Zone. On 08 December 1999, the *Erika* sailed out of Dunkerque, bound for Livorno with a heavy cargo of around 31,000 tons of fuel oil. As she entered the Bay of Biscay she ran into a heavy storm and on 12 December 1999, she broke in two and sank, releasing thousands of tons of oil into the sea, killing marine life and polluting shores around Brittany. Significant gaps in regulation were exposed as a result of this incident. Only some three months after the accident, on 21 March 2000, the Commission adopted a "Communication on the safety of the seaborne oil trade" together with a number of proposals for specific measures to prevent such accidents happening again. This was to be the beginning of a new era, not only in EU regulation but in maritime safety regulation of HNS carrying vessels on a global scale. The legal battle that followed on both civil and criminal liability was to change the international standard on liability and challenge long standing ‘norms’ and IMO Conventions, as will be discussed further on in the paper.

The Prestige

Occurring only three years after the *Erika* accident, the *Prestige* prompted a strong political reaction at national, European and global levels, questioning yet again the effectiveness of existing safety and

[10]Protocol on Preparedness, Response and Co-operation to pollution Incidents by Hazardous and Noxious Substances, 2000 (OPRC-HNS Protocol) Adoption: 15 March 2000; Entry into force: 14 June 2007

vessel source pollution rules and standards[11]. The Prestige incident, considered to be one of the worst environmental catastrophes in history[12], affected 2,000 km of coastline, directly affecting three of the ARCOPOL partner countries namely Spain, France and Portugal. The tanker Prestige sank off the Spanish coast on 19 November 2002, spilling half of its 70,000 tonnes of heavy fuel oil, more environmentally damaging than crude oil, into the sea[13]. The background to the incident was as follows: On 13 November the tanker ran into a winter storm when it was transiting the Spanish exclusive economic zone (EEZ) across the Finisterre traffic separation scheme about 30 nautical miles[14] off the Galician coast. Despite various requests from the *Prestige's* captain and the Dutch salvage operator, the Spanish authorities refused to provide the tanker a place of refuge close to shore where, among other things, its cargo could be safely unloaded. Instead, they required the captain to restart the engine and gave instructions to the salvage operator to tow the ship away from the Spanish coast towards open sea in order, they said, to have more time to tackle eventual pollution. On 18 November the Portuguese navy prohibited the salvage operator to continue towing the *Prestige* in the direction of the Portuguese EEZ and forced a change of route towards the high seas and even rougher waters. For six days the damaged tanker was towed around the Atlantic Ocean like a bomb ready to explode whilst nobody knew what to do with it.[15]

It was estimated at the time that the economic consequences of this spill in Spain, France and Portugal may have been as high as 900 million USD, whereas only 186 million USD was available for compensation.[16] As with previous maritime accidents, the sinking of the *Prestige* triggered a call for re-evaluation of the existing international legal framework governing merchant shipping and worked as a catalyst for new developments both at the European and international level. The EU Commission acted promptly at this time, taking the lead internationally in their response. On 03 December 2002, only two weeks after the Prestige incident, the Commission adopted a communication on improving safety at sea.[17] After Prestige, naturally the Commission took an even firmer stance on the need for an improved compensation arrangement. This was confirmed at the European summit on 21 March 2003.[18] Thus was established in 2003, the supplementary fund under the new Protocol.

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[11] The *Prestige* accident strongly influenced the discussions within the United Nations under the agenda item on "oceans and the law of the sea": i.e. 2003 *UN Secretary-General Report* on the law of the sea, A/58/50, Section IV (hereinafter 2003 *UNSG Report)* and its addendum (A/58/65/Add.1, pp. 12-16); *Report* on the work of the 4th UN Open-Ended Informal
Consultative Process (ICP), A/58/95, Discussion Panel A on Safety of Navigation (hereinafter 2003 *ICP Report)* and the 2003 UN General Assembly Annual Resolution A/58/L.19, 23.12.2003, pp. 23-41 (hereinafter 2003 UNGA Resolution), all available at: www.un.org/Depts/los/general assembly/generalassembly.htm.

