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**THE INTERNATIONALIZATION,
UNILATERALISM AND REGIONALIZATION OF
MARITIME SAFETY AND PROTECTION
OF THE MARINE ENVIRONMENT:
A Comparative Study**

By

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DECLARATION

I certify that all the materials in this dissertation that is not my own work has been identified, and that no material is included for which a degree has been previously been conferred on me.

The contents of this Dissertation reflect my own personal views, and are not necessarily endorsed by the University.

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ABSTRACT

This paper represents an examination and comparative study of the following three concepts: internationalization, unilateralism and regionalization in the realm of maritime safety and protection of the marine environment.

The recent proliferation of unilateral and regional actions in the area of maritime safety and environmental protection is questioning the effectiveness of international rules and regulations agreed upon by IMO Member States, hence the interest of the author in this study.

In this context, the concept of Internationalization expresses the quest for uniformity. A historical survey is presented to show that safety legislation has evolved from urban regulations to international ones and this process is irreversible. The need for uniformity was not idealism, but a practical need. The concept of maritime safety is not divisible. Therefore, maritime nations agreed to establish IMO as an international forum for the setting of safety standards.

The concept of regionalism is analyzed from the perspective of various regional arrangements, and the involvement of regional actors in the international regulatory arena, namely the European Commission. The study also approaches the issue of unilateralism and regionalism, illustrated by some relevant maritime disasters, as dissenting forces from internationalism and its uniform international standards. Moreover, the legitimacy of such actions is discussed against the background of UNCLOS.

In conclusion, the author states that these concepts ultimately are interdependent. However, unilateral and regional solutions to safety and prevention of pollution from ships must be complementary to the international ones. They may be regional in design, but international in concept.

Shipping as an international activity needs a uniform regulatory framework.

KEYWORDS: IMO, the European Commission, internationalization, uniformity, international standards, unilateralism, regionalization.

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LIST OF ABBREVIATIONS

AIS	Automatic Identification Systems
BIMCO	The Baltic and International Maritime Council
BSPC	Baltic Sea Parliamentary Conference
CAS	Condition Assessment Scheme
CBSS	Council of Baltic Sea States
CMI	The Comité Maritime International
CTP	Common Transport Policy
DB	Double bottom
DS	Double side
EC	The European Community
ECDIS	Electronic charts display and information system
ECOSOC	UN Economic and Social Commission
ECSC	European Coal and Steel Community
EEA	European Economic Area
EEC	European Economic Community
EFTA	European Free Trade Association
EMU	Economic and Monetary Union
EU	European Union
FSA	Formal Safety Assessment
HELCOM	Helsinki Commission
ICJ	International Court of Justice
ILO	International Labour Organization
IMCO	Intergovernmental Maritime Consultative Organization
IMO	International Maritime Organization
INTERTANKO	The international Association of Independent Tanker Owners
ISO	International Organization for Standardization
MARPOL	International Convention for the Prevention of Pollution from Ships 1973, as amended by the Protocol of 1978
MEPC	Marine Environmental Protection Committee
MOU	Memorandum of Understanding
NTSB	National Transportation Safety Board
OILPOL	1954 International Convention for the Prevention of Pollution of the

	Sea by Oil
POE	Panel of Experts
PSC	Port State Control
SEA	Single European Act
SOLAS	International Convention for the Safety of Life at Sea, 1974, as amended.
UN	United Nations
UNCLOS	1982 United Nations Law of the Sea Convention
UNCTAD	United Nations Conference on Trade and Development
UK	United Kingdom
US/USA	United States of America
WG	Working Group

Chapter 1

1.0 Introduction

The International Maritime Organization (IMO) is one of the specialized agencies of the United Nations system with a substantial global mandate and an increasingly complex and challenging mission. Since its inception, the IMO's main mandate as an Intergovernmental Organization has been the improvement of safety of international shipping and the protection of the marine environment from vessel source pollution (Campbell, Husagen & Sinha, 2001).

This mandate has been achieved through developing uniform standards and regulations through the adoption of treaty instruments. Such treaties within the domain of public international Law, formulated and implemented as conventions or protocols, are binding to only those States that are signatories to them. Further, the States are free to decide the implementation of various other resolutions, recommendations and guidelines either in whole or in part on the strength of their sovereign right and also on the basis of their requirement and capacities. Therefore, IMO is an international law making body through the articulation of conventions and other treaty instruments, which create uniformity in regulations and standards for the shipping. Moreover, as stipulated in the 1982 UN Law of the Sea Convention, IMO is the only "competent international organization" empowered to promote the 'general adoption of the highest practicable standards in matters concerning the maritime safety, efficiency of navigation and prevention and control of marine pollution from ships'. The activity of IMO is carried out by its members, nowadays 162 Member States, through five technical committees, various sub-committees, working groups and various other bodies.

However, it is an commendable achievement that all international regulations and standards concerning safety at sea have emerged form the consensus achieved among the Member States of IMO. “IMO has been developing consensus”, as Srivastava (1989) metaphorically defined IMO’s activity. Moreover, IMO is the forum where Member States make decisions and where various stakeholders of the shipping industry are represented and consulted. The effort always is to reach consensus.

Shipping as an activity, international in its nature, needs a uniform regulatory framework that provides order and predictability and an equitable economic footing for all stakeholders. This desideratum can be achieved through internationally agreed standards, which only States are in a position to agree upon and international consensus is a sine qua non for the correct functioning of the shipping industry.

However, the policy of consensus and the effectiveness of internationally agreed rules and regulations are at present increasingly questioned and threatened by the recrudescence of unilateral and regional legislative initiatives and actions. The proponents of one-side actions believe that this is the right way to enhance safety and to better protect the marine environment. Every fresh disaster at sea calls into question the effectiveness of the traditional path of consensus and ultimately the relevance of IMO as the main regulatory body. Every State whose coastlines have been heavily polluted demands fast solutions and tangible signs of better safety. Reacting to perceived populist causes, politicians have sailed also into marine safety waters with enthusiasm. Thus, a furious political call for fresh regulations following marine accidents is likely to result in successful law making, more often based on political expediency rather than on sound judgements and compelling need.

One of the prime casualty of the Prestige disaster may be the international consensus of support for the IMO as the lead organization for developing of uniform standards and regulations for vessel safety and environmental protection.

The rot began when the United States moved unilaterally to introduce the Oil Pollution Act of 1990 in the wake of the Exxon Valdez disaster. More recently, moves by France, Spain, Portugal and the European Union to respond unilaterally to the Prestige oil spill have placed “the whole notion of international consensus on maritime-related issues in question”.

There is no doubt that this new wave of unilateral measures, is now threatening the international regime of marine safety as developed over the years through the International Maritime Organization (IMO) and is blurring the image of IMO. However, one of the sad facets of this reality is that the proponents of these actions, in their capacity as IMO Member States, are concentrating more on their own national and regional interests rather than on organisational solidarity and common interests. They are seeking a short-term solution. However, this might be the “fate” of such international institutions.

Having said this one can pose a question. Is IMO still relevant?

Had IMO not existed the shipping industry would have needed to reinvent it. An international industry like shipping obviously needs an international body to tackle its international problems.

The Internationalization, Unilateralism and Regionalization of Maritime Safety and Protection of the Marine Environment is a contemporary issue. Therefore,

In order to understand issues of today we need to appreciate the issues of yesterday and at the same time to be able to develop a prognosis of what is going to happen and what may happen tomorrow. Moreover, we should be able to change the course of the tomorrow's issues and make things happen in a different way, ideally in a better way (Mukherjee, 2003).

This paper represents an introspective study into the phenomena of internationalization, unilateralism and regionalization in the realm of maritime safety and protection of the marine environment.

The paper is divided in four parts. The first part is dedicated to the concept of internationalization. It looks in a retrospect manner to the phenomenon of internationalization and proposes answers to the following questions: What is internationalization? How the society at large has moved towards internationalization? And ultimately, why there exist need for internationalization?

Thereafter, Chapter two and the first of this part, defines the concept of internationalization and presents a brief historical survey of the process itself in the domain of international intercourse of the international community at large. It presents the main steps towards internationalization finally culminating in the creation of public international organizations as an exponent of the internationalization process.

Chapter three deals with the phenomenon of internationalization in the field of maritime transport, preponderantly in the domain of maritime safety and protection of the marine environment from vessel source pollution. In this context, the International Maritime Organization represents the last stage of the internationalization process. The author presents the main stages towards the creation of IMO, which were the main reasons why the international community agreed that regulating ship safety must be pursued through the establishment of uniform international standards and the need for the inception of an international regulatory body to advocate its mutual interests. The evolution of internationalization process in the area of marine environmental protection from vessel source pollution is approached in the same manner.

