Options for Regional Regulation of Merchant Shipping Outside IMO, with Particular Reference to the Arctic Region

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Overview of presentation

- International legal regime for merchant shipping
- Mandate and practice IMO
- Mandate and relevant practice Arctic Council
- Options for regional regulation of merchant shipping outside IMO, with particular reference to the Arctic Region
International legal regime for merchant shipping

  - Key role of ‘competent international organizations’ in implementation by means of standard-setting
  - Prescriptive jurisdiction linked by ‘rules of reference’ to certain output of these organizations → generally accepted international rules and standards (GAIRAS)
    - Flag states: mandatory minimum
    - Coastal states: optional maximum
    - Port states: no linkage with rules of reference & GAIRAS
International legal regime for merchant shipping (cont.)

- Objective UNCLOS: uniformity in regulation international shipping (cont.)
  - Exceptions (more stringent standards than GAIRAS)
    - Coastal state
      - Non-CDEM (construction, design, equipment & manning) standards in territorial sea & archipelagic waters (Art. 21(2)); e.g. discharge & navigation standards
      - Article 234 (Ice-covered areas)
    - Flag state
      - Exercise is restrained by impacts on competitiveness
- General international law (confirmed by UNCLOS)
  - Residual jurisdiction in relation to ports and internal waters
International legal regime for merchant shipping (cont.)

• ‘competent international organizations’ for merchant shipping → no singular body
  – In principle global, but residual role regional bodies not excluded (see further below)
  – Standard-setting bodies
    • International Maritime Organization (IMO)
    • International Labour Organization (ILO)
    • International Atomic Energy Agency (IAEA)
  – Other relevant global bodies
    • International Hydrographic Organization (IHO)
    • World Meteorological Organization (WMO)
Mandate and practice IMO

- IMO is primary ‘competent international organization’ under UNCLOS
- Mandate (purposes) of IMO
  - Art. 1(a) of the IMO Convention (consolidated version)
    - Original mandate narrower: maritime safety and efficiency of navigation
  - Tacit agreement to ignore Art. 1(b) and (c) of the IMO Convention on discriminatory action and restrictive practices
Article 1 of the IMO Convention

The purposes of the Organization are
(a) To provide machinery for co-operation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade; to encourage and facilitate the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and prevention and control of marine pollution from ships (...).
Mandate and practice IMO (cont.)

• Substantive mandate, e.g.
  – Maritime safety → maritime security, unlawful acts against the safety of navigation, piracy & illegal migrants - persons rescued at sea
  – Vessel-source pollution → impact of shipping on the marine environment (anchoring, ballast water & sediments, anti-fouling systems, ship recycling & noise)

• Types of standards, e.g.
  – E.g. CDEM & discharge standards → ship reporting systems, emission standards & ballast water treatment standards
  – Few restraints: e.g. prior notification or authorization
  – Not in Polar Code: standards or requirements on ice-breaker assistance, ice-pilots or ice-navigators, or on convoys
Mandate and practice IMO (cont.)

• Fostering compliance with IMO instruments
  – Reporting obligations
  – 1995: compliance audit of STCW
  – Sub-Committee on Flag State Implementation (FSI)
    • 1999: Self-Assessment of Flag State Performance
    • 2005: Voluntary IMO Audit Scheme
      – Not only flag state, but also port & coastal state
    • 2009: Process towards making IMO Audit Scheme mandatory
      • 2013: Mandatory IMO Audit Scheme to gradually enter into force in coming years
  – Enforcement powers of flag, coastal and port states unaffected
Mandate and practice IMO (cont.)

- Constraints on the expansion of IMO’s mandate
  - Mandates of other global bodies
  - Domain of (the overarching regime of) the international law of the sea, including the UNCLOS
    - Not always easy to determine, *inter alia* due to implementation role of IMO under UNCLOS (e.g. ‘cooperative legislative competence’ → but IMO also developed similar mechanisms in other situations)
- Controversies
  - Prior notification and authorization for ships carrying hazardous cargoes
  - Turkey’s 1994 regulations on Turkish Straits
  - Australia’s 2006 regulations on the Torres Strait
  - Canada’s 2010 NORDREG Regulations
Mandate and relevant practice Arctic Council

• Very broad mandate under 1996 Ottawa Declaration
• Arctic Marine Shipping Assessment (AMSA; 2009)
  – Recommendations:
    • Support negotiation mandatory Polar Code
    • Negotiate Arctic SAR Agreement (implements, *inter alia*, IMO’s SAR Convention) → gave rise to ‘Arctic Council System’ (ACS)
    • Negotiate Arctic MOPPR Agreement (implements IMO’s OPRC 90 and Intervention Convention)
  – Ongoing AMSA follow-up; e.g. use and carriage of heavy fuel oil (HFO); special areas
Mandate and relevant practice Arctic Council (cont.)

• Arctic Ocean Review (AOR) project (2009-2013)
  – Ch. 9 ‘Recommendations’; three on Arctic Marine Operations and Shipping
    • Two on action within IMO or ‘existing port state arrangements’
    • Guidelines on sustainable tourism and cruise-ship operations → Arctic Shipborne Tourism Initiative (ASTI) led by PAME

• Main problem Arctic Council: limited participation
Options for regional regulation of merchant shipping outside IMO, with particular reference to the Arctic Region

- Regional implementation of global instruments
- Exercising uniform, residual flag, coastal and port state prescriptive jurisdiction in concert
- Initiatives to ensure compliance, e.g.
  - Port state control
  - Aerial and satellite-based monitoring and surveillance of intentional and accidental pollution incidents
- Resolving regional merchant shipping disagreements & disputes within the domain of the international law of the sea
Thank you!

Questions?