[12] For the extent of the ecological disaster, see Greenpeace, "The *Prestige* Disaster: One Year On", November 2003,

[13] On IMO's work in the aftermath of the *Prestige* accident, see "Contribution of the IMO to the 2004 Secretary-General Report on Oceans and the Law of the Sea" (hereinafter 2004
UNSG Report), available at: www.un.org/Depts/los/general-assembly/contributions59.htm.

[14] One nautical mile corresponds to 1,852 metres.

[15] The *Prestige* tanker, 243 metres in length and 42,000 gross register tons, was built in Japan in 1976, owned by the Mare Shipping Inc., Liberia, operated by the Universe Maritime Ltd, Greece and chartered by the Russian trading house Crown. The captain, Mr Mangouras. is Greek; the 27 members of the crew were Filipino and Romanian; the classification society used is ABS, based in Texas, US; the insurance company, the London Steamship Owner Association, is British and the rescue operations have been conducted by the Dutch company "Smit".

[16] Civil Liability for Marine Oil Pollution Damage: A comparative and economic study of the International, US and Chinese Regime, Wang Hui, Kluwer Law International, Netherlands (2011)

[17] Communication on Improving Safety at Sea in Response to the Prestige Accident, 03 December 2002.

[18] The Presidency Conclusions, European Council, Brussels, 20-12 March 2003 pg.26-27

Some Legal Issues surrounding & Consequences of *the Prestige* incident

Limited Jurisdiction of Coastal States *vis-a-vis* Dangerous Tankers carrying HNS in Transit

The UN Law of the Sea Convention 1982 (UNCLOS) recognises the IMO as the only body entitled to adopt measures interfering with shipping. It also recognises that UNCLOS is the proper forum in which to balance coastal state demands for more stringent protection with flag state needs to preserve the freedom of navigation.[19] The *Prestige* disaster raised serious concerns over the capacity of the jurisdictional framework set by the Law of the Sea Convention to effectively protect coastal states against the risk posed by the ever-increasing traffic of hazardous noxious substances (HNS) along their coastline.[20] As the law stands, Spain could not have done much to prohibit an old single-hull tanker like the *Prestige* from carrying a load of one of the most polluting types of oil at a short distance from its coastlines. The *Prestige* was lawfully exercising its freedom of navigation through the Spanish EEZ to which UNCLOS entitled it. Some of those rules have been criticised for being outdated, based on a three-decades-old balance of interests and not in line with the current requirements of maritime safety and marine environmental protection.[21] It can also be argued that they do not take into account the increasing environmental awareness of modern society, which is no longer prepared to tolerate the risk of maritime catastrophes in the name of freedom of navigation.[22] Some states, such as Denmark, Greece, Norway, Russia and the US (even
though it is not a party to UNCLOS), with strong maritime interests, firmly oppose any initiatives that would compromise the freedom of navigation and right of innocent passage guaranteed by the Convention. Foreign vessels in transit through waters under the jurisdiction of coastal states must comply with the safety and antipollution standards set by the IMO. In particular with regards to the Prestige, are the construction, design, equipment and manning standards (CDEMs) intended to reduce the risk of incidents or to minimise their environmental consequences (for example, the required double hulls for tankers).[23] As an immediate reaction to the *Prestige* accident Spain, France and Portugal banned single-hull tankers carrying heavy grades of oils, regardless of their flags, from entering their ports or internal waters.[24]The consequences of this agreement were immediate and stark. In the six months after the *Prestige* accident a total of 81 ships were expelled from the French and Spanish EEZs.[25] The threat of unilateralism and regionalism that followed the *Prestige* incident highlighted once again the need of uniformity in international merchant shipping and the importance of having maritime safety and environmental standards set at the global level that are within the jurisdictional framework of the LOSC and the IMO regulatory regime.[26] It is commonly agreed however that regional rules consistent with the Convention may well contribute to the effective implementation of the global regime.[27] Arguably, there is still some room left for the EU