The Second Part contains the next three chapters of this paper and is dedicated primarily to the concepts both of regionalism and unilateralism. The concept of regionalism is dealt with from two perspectives: first regionalism on land and second regionalism at sea. Therefore, Chapter four tackle the issue of regionalism on land. The concept of regionalism is briefly defined, the main forms of the manifestation of regionalism on land and the reasons which led States to co-operate at regional level. Further, the main fears with regard to regionalism as opposed to internationalization are discussed. This chapter also contains some reflections

regarding regionalism and regional rules in the context of International Law. Chapter five deals with the concept of regionalism from the second perspective, namely regionalism at sea. First it presents the concept of marine regionalism and the suitability and efficiency of marine regional arrangements in the area of safety and prevention of pollution. Second, one of the most important regional actors in the sphere of maritime transport both maritime policy and regulatory aspects, is presented, namely the European Commission of the European Community. First, the actor is presented within the context of the European integration process, second its main roles and responsibilities in the realm of safety at sea are described, and third a retrospect of the European maritime safety policy and the main policy milestones are noted. Last, the regional regime of European shipping legislation within the context of EU legislative framework is presented.

Chapter six approaches the issue of unilateralism and regionalism at sea in the area of safety and environmental protection regulations. Unilateral actions are defined. Moreover, the tactics employed by the proponents of unilateral actions to achieve their goals are succinctly presented. As to exemplify the forms and aims of unilateral actions, the author presents the main causes, which have led to the emergence of such actions. All these issues are illustrated through the presentation of some relevant maritime disasters that have led to unilateral and regional approaches in the area of safety of life at sea and the protection of the marine environment.

Part three contains Chapter seven which analyses the whole issue of internationalization, unilateralism and regionalization of maritime safety and protection of the marine environment against the background of global regulatory framework provided by the 1982 UN Law of the Sea Convention. The rights and duties of States in their capacity as Flag, Coastal and Port States, to adopt and enforce the international standards concerning safety at sea within various maritime zones are presented.

The Fourth Part contains chapter eight which concludes that shipping industry needs a uniform regulatory framework.

PART I

Chapter 2

2.0 Internationalization

2.1 The concept of internationalization

The evolution and development of international intercourse among various actors, private and public, in various fields of activity has called for international regulation by institutional means. The trend towards the creation of International Organizations as an exponent of the Internationalization process was gradual and marked by the evolution of international relations as a result of society's maturation at large. The need for States to co-operate and to represent their own interests through permanent and organised structures has been the common denominator throughout the entire process of Internationalization.

Internationalization may be defined as the process of institutionalization of international relations among States¹.

This chapter presents a brief historical survey of the process of internationalization in the domain of international intercourse of the international community at large.

2.2. Steps towards internationalization – a historical survey

2.2.1 Early steps

The institutions of consul and that of the ambassador represent the first step in the internationalization process. They are the distant origins of international organisations (Amerasinghe, 1996, p.1). The development of these institutions gave rise to what is known in international law as "bilateral relationships". However, bilateralism as a traditional method of diplomatic intercourse proved not to be adequate as a means of "representing the interests of all States concerned" in a

¹ This definition is proposed by the writer.

particular issue. A problem would arise that concerned not two, but three or more States; hence a means of representing the interests of all those States concerned had to be found (Sands & Klein, 2001, p. 1).

The system of ad-hoc conferences represented by an International Conference as “gathering of representatives from several States” was the next stage of the internationalization process. This institution was considered the appropriate tool for achieving the desideratum of solving problems on a multilateral basis and is very much in evidence still today. However, this system proved inadequate for the solution of political problems. Also, it proved to be even more inadequate as mechanism for the regulation of the relations between groups representing private concerns (Amerasinghe, 1996, p. 2).

2.2.2 The nineteenth Century

The nineteenth century² has been described as “the era of preparation for international organizations” (Claude, 1971)³. The nineteenth century’s advances in industry, trade, transport and communications intensified the international economic relationships among States. Therefore, the nineteenth century saw an impressive development of associations or unions, international in character, first between groups other than governments, then by the governments themselves predominantly in the administrative field (Ott, 1987, p. 351).

2.2.2.1 Private International Unions

According to Amerasinghe (1996, p. 3) “private unions sprang from the realization by non-governmental bodies, whether individual or corporate associations that their interests had an international character which demanded the furtherance via a permanent international association”.⁴ Private unions created not only a worldwide

² This chronological period being between 1815 and 1914.

³ As quoted by Amerasinghe (1996, p. 5).

⁴ Between 1840 and the beginning of the First World War 400 unions came into existence. The continued proliferation of these private unions today is proved by their more modern manifestation in the form of NGOs.

programme, but also promoted a long series of treaties in which States gradually bound themselves.⁵

First and foremost, “these private unions emphasised the need for permanent as opposed to ad-hoc association and for periodic, regular meetings, while also recognizing the importance of a permanent secretariat” (Sands & Klein, 2001, p.5).

2.2.2.2 Public International Unions

Public international unions were “permanent associations of governments or administrations (i.e. postal or railway) based upon a treaty of a multilateral rather than bilateral type and having a definite criterion purpose” (Amerasinghe, 1996, p.4).

The need for governmental and state action in various domains was signalled by the private unions’ activities. As a consequence, Public International Unions were established in those fields of activity where the private actors were already active such as communications, transportation, and public health. This is the case of the International Labour Organization (ILO), whose forerunner was the International Association of the Legal Protection of Labour. Other notable Public Unions were the International Telegraphic Union (1865) and the Universal Postal Union (1874) (Ott, 1987, p. 351).

2.2.2.3 International Organizations

International organizations are the last stage of the internationalization process. International conferences periodically convened by States to deal with particular issues or solve specific problems, which had arisen in international relations, may be considered the successors to international organizations. Also, the inception of private international unions followed by public international unions foreshadowed the development of international organizations at the intergovernmental level. “...*Private activity led and state activity followed* “ (Sands & Klein, 2001, p.6).

⁵ The most relevant examples in this respect are the promotion of the Geneva Conventions of 1864, 1906, 1929 and 1749 by the International Committee of the Red Cross, and of the Conventions of the Safety of Life at Sea of 1914 and 1929 by the International Maritime Committee (Sands & Klein, p. 5).

To be considered an International Organization, an entity must have the following characteristics:

Its membership must be composed of states and /or another international organizations, it must be established by treaty, must have an autonomous will distinct from that of its members and be vested with legal personality, and it must be capable of adopting norms addressed to its members (Sands and Klein, 2001, p.16).

2.3 Conclusion

As illustrated throughout this chapter international cooperation among States has taken many forms, and followed a pattern generated by a practical need to identify the most suitable means and mechanisms of representing the interests of all States concerned in a particular issue, and seeking solutions to problems arising from international intercourse among States, promoting and enhancing their interests in various fields of activity. However, the evolution and development of international intercourse among various actors private and public in various fields of activity called for international regulation by institutional means. This has led to the creation of international organizations.

Chapter 3

3.0 Internationalization and shipping industry: the quest for uniformity

The internationalization process has also been manifested in the maritime transport field of activity. The driving force of the internationalization process in this field was the need of States to co-operate in achieving safe and efficient maritime transport. Ultimately this has led to the creation of a plethora of international organizations, either governmental or non-governmental, dealing with various aspects of shipping industry. In this respect mention can be made of CMI, UNCTAD, ILO, and IMO.

This chapter presents the evolution of the internationalization process in the area of maritime safety and protection of the marine environment from vessel source pollution. It presents the main reasons for an international approach to an international activity and the main stages towards the creation of an international body to deal with these issues.

3.1 Internationalization and maritime safety

As indicated by the IMO⁶ itself:

Shipping is the most international of all the world's great industries and one of the most dangerous. It has always been recognized that the best way of improving safety at sea is by developing international regulations that are followed by all shipping nations.

This has led to the creation of the International Maritime Organization, a specialized agency of the United Nations promoting co-operation among states with various

⁶ Retrieved from the World Wide Web on the 22nd of June 2003 <http://www.imo.org/home.asp>

interests in the shipping industry. IMO is the forum where uniform international regulations and standards are enacted; hence it provides the international regulatory framework for shipping.

3.1.1 Reasons for internationalization

In terms of maritime safety, the need to having uniform rules and customs was at the beginning just a “basic” one: the need to have a common understanding of the “rules of the road” and a common method of passing messages between ships and between ships and shore. In time, this need has evolved and got sophisticated with the growing interests of maritime nations in the safety of their fleet. Nowadays, uniform standards are required in order to have a “comparable degree of safety and a common platform for competitiveness among various fleets” (Horrocks, 1992, p.2).

However, the main reasons that have led the international community to agree that the regulation of shipping should be pursued through the establishment of uniform international regulations and standards are presented below.

Firstly, shipping is a complex activity. This is due to the ship’s design, operation, operating area, voyage length, etc. Hence shipping has necessitated international conventions to tackle the issues related to maritime safety.

The second reason is that “in shipping safety it is not divisible” (Balkin, 2000, p. 11). Therefore, international safety standards and regulations, which are deemed necessary for enhancing safety at sea and marine environmental protection, must be applicable and uniformly applied globally to all ships irrespective of the flag they fly or the port or jurisdiction a ship may find itself in at a particular time.

Thirdly, “uniform international regulations and standards help to avoid unfair advantage to ships of different States” (Balkin, 2002, p.11). In this respect, Plaza (1998, p.2) calls the need for uniform international standards “equity in an international regulatory maritime safety regime”. If some States apply more stringent standards while others apply lower standards or no standards at all, the

ships of the former would be at a commercial disadvantage since they would have to incur greater expense in meeting the higher standards.

Fourthly, international safety standards and regulations are needed to ensure that “the different navigational rights enjoyed by ships on the high seas and in the various maritime zones, subject to the jurisdiction of the coastal State, are exercised in an orderly and safe manner” (Churchill and Lowe, 1999, p. 256).

Last but not least, international standards and regulations are required to provide uniformity in international maritime law. According to Mukherjee (2001, p. 113)

Without uniform laws, ships traverse the seas of the world through what has been sometimes described as a “patchwork quilt” international regime. The inherent international character of shipping and the inconvenience and hardship generated by conflicts in practical and legal affairs make it necessary for maritime law to attain a degree of international uniformity.

3.1.2 Steps towards internationalization

The need for a formalized approach to shipping safety had been recognized and called for by many authorities. But, the move towards a greater co-operation in this field was quite slow (Plaza, 1988, p. 3).

Three stages were identified in the process of internationalization of maritime safety regulations: first, the harmonization of national maritime legislations through bilateral agreements amongst the leading maritime nations; second, the international conferences as mechanisms for setting-up universal rules on a multilateral basis; third, the intergovernmental organizations as proper fora for the adoption of international instruments to regulate safety at sea and protection of marine environment (Boisson, 1999, p 53).

3.1.2.1 The harmonization of national maritime legislations

This first stage towards internationalization came at the beginning of the 19th century. During this period “there were few rules and regulations and virtually no construction or safety standards for merchant ships. Many ships were sent to sea

badly built, ill found, grossly overloaded and often over insured” (Stopford, 2002, p. 440). Furthermore, in the name of “absolute freedom of competition”, a dominant characteristic of the beginning of the 19th century, one could build, equip and operate a ship according with ones own standards, plying whatever way one liked on any seas (Boisson 1998, p.53).

The first attempt to regulate the shipping industry in terms of maritime safety had come from the United Kingdom (UK) Government in the middle of the 19th Century. In the nineteenth century, Britain dominated the maritime scene and this influenced the then existing shipping regulatory framework. Even though the most important concern at that time in terms of safety was the successful passage of vessels from one port to another, the occurrence of a large number of shipwrecks and fatal accidents had led in the 1850s to the inception of controlling unseaworthy ships and the quality of crew (Veiga, 2002, p.20).

Other countries with a developing maritime interest had developed their maritime law on a piecemeal basis, but the British law was used almost universally as the framework for national maritime law. “The British rules and regulations came to apply much more widely than in the UK” (Stopford, 2002, p. 440).

However, due to the fact that ships trade internationally, there has been a strong incentive to standardize those aspects of national maritime law that relate to international operation of ships. It was generally accepted that the existence of different standards would have a detrimental impact on the shipping industry as a whole. Furthermore, “domestic regulation of an international industry is not only of limited value but could be positively prejudicial to the efficiency of maritime commerce” (Horrocks, 1992, p. 2).

3.1.2.2 The system of ad-hoc Conferences

The International Conferences known as the system of ad-hoc conferences marked the first step towards a regulatory regime developed through international co-operation. “In view of the international character of shipping and in relation to the maritime safety, governments felt that action was required at an international level”

(Plaza, 1998, p.3). Moreover, it was realised that only an agreement among States laying down minimum standards to be met by a particular ship performing a particular service could offer a long-term solution (Boisson, 1999, p.53). Although, only a few common rules had emerged as a result of convening international conferences on the safety of maritime transport, those treaties witnessed the need for shifting from a unilateral to a multilateral approach in dealing with maritime safety.

The International Maritime Conference called in Washington in 1889 is considered, “the first step towards an international system for drawing up international accepted regulations”. The industry felt that: “the standardization of international regulations would be an advantage” (Stopford, 2002, p.441). This Conference was called by the United States (US) government, and was attended by 27 of the then leading maritime nations.

Another step towards the internationalization of safety regulations is the First International Conference on the Safety of Life at Sea, convened in London on the 12th of November, 1914.

The sinking of the White Star liner Titanic on her maiden voyage on the 14th of April 1912 raised many questions about the safety standards in force during that time. Accordingly, the UK Government proposed holding this conference to develop international regulations (IMO, 1998, p.1). Even though the convention failed to enter into force due to the First World War, it is considered a positive step towards the uniformity of safety regulations because “the majority of the maritime countries of the period adopted most of its provisions” (Veiga, 201, p.26).

3.1.2.3 The Intergovernmental Organizations

“Even before the 19th century suggestions were made for the creation of a permanent international maritime body – a forerunner of IMO – to take due account of the global nature of the shipping industry” (Horrocks, 1992, p. 2). The 1989 Conference, mentioned earlier, had on its agenda the establishment of a permanent

international maritime commission, even though the establishment of such body was shelved.

Ivanov also mentions that within the League of Nations' framework maritime problems were dealt with. Under the League Commission and Committee System, the Advisory and Technical Committee for Communications concentrated its attention, *inter alia*, on problems relating to maritime transport. Thus, several conferences were held under the auspices of the League of Nations and the adoption of the Barcelona Declaration recognizing the right of landlocked states to sail ships flying their flags and of the 1923 Convention on Maritime Ports Regime to attest the attempt of Governments to discuss the issue of shipping in an international forum (1997, IMO News, 1997, p.21).

However, even though various conventions were adopted and other agreements were concluded, only after the end of the Second World War and the inception of the United Nations was the creation of a permanent body to deal with safety of shipping and other related issues possible (Plaza, 1988, p. 3).

3.1.2.3.1 Intergovernmental Maritime Consultative Organization (IMCO) International Maritime Organization (IMO)

In the 1950s, each shipping nation had its own maritime laws. There were comparatively few international treaties and those that existed were not accepted or implemented by all maritime states. The result was that standards and requirements varied considerably and were sometimes even contradictory. Not only were standards different, but also some were far higher than others.

The year of 1948 marked a decisive turning point in the maritime history of nations. For the first time a permanent international body, capable of adopting legislation on all matters related to maritime safety, was established (Veiga, 2002, p.26). A United Nations Maritime Conference held in February - March 1948 drew up the Convention of the Intergovernmental Maritime Consultative Organisation (IMCO). Delay in securing the necessary 21 ratifications, seven of which had to be nations

with one million gross tonnage of shipping, meant that the Convention did not enter into force until 1958 (Sands & Klein, 2001, p.102). The IMCO began operations in 1959 with 28 member States. In 1982 the name of the Organization was changed to IMO.

The purposes of the Organization, as summarized by Article 1(a) of the IMO Convention, are:

to provide machinery for cooperation 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.⁷

IMO is essentially a standard-setting Organization. It provides the international forum for Governments to consider and establish the international standards, which are then used as the basis on which individual States adopt their national regulations. Therefore, the rules and regulations are made by the States with IMO providing the platform and the machinery (Balkin, 2001, p.12).

3.2 Internationalization and Marine Pollution Prevention

Regulation of marine pollution was somewhat slower to develop, reflecting on the one hand a limited interest of States in this problem, and on the other hand the limitation of scientific understanding of oceanic processes. It was only around Second World War that the problems related to the effects of pollution from seaborne sources reached an intensity that required concerted international action. However, by the late 1960s the awareness of the impact of pollution on coastal environments, on fisheries, and human populations had become widespread (Birnie & Boyle, 2002, p. 347).