[19] S. Rosenne and A. Yankov (eds.), *United Nations Convention on the Law of the Sea 1982,A Commentary,* vol. IV, pp. 176-207, Leiden/Boston, Martinus Nijhoff Publishers, 1991.
[20] COM Statement at the MSC, 76th session, 9.12.2002, reported in IMO Doc. MSC 76/23/ Add.1 (Annex 20), pp. 237-238
[21] COM (2002) 681, note 17 above, p. 12, and letter from the Vice President of the COM, Loyola de Palacio, to the UN Secretary-General, Kofi Annan, 20/12/2002, quoted in the 2003 *UNSG Report,* note 9 above, para. 58
[22] Veronica Frank, '*Consequences of the Prestige Sinking for European and International Law*', Research Associate, Netherlands Institute for the Law of the Sea (NILOS), Utrecht University.
[23] Principal CDEMs are contained the 1973 International Convention for the Prevention of Pollution from Ships, its 1978 Protocol, as amended, and the 1997 Protocol available at: www.admiraltylawguide.com/interconv.html and the 1974 International Convention for the Safety of Life at Sea and its Protocols, as amended, available at: www.admiraltylawguide.com/interconv.html
[24] Malaga Agreement between France, Portugal and Spain, 26/11/2002
[25] According to the Lloyd's List (5/06/2003, p. 1)
[26] Supra at 12, pg.10
[27] Supra at 10, pg. 201

regulatory action in the field of maritime safety and vessel source pollution as long as it is consistent with UNCLOS and is performed in strict co-ordination with the IMO.

Flag State & Coastal State control over ships in transit

There is no doubt that when it comes to HNS spill, prevention is better than cure. The *Prestige* incident focussed attention on the unwillingness or incapacity of certain flag states to exercise effective control over their vessels and to fully implement and enforce international standards. This leaves the coastal states in the situation whereby they must look at the control of foreign vessels navigating off their shores. Most of the enforcement mechanisms available to coastal states in these areas relate to the violation of discharge or navigational standards. Enforcement mechanisms that may be in place can do little prior to the pollution occurring. In general, coastal states may take action against a foreign ship in these areas only if they have clear proof that during the passage that vessel has committed a violation resulting in a "substantial discharge" causing or threatening "significant pollution" or "major damage" to the coastlines or related interests of the coastal state.[28] However, the enforcement powers of coastal states are particularly extensive for foreign State ships involved in "maritime casualties".[29] In this instance, the state may take all proportionate measures within and beyond the territorial sea to protect their coastline or related interests from actual or possible damage. Although the definition of "maritime casualty" is quite wide, these powers only apply after a casualty has taken place. The UNCLOS places strong emphasis on the need to prevent accidental pollution. It would however appear that the capacity of coastal states to take preventive action against potentially hazardous foreign vessels in transit (even when they are substandard) is restricted. What is limited is not the ability of the coastal states to take action, but rather their capacity to take "unilateral"action.

Is there a Legal obligation to provide Place of Refuge for vessels carrying HNS?

This legal question is not a new one. A cursory interrogation of the published literature reveals an abundance of studies that have demonstrated the capacity of accidental spills to have a significant environmental and economic impact. It is therefore understandable why coastal States would be slow to provide a place of refuge, particularly if the law allows for refuge to be refused. The *Prestige* incident evidenced the lack of a clear legal regime for dealing with distressed vessels and the absence of a positive legal duty upon coastal states to provide a place of refuge for ships in trouble. The decision of the Spanish authorities to refuse shelter to the tanker, although strongly criticised, is nothing new and is not uncommon in state practice. Coastal States are entitled to set special environmental requirements as a condition of access to their ports and may take all the necessary steps to prevent violation of these conditions.[30] The transport of HNS in the absence of a clear intent to pollute, violations of CDEMs or accidental discharges do not seem sufficient to qualify the passage as "not innocent". Nor does it give an express right to expel the vessel from a coastal State's waters, even in the case of serious threat to the marine environment of the coastal state. It is clear that a positive and wilful act is always needed.[31] The EU legal regime on "places of refuge" is contained in Directive 2002/59 on a Community Vessel Traffic Monitoring and Information System. The Directive,

[28]International straits (LOSC, Art. 233); archipelagic sea-lane passage *(ibid.,* Art. 54), and EEZ *(ibid.,* Art. 220(5) and (6))

[29] LOSC, Art. 221(2), defined as "collision of vessels, stranding or other incidents of navigation or other occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo

[30] LOSC 1982, Art. 25(2) and 211(3). Also, *Nicaragua* case *(Nicaragua v United States),*27/06/1986, [1986] ICJ Rep 14-101, and 148 at para. 213.