⁷ *Introduction to IMO*. Retrieved from the World Wide Web on the 22nd of June 2003.
<http://www.imo.org/home.asp>

3.2.1 Steps towards internationalization

3.2.1.1 The harmonization of national maritime legislations

The UK was the first to adopt national rules on the prevention of marine pollution in 1922 (Oil Navigable Waters Act), while the US adopted its own regulations on oil pollution prevention in 1924 (Oil Pollution Act) (McFarland (2002, p.1).

3.2.1.2 The system of Ad-Hoc Conferences

The wider implications of oil pollution were seemingly unrecorded until the early 20th century when the first international conference dealing with the control of marine pollution from ships was convened in Washington in 1926. As Horrocks (1998, p.2) states: "The US government with European encouragement called an international conference to tackle oil pollution from ships as long ago as 1926". However, the severity of pollution had not been recognized at this stage and the main outcome of this international conference was just a recommendation stipulating that the discharge of oil at sea should be limited (Birnie & Boyle, 2002, p. 347).

By 1928, concern over pollution had grown when an article in a newspaper brought out that some 500,000 barrels of waste oil per year were being tipped over board into the sea. However not until 1934 when the British Government raised the issue with the League of Nations that according to Horrocks (1998, p.2) the League took the matter a stage further developing in 1935 a draft convention on the subject. However, the outbreak of the Second World War stopped the initiative of calling an international conference to adopt this treaty on a multilateral basis.

As a result, in 1952 an International Conference was called in London. According with Stopford (1987, p.447) this conference is considered the beginning of the process of developing international legislation relating to marine pollution. Indeed, this had led to the 1954 Convention for the Prevention of Pollution of the Sea by Oil (OILPOL), which was the first successful attempt to deal with the issue of marine pollution from ships on an international scale. The problem addressed primarily by this convention was that of oil pollution resulted from routine tank ship operations (McFarland, 2002, p.3).

3.2.1.3 The Intergovernmental Organizations

When IMCO became operational in 1959, marine pollution was still regarded as a relatively minor problem. The IMO eventually oversaw the 1954 OILPOL Convention and in the later years amended it and imposed stricter requirements (McFarland, 2002, p.1). In this regard, IMO had carried out a worldwide enquiry into the general extent of oil pollution, the availability of shore reception facilities and the progress of research methods of preventing pollution from ships. As a result of its survey, the IMO convened conferences and amended the 1954 Convention in 1962, 1969, and 1971. In addition to focusing on maritime safety issues, the IMO assumed also pollution prevention responsibilities as a result of growing threat of marine pollution from ships in the mid -1950s.

3.3 Concluding remarks

The trend towards the internationalization of maritime safety and the environmental protection regulations was gradual and marked by the need of maritime nations to have uniform rules and customs. As illustrated throughout this chapter internationalization process of maritime safety regulations evolved initially from national maritime rules and regulations enacted by States, to multilateral treaties agreed upon by States within the framework of international conferences, and lastly had culminated with the creation of IMO, which develops international standards and plays the predominant role in the harmonization of international maritime law.

PART II

CHAPTER 4

4.0 Regionalism – concept and reality

Thinking of the way the global system functions, we are thinking in terms of states. Maps of the world show continents and regions divided by state frontiers, demarcating areas that come under the administration of different governments, and separate systems of law. States have been the major actors in the global system for more than 200 years. However, the State is not the only kind of administrative community, nor is it necessarily the best. In fact there are many experts of the view that the modern state system is declining, undermined by several fatal flaws, and that the world may be moving steadily towards regional groupings that will help us set aside our national differences, avoid conflict and concentrate instead on the benefits of co-operation (McCormick, 1999, p. 2).

Starke (1989, p. 6) defines “regionalism” as a “fusion of States into regional functional groupings”. Furthermore, “geographical situation of the States in question is regarded as the principal common denominator of regionalism” (Mukherjee, 2002, p. 144).

These regional functional groupings have taken many different forms and many have various purposes, from those that are narrowly focused to those with a much wider scope. Thus, as to exemplify the forms such “fusions” have taken and the preponderant areas where they have been manifesting, mention can be made of the creation of “regional arrangements” having the sole purpose of “dealing with matters relating to the maintenance of international peace and security as are appropriate for regional action...” in conformity with the United Nations Charter (Chapter VIII, articles 52-54), the creation of European Economic Community (EEC)¹, the

¹ The EEC has been established under the Treaty of Rome of 25 March 1957.

conclusion of regional security treaties², the creation of various regional international organs³, and lastly the establishment of regional international tribunals, such as the European Court of Justice⁴.

4.1 Reasons for regionalism

The need of States to co-operate at regional level has brought about the phenomenon of regionalism, which has led to the creation of various regional arrangements and regional international organisations.

Two main reasons have led to the inception of various regional arrangements or organizations. First, States consider that greater progress may be achieved through co-operation at regional level. In this respect, Mukherjee (2002, p. 144) stated that: "regional approaches are effective where there are substantial commonalities in terms of legal systems and the prevailing political and socio-economic conditions among the States in the region". Second, unique regional problems require regional solutions. Indeed, economic and social problems vary tremendously by region and can be better tackled at the regional level. Nevertheless, regionalism should simplify and facilitate the achievement of global solutions. Based on this reality, the UN itself has established 5 regional economic commissions within ECOSOC. These commissions are concerned with special problems in particular regions such as: Asia, the Far East, Europe, Latin America, and Africa (Starke, 1989, p. 657). Hence a global organisation like the UN has within it "regional" bodies.

4.2 Fears with regard to regionalism

Although, the aforementioned benefits brought about by regionalism in terms of co-operation among nations are not challenged, there are proponents of the view that regionalism poses certain dangers. The main assumption in this respect is that State Members to various regional arrangements or organizations will minimise their efforts to co-operate at international level (Sands and Klein, 2001, p. 155). However, regional arrangements or organisations should be regarded as

² The North Atlantic Security Pact of 4 April 1949, which *stricto sensu* is not a "regional arrangement" within the meaning of UN Charter's Art. 52 & 53.

³ The South Pacific Commission established in 1948.

⁴ It serves all three Communities

complementary to and not as substitutes for international organisations. Ideally they should be “creative as well as supportive of international goals” (Alexander, 1977, p.5).

4.3 Public international law considerations

4.3.1 Public International Law definition

Ott (1987, p.1) defines international law “as the law operating among nations or states”. Starke (1989, p.3) goes beyond this traditional and narrow definition of international law that refers only to the rules of conduct governing the relations between states and mentions also the rules of law that relate to the functioning of international organisations, their relations with each other and with states and individuals. He mentions as components of the body of international law the rules relating to individuals and non-state entities so far as the rights or duties of such individuals and non-state entities are the concern of the international community.

4.3.2 Regionalism and Public international law

Regionalism is a well accepted concept in international law and this can be illustrated, on the one hand by the existence of regional rules of international law and, on the other hand by the functioning of various regional entities having international legal personality, and are proper subjects of public international law.

Regional rules of international law can be defined as those “rules that have developed in a particular region of the world as between the states there located, without becoming rules of a universal character” (Starke, 1989, p.6). Thus, a clear distinction must be made between general rules of international law, which are of universal application and those developed within a particular region and are of a regional application.

However, regional rules must be seen as complementary or correlated with general rules of international law, although not subordinated to them. Moreover, an international tribunal might give effect to such regional rules in the particular region concerned if they are to the satisfaction of the court. These considerations must be seen in the light of the decision of the International Court of Justice (ICJ) in the

Asylum case (1950)⁵, as quoted by Starke (1989, p. 6). Nevertheless, the relevance of this case is that it was accepted that there is regional customary law that differs from international customary law (Ott, 1987, p. 18).

4.3.3 Regional rules and some International legal constraints

Several questions could be posed with regard to regional rules and their applicability within the context of international law. Are States completely free to establish whatever rules they like within their own regions? Are there any limitations? Do they have the authority to impose their regional rules on third parties?

4.3.3.1 The UN Charter and Article 103

The role of regional organizations is expressly recognized in the UN Charter and many other international documents. The multitude of regional organizations, institutions, and other arrangements in existence lend support to this fact.

However, Bilder (1996, p. 37) considers that “international law, or other international arrangements to which the regional States are parties appears to a certain extent to limit the permissible objectives of regional arrangements”. For example, Article 103 of the Charter reads:

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Hence, regional organizations are recognized in the UN Charter, but regional nations could not legally pursue objectives inconsistent with their obligations under the UN Charter. The obligations of Member States under the Charter will prevail in such cases.

⁵ The Columbian-Peruvian Asylum Case (1950) revolved around the question of diplomatic asylum as a rule of customary law. See Ott (1987), p. 18

4.3.3.2 The authority of regional organisations to impose regional rules on third parties

The third aspect on which international law imposes limits is the authority of a regional organization to impose regional rules on non-regional States with respect to areas or activities that, even though they are generally within their geographic region, are not within the specific jurisdictional competence of any of the regional states.

As mentioned earlier, the ICJ through the judgment rendered in the Asylum Case (1950) has recognized the concept of regional customary international law binding upon States in a particular region that participated in its formation. However, “such a regional custom would not bind non-regional States, which did not participate in its formation or in some way manifest their acquiescence” (Bilder, 1996, p.37). Nevertheless, non-regional States may be bound by obligations established by regional arrangements if they either expressly agree to be bound or if they manifest acceptance through a consistent course of complying conduct.

CHAPTER 5

5.0 Regionalism at sea

5.1 General considerations

The increasing complexity of ocean use has led to the emergence of regionalism at sea. Given the circumstances in which neither the unilateral management nor the global approach has appeared practical and efficient for a number of issues involving ocean management, such as: pollution control, commercial fisheries and marine technology transfer, the regional approach has been considered the third best alternative (Alexander, 1976, p. 3).

5.2 The concept of Marine Regionalism

Analysing the regional concept with respect to the sea is not a simple task. On the one hand, the concept itself takes various forms and on the other between the regional and other issues, both within and beyond the ocean policy system, there exists a multitude of complex relationships. Besides, the terms “region” and “regional” per se have different connotations. For instance, with respect to the marine environment, they refer to the regions of the ocean. Nevertheless, the terms “region” and “regional” can be used with respect to “groups of countries that have similar interests in ocean matters” (Alexander, 1977, p.6).

However, in analysing the regional concept, two elements are basic: the region and the regional arrangements or organizations. Furthermore, the interaction between regions and regional arrangements form an integral part of the subject matter of regional analysis.

5.2.1 The Concept of Marine Regions

A region “is a geographical phenomenon, an area of the Earth surface that is differentiated from other areas by one or more criteria. Any region may be subdivided into sub-regions” (Alexander, 1977, p. 4-5).⁶ According to Birnie & Boyle (2002, p. 354) a “region is defined by the context in which the issue arises”, while Somsen (1998, p.229) states that “a marine region is largely determined by the political factors”.

5.2.2. Marine Regional Arrangements

Regional arrangements are mechanisms designed to implement various types of co-operative activities among States, particularly those in a contiguous geographic area. These arrangements may exist in the form of agreements, treaties, institutions and simple working groups. Their main purpose is to handle particular problems, which arise in that particular region (Alexander, 1977, p. 3). However, the ecological aspect of a particular region is not the only factor to consider when establishing a regional arrangement. Political considerations, common interests, or geographical proximity are other factors influencing the inception of such arrangements. The close correspondence between the “political” region and the “geographical” region is undoubtedly one of the common denominators of such arrangements (Birnie & Boyle (2002, p. 354).

However, the establishment of various regional arrangements should be creative as well as supportive of international goals governing the use of the oceans and their resources, protection of the marine environment and enhancing the safety of navigation. Paraphrasing Caddy (1990, p.29) these regional arrangements, whatever the scope they were created for, should be regional in design but global in concept.

⁶ The enclosed or semi-enclosed seas, as defined in Art. 122 of LOS can illustrate the term “region”. A number of regional treaties dealing with the protection of the marine environment must be seen in the light of this interpretation, notably those relating to the Mediterranean, the Baltic, and the Persian Gulf.

5.2.3 Forms of existing Marine Regional Arrangements

In terms of activity areas regional arrangements are associated with: fisheries conservation and management, scientific research and the protection of the marine environment and other related activities. Regional arrangements are effective as long as they solve the problems that they were designed to handle.

5.3 Regional arrangements in the area of safety and prevention of pollution

The establishment and subsequent development of European regional arrangements for ship inspection are considered the most successful regional developments aimed at improving living and working conditions on board ships, maritime safety, and the protection of marine environment.

Barton (1980, p. 87) considers the evolution of these regional arrangements “a significant development relating to the implementation of the IMO and other instruments concerning ship safety and pollution”. These regional arrangements are presented below, first the Hague Memorandum of 1978 and second its subsequent development, the 1982 Paris MOU on Port State Control.

5.3.1 The 1978 Hague MOU

In 1978 eight maritime authorities established the first European regional arrangement covering the North Sea region in order to harmonize the port state control procedures. This arrangement was set within the framework of the Hague Memorandum of Understanding (Hague MOU) signed in 1978 by the following States: Belgium, Denmark, France, Germany (FR), the Netherlands, Norway, Sweden and the United Kingdom. The main objective of this regional arrangement was to ensure that the living and working conditions on board ships, as stipulated in 1979 ILO Merchant Shipping (Minimum Standards) Convention (ILO 147), were met by those foreign vessels calling at their ports (Barton, 1980, p. 87).

The creation of this European regional arrangement preceded the development of port State Control as a regional mechanism aiming to eliminate the operation of substandard ships. In this regard Özcayir (2001, p.117) considers the 1978 Hague MOU “the origins of Port State Control”.

The grounding in March 1978 of the VLCC Amoco Cadiz off the Ushant stressed the need to enlarge the Hague MOU's objective to tackle the issue of safety and other aspects related to ship operations. Accordingly, in 1980, following a meeting held in Paris and attended by the ministers responsible for maritime safety of 13 European countries, the representatives of the EEC Commission, IMO and ILO agreed that the elimination of substandard shipping would be best achieved by the co-ordination of port States as stipulated in relevant international instruments⁷. The outcome of the 1980 meeting has made the object of the 1982 MOU, signed in January 1982 in Paris by the maritime authorities of 14 States⁸ (Özcayir, 2001, p.116).

5.3.2 The 1982 Paris MOU on Port State Control (PSC)

According to Barton (1980, p.88) "the concluding of Paris MOU (1982) on Port State Control is an illustration of the cooperative arrangements envisaged in Article 211(3) of the 1982 LOS Convention". This article stipulates that coastal States may establish various "cooperative agreements" in their endeavour to harmonize the rules and regulations applicable within their territorial seas to prevent, reduce and control the marine pollution from foreign vessels. However, Paris MOU went further than the administrative enforcement coordination with respect to pollution by also including maritime safety.

The Paris MOU on Port State Control is a regional agreement signed in Paris on 26 January 1982 by 14 European countries. Its main objective is to enforce, through a harmonized system of port State control, the international standards related to safety, environmental protection, living and working conditions on board foreign vessels as stipulated by the relevant international conventions.

As mentioned by Ozcayir (2001, p. 116) "with this Memorandum, for the first time a regular and systematic control of ships was exercised by a regional group of port States that were parties to the relevant conventions." Established first at the European level this European regional arrangement set out in the Paris MOU (1982) has steadily influenced the formation and functioning of other cooperative regional

⁷ IMO Conventions: SOLAS, MARPOL, STCW and ILO Convention on minimum standards

arrangements outside Europe (Barton, 1980, p.87). Currently, Memoranda of Understanding having the same objectives cover other regions of the oceans⁹.

Nowadays, the Paris MOU consists of 20 participating maritime administrations¹⁰ and covers the waters of European coastal States and the North Atlantic basin from North America to Europe. Moreover, the 1982 Paris Memorandum of Understanding (MOU) on port State control, to which all EU maritime States are parties, was revised in 1991. A proposal was made by the European Commission in 1985 to directly incorporate the MOU into EU legislation. In 1995, a Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) was issued. It came into force on 1st of July 1996 and made port State control mandatory in EU Member States.

5.3.3. The Helsinki Commission

This regional arrangement is considered a pioneering agreement on many fronts. It was the first regional agreement ever to cover all sources of pollution, whether from land, sea or air. It was established on 24 March 1974 within the framework of the Convention on the Protection of the Marine Environment of the Baltic Sea Area, known as the 1974 Helsinki Convention, signed by the Baltic Sea States.

In the light of political changes and developments in international environmental and maritime law, a new convention was signed in 1992 by all the states bordering the Baltic Sea and the European Community. The Convention covers the whole of the Baltic Sea area, including inland waters as well as the water of the sea itself and the sea bed.

⁸ Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Spain, Sweden and the UK.

⁹ Latin America (Acuerdo de Viña del Mar-1992), Asia and the Pacific (Tokyo MOU-1993) Caribbean (Caribbean MOU-1996); the Mediterranean (Mediterranean MOU-1997); the Indian Ocean (Indian Ocean MOU-1998), West and Central Africa (Abuja MOU-1999); the Black Sea region (Black Sea MOU- 2000).

¹⁰ The original group was joined by Poland, Canada, Russian Federation, Croatia and Iceland.