[31] R.R. Churchill and A.V. Lowe, *The Law of the Sea* (1999) Manchester, Manchester University Press, pg. 72

does not create a legal duty for EU coastal states to open their ports to vessels in trouble, but compels Member States to balance interests in accordance with the IMO guidelines.

EU and IMO rules on place of refuge follow the same approach. They both focus on preventive action. They require coastal states to have an effective structure in place, in order to react quickly to distress situations. They encourage coastal states to grant shelter whenever reasonably possible. When assessing the environmental risk, coastal states should always take into account that pushing away a ship in distress will almost certainly cause greater and more extended pollution than might otherwise be caused by granting a place of refuge. It has been suggested that offering shelter should be the general rule unless the coastal state proves that the risk of accepting the vessel is higher than refusing it.[32]

Liability for Damages due to HNS Spills

Liability is a naturally contentious issue in many areas of law but it can be starkly seen that it is a very contentious issue in relation to HNS spills. Two IMO Conventions later in the last 20 years and neither have made it across the line to date.[33] The IMO were not alone however. Following the sinking of the *Erika*, the EU Commission came to the conclusion that the existing liability and compensation arrangements failed to offer sufficient guarantees against oil pollution damage. Since the 1970s, the international community has drawn up international conventions under the auspices of the IMO laying down detailed rules on liability and compensation for damage in the event of pollution caused by tanker ships.

In 2000, the Commission proposed a change to liability arrangements. Their proposal complemented the existing international two-tier regime on liability and compensation for oil pollution damage by tankers by creating a European supplementary fund, the COPE Fund, to compensate victims of oil spills in European waters. The COPE Fund would only compensate victims whose claims have been considered justified, but who have nevertheless been unable to obtain full compensation under the international regime, owing to insufficient compensation limits. The ceiling at that time was EUR 200 million. Compensation from the COPE fund would thus be based on the same principles and rules as the international fund system, but subject to a ceiling which was deemed to be sufficient for any foreseeable disaster, i.e. EUR 1 000 million. The COPE Fund could also be used to speed up the payment of full compensation to the victims. The proposal was that any person in a Member State who received more than 150 000 tonnes of crude oil and/or heavy fuel oil per year would have to pay its contribution to the COPE Fund, in a proportion which corresponded to the amounts of oil received. The proposal was rejected, in particular by the oil industry as they would be the contributor to such fund and deemed it would increase their liability to an unreasonable extent. A Protocol to the Fund Convention, modelled on this European Cope Fund was later established and adopted by the IMO in 2003. The advantage of this is that it now applied internationally.

Criminal Liability

The Cour de Cassation in Paris upheld the 2008 ruling that the company 'Total' had criminal responsibility over the spill of some 20,000 metric tonnes (22,046 tons) of crude oil, when the tanker *Erika* split apart off the northwest coast of France.[34] The court also ruled that Total had civil

[32]Reflected in the following case law: *Ireland and the Attorney-General (MV Toledo),* (1995) 2 ILRM 30, pg.48-49 and *Raad van State (the Netherlands) v Long Lin, Ship en Schade (Long Lin),* (1995) 95 ILRM 391.
[33]IMO HNS Conventions 1996 &2010
[34] http://www.reuters.com/article/2012/09/25/us-france-erika-idUSBRE88O0LX20120925 accessed on 01 May 2015

responsibility in the accident, which killed tens of thousands of sea birds and soiled some 400 km (250 miles) of coastline. The company had hoped to overturn the ruling and clear a stain on Total's image on the grounds the Italian-owned *Erika* was outside French waters and flying a Maltese flag when it sank, limiting the applicability of French laws.[35] They argued that convicting Total went against international conventions that place liability for oil spills with ship owners rather than companies chartering the vessels. The International Civil Liability Convention was adopted to ensure that adequate compensation is available to persons who suffer oil pollution damage resulting from maritime casualties involving oil-carrying ships. In a challenge to that Convention, the 2008 judgement against Total endorsed the argument that oil companies should be held responsible for the state of the tankers they use and backed the idea of "environmental responsibility" in such cases. All ARCOPOL partner States are contracted parties to this Convention.[36]