The Helsinki Commission¹¹ (HELCOM) works to protect the marine environment of the Baltic Sea from all sources of pollution through intergovernmental co-operation. HELCOM is the governing body of the Convention on the Protection of the Marine Environment of the Baltic Sea Area - more usually known as the Helsinki Convention (Introducing the Helsinki Commission, Ostojski).

HELCOM has regulatory competence. Since the beginning of the 1980s the Helsinki Commission has been working to improve the Baltic marine environment, largely through some 200 HELCOM Recommendations. It has achieved major progress, especially in the following fields: better special legislation to prevent the pollution of the Baltic Sea by shipping, developed together with the IMO, measures to eliminate all illegal discharges by ships into the Baltic Sea, a major international plan to combat marine pollution, with active co-operation involving all the Contracting Parties through HELCOM. In terms of safety of navigation, the latest achievement of Helsinki Commission is the HELCOM Copenhagen Declaration adopted on 10th of September 2001 by the HELCOM Extraordinary Ministerial Meeting. On this occasion a new package of measures to improve the safety of navigation in the Baltic Sea was adopted.

5.3.4 The Baltic Sea Parliamentary Conference (BSPC) Working Group on Maritime Safety

Baltic Sea Parliamentary Conference (BSPC) was established in 1991 as a mechanism of co-operation at parliamentary level of the States bordering the Baltic Sea and regional assemblies, such as the parliaments of the Karelian Republic and the legislative assembly of the German Land (state) of Schleswig-Holstein, as well as regional organizations such as the Nordic Council and the Baltic Sea Parliamentary Conference.

The BSPC decided to tackle the issue of maritime safety in the Baltic Sea area in September 2001. This initiative was endorsed by the Resolution adopted with the occasion of the 10th BSP Conference assembled in Greiswald, Germany between 3-

¹¹ The present contracting parties to HELCOM are Denmark, Estonia, European Community, Finland, Germany, Latvia, Lithuania, Poland, Russia and Sweden. The ratification instruments were deposited by the European Community, Germany, Latvia and Sweden in 1994, by Estonia and Finland in 1995, by Denmark in 1996, by Lithuania in 1997 and by Poland and Russia in November 1999.

4 September 2001 which led to the creation of a Working Group tasked with the issue of maritime safety (Kuessner, 2002, p. 5).

The BSPC has devoted itself to special measures concerning the topic of Maritime Safety in the Baltic Sea over the last few years. As stated by Dr. Klostermann (2001, p. 55), the chairman of the WG, the general increase in maritime traffic and the attendant threat to the basic existence of all the neighbouring Baltic Sea States has resulted in a call for a mandatory strengthening of international action on the prevention of shipping disasters.¹²

However, the regional work of this WG must be seen in the context of the joint efforts of another two relevant regional arrangements established by the Baltic Sea States, namely, the HELSINKI Commission, mentioned earlier, and the CBSS¹³ both of which have also granted a high priority to maritime safety in the area of the Baltic Sea. The WG has focused mainly on the assessment of the current situation in the region, developing further recommendations for action on the issue of safety. In 2002 it proposed the introduction of a globally binding flag State code in order to monitor compliance with international shipping regulations, the fastest implementation of the Copenhagen Declaration, as well as other suitable measures to improve marine environment protection.

5.4 Concluding remarks

The harmonized system of PSC inspection performed at regional level within the framework of a Memorandum of Understanding can be considered a successful regional arrangement designed to address the problems of safety and pollution from ships that occur in various management marine regions¹⁴ of the world's oceans.

¹² Members from 12 national and regional parliaments of the countries bordering the Baltic Sea joined in the WG, as well as the CBSS.

¹³ The CBSS was established in 1992 and serves as an overall regional forum focusing on the needs for intensified co-operation and co-ordination among the Baltic Sea States.

¹⁴ A "management region" is created for a particular situation where a well-defined management problem can be better handled as a discrete issue.

The other two highly sophisticated regional arrangements established in the geographical area of the Baltic Sea, which were mentioned in this chapter, namely the HELCOM and the Working Group on Maritime Safety of the Baltic Sea Parliamentary Conference demonstrate the benefits brought about in terms of “sea” management by such regional mechanisms. Above all, the activities developed by these regional arrangements have lead in time to the creation of what is often termed as “regional “consciousness” on the part of all of the inhabitants of that particular region.

The Baltic Sea area is characterized by special natural circumstances; hence special regional marine problems are confined to the Baltic region. Moreover, nowadays, the problems associated with shipping activities and the protection of the marine environment, due to the increase of tanker traffic within the region and the threat this involves to the marine environment require particular attention. Thus, a coordinated effort of the States bordering the Baltic Sea to handle these problems is a must.

However, these regional arrangements are strengthened in achieving their objective by their political counterparts on land. Both regional arrangements are mechanisms of regional co-operation first, at parliamentary level of the States bordering the Baltic Sea in the case of BSPC and second, at intergovernmental level in the case of the Helsinki Commission. However, the most relevant thing is that their programs and strategies with regard to safety at sea and protection of the marine environment from vessel source pollution are in accordance or complementary to the programmes developed by the lead agency in this field of activity at international level, namely IMO, which makes recommendations for international action, drafts conventions and various agreements.

5.5 Regional actors in the area of maritime safety and environmental protection regulatory regime: the Commission of the European Community

Since early times, Europe has had its say in shipping and the development of the legal and political regulatory system around it. In various forms and under various flags the maritime interests of Europe have been maintained.¹⁵

Safety at sea has been the subject of international regulations, resulting primarily from the work of international rule-making institutions such as the IMO and ILO. Regional arrangements or organisations have not traditionally been involved in the regulatory process relating to safety and prevention of pollution. The role of such institutions has been restricted to monitoring and enforcing the international standards agreed upon by all interested maritime nations at the international level.

However, since the 1990s regional initiatives have intensified in the regulatory area of maritime safety related issues, and the activity of the European Commission is of particular interest in this context. The Commission of the European Community has become an important actor in the process of development, implementation and enforcement of maritime safety and environmental regulations.

5.5.1 Identifying the actor

5.5.1.1 A brief historical background of the European Union process of integration

“The European Union is the most highly evolved example of regional integration in the world” (McCormick, 1999, p. 29). However, what sets the European Union apart from any traditional international organization, even though the EU cannot be considered an international organization¹⁶ is its unique institutional structure. In accepting the European Treaties, Member States relinquish a measure of sovereignty to independent institutions representing national and shared interests. The institutions complement one another, each having a part to play in the decision-making process.

¹⁵INTERTANKO, 2001

The process of European integration has been marked by constant progress and change ever since the European Coal and Steel Community (ECSC) was founded in 1952. The European Economic Community (EEC) came into existence following the signing of the Treaty of Rome in 1957 by the six original member states: France, Germany, Italy, Belgium, the Netherlands and Luxembourg. A second Rome Treaty signed by the same six States created Euratom on the same day. The ECSC, EEC and Euratom treaties are known as the foundation treaties. All of them, but particularly the EEC Treaty, represented the culmination of a movement towards international co-operation, which had been growing throughout the 20th century (Steiner, 1990, p. 3).

Although the institutional framework of the EEC, as of Euratom, was modelled on that of the ECSC, the three Communities at the outset held only two institutions in common: the Parliament and the Court of Justice. The Merger Treaty, signed in Brussels on the 8th April 1965, provided for the other two main institutions to be merged; hence the three Communities shared the same institutions: a single Commission and a single Council, even though they continued to function as separate entities.

5.5.1.1.1 From the Treaty of Rome towards the Maastricht Treaty

The founding Treaties have been amended ¹⁷ on several occasions by many other instruments. Nevertheless the most significant of these in terms of bringing major institutional changes and introducing new areas of responsibility for the European institutions are the Single European Act of 1986 (SEA)¹⁸ and the Treaty on European Union of 1992. The principal purpose of SEA was to eliminate the remaining barriers toward the single European market, whereas the Maastricht Treaty of 1992 has facilitated the achievement of that objective. According to Luff, (1992, p. 8) the main advances brought about by the Treaty of Maastricht can be summarized as follows: first, it has created “the European Union”, secondly it has established a principle in the European Union which reinforces the concept of

¹⁶ It is worth mentioning that European Union may be defined as an international organization in the sense that its members are States, but it has moved well beyond the idea of international co-operation.

¹⁷ In particular when new Member States acceded in 1973 (Denmark, Ireland, United Kingdom), 1981 (Greece), 1986 (Spain, Portugal) and 1995 (Austria, Finland, Sweden)

“subsidiarity”¹⁹, thirdly it has established a new Committee of the Regions, fourthly has set out a procedure and a timetable for creating Economic and Monetary Union (EMU) and lastly the treaty has established the notion of “European citizenship”.

5.5.1.1.2 Turning the EEC into the European Community

Although the new EU incorporates the European Community (EC), a distinction must be made from the outset between the European Economic Community (EEC)²⁰ and the European Community (EC). The EEC has evolved into the EC, and this process has been formalized by the subsequent amendments of the 1957 Treaty of Rome first by SEA and later, in 1992, by the Treaty of Maastricht.

The Treaty of Maastricht reaffirms the key objectives of the EC, and among the Community’ main tasks, according to Article 2, namely a common market, economic and monetary union, etc the Treaty also refers to the issue of a common policy in transport.

5.5.2.1 The European Community – European Union’s pillar one

The new European Union, created by the Maastricht Treaty establishes a three-pillared structure. The Community is only one of the three pillars of the European Union, the other two pillars established being the common foreign and security policy, and cooperation in the field of justice and home affairs.

The first pillar of the EU is by far the most substantial of the three pillars. All the major internal policy areas, which establish the EC’s presence, fall within Pillar I. Moreover, the Community’s external responsibilities include: trade, aspects of environmental policy, cooperation and association with third parties (Bretherton & Vogler, 1999, p.10). In terms of the activities performed, this covers a wide range of Community policies, such as: agriculture, transport, environment, energy, research and development (European Communities, 1999, p.10).

¹⁸ Signed by the then 12 Member States

¹⁹ Decisions should be taken at the lowest level compatible with efficiency and democracy. In reality suggests which legislation should be adopted by the Community as a whole and which by the Governments of the Member States and should be responsible for its enforcement.

²⁰ EEC has had to deal with an increasing number of political, environmental, and social issues, hence it became logical to drop the qualifying word “economic”

The most significant fact is that the Community enjoys legal personality and can enter into formal agreements with third parties. The Union, which does not have legal personality, is unable to do so (Bretherton & Vogler, 1999, p.10).

5.5.2.1.1 The European Commission: a key institution of the European Community

The role and responsibilities of the European Commission place it firmly at the heart of the European Union's policy-making process. In some respects it acts as the heart of Europe, from which other institutions derive much of their energy and purpose (European Communities, 1999, p.13).

5.5.2.1.1.1 The role of the Commission

The Commission is not an all-powerful institution. Its proposals, actions and decisions are in various ways scrutinized, checked and judged by all of the other institutions: the Council, the European Parliament and the Court of Justice. Nor does it take the main decisions on Union policies and priorities – this is the prerogative of the Council and, in some cases, of the European Parliament. However, the legislative initiative process begins with a Commission proposal – Community law cannot be made without this. In devising its proposals, the Commission has three constant objectives: to identify the European interest, to consult as widely as is necessary and to respect the principle of subsidiary.

The Commission is also the guardian of the treaties. Accordingly, its job is to ensure that Union legislation is applied correctly by the Member States. If they are in breach of their Treaty obligation, they will face Commission action, including legal proceedings at the Court of Justice (European Communities, 1999, p.15).

5.5.2.1.1.2 Decision Making process

The European Commission is the political “think tank” of the Community, while the Council of Ministers in close cooperation with the European Parliament are the lawmakers and the decision makers (Jenisch, 2002, p. 3).

The Community policies are designed and implemented according to a decision making process which begins with the Commission proposal. The Commission has sole right of initiative, although the Council of Ministers ultimately decides upon the fate of measures proposed. Following a detailed examination by experts and at the political level, the Council can adopt the Commission proposal, amend it or ignore it. The Treaty of European Union increased the European Parliament's say through a co-decision procedure, which means that both, the Parliament and the Council adopt a wide range of legislation.²¹

As mentioned by Bretherton & Vogler (1999, p.11), the role of the Commission is significant within the Community's policy area. Its structural position within the institutional framework of the Community has facilitated the evolution of a leadership or "policy entrepreneur" role. Consequently, the Commission has developed the capacity to respond to opportunities for action, and even to create such opportunities.

5.5.2 The European Commission and its main responsibilities in the area of safety at sea and environmental protection

The issue of safety of maritime transport has become part of the Commission competencies since 1992. This fact can be traced back to the 1992 Treaty on the European Union²². As stated by Lalis (2000, p. 1) "until 1992, it was not clear whether safety in transport was an issue of Community competence". Indeed, the Treaty clarified this question and it is a fact that since 1992 the EU has made its presence more and more felt in safety related issues.

The role of the Commission is largely determined by the extent to which the 15 EU Member States have agreed to transfer their competencies to the European Union.

²¹ In the vast majority of cases, including transport, the Council decides by a qualified majority vote with Member States carrying the following weight: Germany, France, UK (10 votes), Spain (8), Belgium, Greece, the Netherlands, Portugal (5), Austria, Sweden (4), Ireland, DK, Finland (3), Luxembourg (2). At least 62 votes must be cast in favour.

²² The Treaty on the European Union, signed in Maastricht on 7 February 1992, entered into force on 1 November 1993. The Maastricht Treaty changed the name of the European Economic Community to simply "the European Community". It introduced new forms of co-operation between the Member State governments - for example on defence, and in the area of "justice and home affairs". By adding this

In the field of maritime transport, the European Commission has the competence to propose the legislation and create legal order that pre-empts national laws.

As stated by Jenisch, (2002, p. 3) the Commission introduces its proposals by policy papers known as “white” or “green papers”. This is an informal procedure through which these proposals are sent by the Commission for general discussion with the Member States, interested groups and fora. Thus, the formal procedure starts with the proposal of a Directive or a Regulation ²³. The Commission’s proposals are discussed simultaneously by the Council of the Ministers and the European Parliament in a first reading, which ends with a “common position” of the Council. After a second reading in the Parliament the Council finally adopts the legislation.

However, as stated by Lalis (2000, p.5) “...the maritime safety field is one of the most difficult areas for the Commission to act and for the Community to be recognized”. The difficulty comes mainly from the fact that on the one hand the industry, and on the other hand also the EU Member States have been reluctant to accept the Commission as a player in the maritime safety regulatory arena. In this respect, Djonne (1996, p. 250-251) stated that for decades the concept of globally applicable rules agreed upon within the IMO and enforced through flag State legislation, was close to a dogma for the maritime nations now members of EU. Since the beginning of a co-ordinated Community shipping policy in 1986 ²⁴, the large majority of member states firmly objected to safety issues becoming an integral part of a Common Maritime Transport Policy. Safety at sea was for the member states alone to handle through their sovereign participation in the IMO. As such, the issue was not perceived as a matter of shipping policy, but as a major question of principle. However, following the many tragedies that occurred in European waters at the beginning of the 90s the Commission could not remain

inter-governmental co-operation to the existing "Community" system, the Maastricht Treaty created a new structure with three "pillars" which are political as well economic. This is the European Union (EU).

²³ The main feature of EU types of legislation will be discussed in the section 5.4.6.2

²⁴ The Common Maritime Transport Policy began in fact in 1979 when the Commission proposed to make the ratification of the UN Liner Code compatible with EC Law. However, as mentioned by Jenisch (2002, p.3), the year of 1986 is considered the second step towards CTP, when a series of measures on the freedom to provide maritime services were adopted.

passive and considered that it had to involve itself in the area of safety and marine environmental protection (Greaves, 1996, p.31).

5.5.3 The EU, the Economic European Area and the issue of maritime safety

The European Free Trade Association (EFTA) was established on 3rd of May 1960 as an alternative for European States that did not wish to join the European Community.²⁵ Each of its original members: UK, Denmark, Norway, Sweden, Austria, Portugal and Finland ceased to be EFTA members when they joined the European Community. Nowadays, only Iceland, Norway, Switzerland and Liechtenstein are members of EFTA. All these States, except Switzerland, are currently members of the European Economic Area (EEA), (Wikipedia, Free encyclopaedia).

The EEA was maintained because of the wish of the three remaining - Norway, Iceland and Liechtenstein - to participate in the Single Market, while not assuming the full responsibilities of membership of the EU.

The Agreement creating the EEA ²⁶ gives them the right to be consulted by the Commission during the formulation of Community legislation, but not the right to have a say in the decision-making, which is kept exclusively for Member States. All new Community legislation in areas covered by the EEA is integrated into the Agreement through a Joint Committee Decision and subsequently made part of the national legislation of the EEA /EFTA States. Consequently, this implies that the Community legislation on safety and environmental protection have been incorporated into EEA's countries legislation. Moreover, the European Community's initiatives with regard to shipping activities and legislation must be observed and regarded as relevant by all Member States of EU/EEA area.