EU Law and its relationship with International Law: General Commentary

When the EU introduced regulations that could potentially be considered inconsistent with international standards such as UNCLOS and MARPOL, the international community expressed concern. It could be viewed as the EU acting unilaterally and as a consequence undermining 'universal' code. EU Regulation 1726/2003 introduced three main innovative elements compared to the international regime set out in MARPOL 73/78. Firstly, it introduced an immediate ban on the transport of HGO in single- hulled tankers and required that in the future only vessels equipped with a double hull will be entitled to carry HGO within or from the EU. Secondly, it accelerated the phasing out of single-hull tankers to 2010 rather than 2015. Thirdly, it strengthened the inspection regime on younger single-hull tankers pending their final phasing out.[37] The right of port states to set conditions for the entrance into ports of foreign ships going beyond international standards. This is not necessarily a negative. To deny access to vessels not complying with these requirements is widely recognised as reflecting customary international law.[38] Nevertheless, port state regulatory capacity is not unlimited, as it may be restricted by treaty obligations and by the general principles of international law, such as proportionality, non-discrimination and prohibition of abuse of right. It is worth noting that the EU's accelerated phasing out of single hulls has precedents in state practice, such as the US Oil Pollution Act (OPA) which was adopted in 1990 following the *Exxon Valdez* disaster, and whose consistency with UNCLOS seems to be uncontested and not of issue. The EU Regulation seems to be consistent with the general principles of International law. Firstly, the EU reaction appears to be "proportional" to the high level of risk posed by the increasing volume of oil transported along the European coasts. Secondly, there is no "abuse of right".' The primary objective of the EU Regulation is to enhance maritime safety and marine environmental protection and there is a direct connection between the new standards and EU legitimate environmental interests.

Conclusion

Larger spills in recent years mostly concerned pre-MARPOL single hull tankers built in the 1970s such as the *Erika* in 1999 (20 000 t spilled, built in 1975), the *Prestige* in 2002 (63 000 t, 1976) and the Tasman Spirit in 2003 (29 000 t,1979) or MARPOL single hull tankers built in the early 1980s

[35] In France, the constitution recognises that Treaty Law, once ratified by the State takes primacy over domestic law. This is not the case in Ireland. In the case of the Erika, this gave UNCLOS primacy which allowed the French court jurisdiction over the case even though it occurred outside the 12nm territorial limit.

[36] Status of IMO Conventions at http://www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx accessed 02 April 2015

[37] Supra at 21, pg.19

[38] L de La Fayette, "Access to Ports in International Law", (1996) 11 IJMCL 1-22

such as the *Petrolimex* 01 in 2001 (39 000 t, 1983). However, with the accelerated final phase-out of ships with single hull constructions (Pre-MARPOL in 2005 and MARPOL not later than 2010), the composition and average age of the world tanker fleet is changing. Following the EU and international response to incidents such as *Prestige,* there have been some positive changes to the law and regulation of vessels carrying HNS. That said, the international regime for safety and environmental protection in merchant shipping still presents some gaps.

The exercise of the freedom of navigation by foreign ships through waters under the jurisdiction of coastal states is guaranteed by the UNCLOS.[39] Unilateral regional agreements and EU regulations must be written within the general framework and spirit of UNCLOS to avoid regionalisation of maritime safety law. The UN body, the IMO is charged with the supervision of international maritime legislation. In order to ensure global uniformity, it is crucial that measures adopted by individual States are constructed in accordance with international law and the IMO. In the current climate, there seems to be a general consensus that, rather than amending the Convention, coastal states should take full advantage of the possibilities already available under the UNCLOS and IMO instruments to prevent maritime accidents. For now, there is no need for new regulation. There is however the need for States to take full advantage to clarify and effectively enforce the existing ones.

[39] UNCLOS, Arts 58 and 87