²⁵ The Treaty was signed on 4th of January 1960 and is known as Stockholm Convention.

²⁶ The EEA Agreement entered into force on 1 January 1994.

5.5.4 European Community's common maritime safety policy

5.5.4.1 A retrospect – the main policy milestones

The EC commitment to a policy of safety dates back to 1978. This fact is acknowledged by the Council Recommendation on the Ratification of Conventions on Safety in Shipping, which stated, "safety in shipping must be improved" (Power, 1999, p. 539).

However, although action on safety at sea had been taken in a number of individual cases before 1993, the year of 1993 is still considered the first step towards a common maritime policy.

1993 - A common policy on safe seas ²⁷

The 1993 Community policy on safe seas is considered the first step towards a common policy on safety. The Commission's 1993 communication "A common policy on safe seas", proposed that an ambitious policy be introduced at Community level to improve the safety of ships, their crews and their passengers and to prevent marine pollution more effectively. The Safe Seas Policy was aimed to enhance safety and prevention of pollution at sea through the implementation of the Community legislation on maritime safety, prevention of pollution and shipboard living and working conditions.

1993 – Safe Seas Resolution

On 8th of June 1993, the Council of Ministers adopted a Resolution on a Common Policy on Safe Seas. The Resolution contains a set of major guiding principles supported by an extensive and fairly detailed action plan for the field. So far, all adopted EU maritime safety and environmental policies can be traced directly back to the June–Resolution of 1993. Heavily moored in the Commission's input, the Resolution became the document, which launched and set the future course for the present Community's safety and environmental policy.

²⁷ Communication from the Commission to the Council COM (93) 66 final, 24.2.93

According to Djonne (1996, p. 253) the 1993 Resolution “was pragmatic and realistic in its approach.” The Council introduced important new elements and principles into European shipping policy. These are summarized below.

The first important element is the clear shift in the emphasis from “the traditional flag State - oriented policies defended by the European countries individually, towards a much clear port-State orientation.” This move could be explained by the fact that the UK, Germany, and France tended to define themselves more as coastal States and less as maritime nations with flag State’s interests.

The second issue approached by the Council Resolution was the future role of IMO. This issue was also tackled from three perspectives. Firstly, the Resolution recognized the need of Member States to be more pro-active and co-ordinated in their actions within IMO. Secondly, the Resolution approached the issue of future implementation of IMO rules. In this regard, the principle adopted was that the global rules agreed upon within IMO would be implemented and enforced at European level by means of harmonised and binding EU legislation and monitored through PSC mechanism.

The third aspect with regard to IMO stressed the fact that if IMO fails to deliver the rules and standards deemed necessary by Europe, the Community will come with regional solutions. However, it highlighted its confidence in IMO and its global solutions, provided that IMO shows the ability to become more ambitious and efficient.

1996 Towards a new maritime strategy ²⁸

This document has introduced the new approach of the Commission to maritime strategy. It re-assessed Community’s maritime policy and set further goals towards establishing a common maritime strategy. In terms of safety at sea, the Commission made the following proposals.

Firstly, to pursue a policy based upon a convergent application of internationally agreed rules. This policy should be applied to all vessels trading to or from EC ports irrespective the flag they fly. Secondly, it stressed the need for a joint effort by Community and Member States in the IMO to agree on a worldwide basis on certain conditions for flag administrations and their ship registers. Thirdly, it was proposed to strengthen port State control through operational links with other third countries.

2001 - White paper – European Transport Policy for 2010 - Time to decide

Another relevant step in terms of policy making was recorded in 2001, when the Commission launched the “White paper – European Transport Policy for 2010 - Time to decide”. This time safety at sea was given a new dimension in the context of the enlargement process of the EU. The Commission has proposed a package of major measures designed principally to reinforce the PSC, tighten the legislation on Classification Societies and gradually phase out old single hull tankers and to introduce a compensation system for victims of marine pollution. The last objective was the establishment of the European Maritime Safety Agency.

However, another important issue raised this time by the Commission was the need to access the IMO, to become a member of IMO. The European Commission had asked the Council to authorise negotiations for the European Community's accession to the IMO. Having in view the expansion of EU competence in the maritime sector and the increasing participation of the European Community in the work of the IMO in the past ten years, it has been made necessary for the European Community to become a member of IMO. Through this accession, the Community will finally be a party to the IMO. For the time being it is only playing a minor role as an observer.

In 2003, the key elements of European maritime policy can be summarized as follows: application of international standards and rules on maritime safety and environmental protection, uniform control and enforcement of these rules, additional

²⁸ Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions COM (96) 81 13.03.1996

EU measures where international rules are insufficient, strong role for the EU on the international stage (Langenhagen, 2003, p.3).

5.5.5 Reasons for involvement

5.5.5.1 The natural right

Shipping in Europe can be seen in many ways as a successful history. Successful maritime trade has always been the basis for Europe's central position in the world's economy. Indeed, sea transport is of strategic importance for the world's largest trading bloc. "For the Union itself shipping represents a significant contribution to employment, security of supply, economic independence and a spin-off effects concerning its ancillary industries: shipbuilding and equipment manufactures, ports, shippers and charterers, shipbrokers, freight forwarders, marine finance and insurance, training research" (Jenisch, 2002, p. 1).

Maritime transport carries 90% of EU external trade, in terms of volume of goods, as well as 40% of trade by volume between Member States. The coastline of the European Union member States has a length of some 90,000 km. The total number of people employed in the maritime industries within EU/EEA exceeds 2,4 million. The EU/EEA controlled fleet of ships represents 220 million GRT. However, only 95 million GRT are registered under the present EU/EAA flag. The enlargement of the Union with Malta, Cyprus and Poland would increase these figures to 150 million GRT, which means that UE will have a market share of 27,5% of the world tonnage (Maritime Industries Forum, 2002)²⁹.

5.5.5.2 The need for involvement

During the last decade a shift in policy orientation was recorded in European thinking regarding the issue of safety at sea. High standards of safety in shipping used to be regarded as "desirable objectives" and in some way separate from the general objectives of shipping policy, which may be defined as great competitiveness and increased efficiency. However, this has changed and safety is now an intrinsic part of the Community approach (Toll, 1996, p. 303).

²⁹ Master Plan developed by Maritime Industries Forum in 2002

Nevertheless, substandard ships represent unfair competition, as some ship registers are designed with the sole purpose of raising revenue, and ship operators whose definition of safe manning is to get the ship from one port to another without hitting anything. Therefore, the Commission has been looking into the question of safety as being part of fair competition.

However, the EC's decision to be involved in maritime safety has been influenced mainly by numerous accidents³⁰ that have occurred in European waters during the last decade. In this respect, Langenhagen (2003, p. 1) states that maritime safety has become one of the top priorities of EU during recent years due to the fact that the international maritime safety regulatory regime revealed significant weaknesses in combating the occurrence of these maritime disasters.

Since 1978, following the Amoco Cadiz disaster, the Commission has repeatedly drawn the Council's attention to the fact that the conventional forum for international action on safety at sea, the IMO has not been adequately effective in tackling the causes of disasters at sea³¹. In 1999, the Erika disaster has definitely marked a turning point in the European maritime safety policy and redefined European Commission's stance in the international maritime safety arena. In its Communication to the European Parliament and the Council, in the aftermath of Erika disaster (COM 2000, 142 final, 21.3.2000) the Commission restated that the international framework of maritime safety under the auspices of the IMO falls short of what is needed to tackle the causes of such disasters effectively.

"Today's safety problems affecting shipping industry stem from lack of compliance by those target groups for which the international rules are designed" (Salvarani, 1986, p. 1). Enforcement is the critical problem. The reality is that many of the legally binding measures that have been adopted at international level are not enforced. Many flag State Administrations fail to apply and enforce the conventions. On the other hand, some of the international measures are not legally binding, most notably the IMO Resolutions. The enforcement of those rules is the real concern.

³⁰ Torrey Canyon, Amoco Cadiz, Herald of Free Enterprise, Braer, Scandinavian Star, Estonia, Pallas, Erika.

Therefore, the European Commission has decided to remedy the shortfalls of the international safety regulatory regime by means of harmonized implementation and enforcement of international rules and regulations within the EU/EEA area, through EU legislation, hence becoming the enforcer of IMO's international regulations.

5.5.6 The emerging European regional regulatory regime

5.5.6.1 Shipping and the European legal framework

European shipping law is basically a reflection of the unified policies of the members of the European-Community (Mukherjee, 2002, p.145). The main sources of EC shipping law are:

- i. The European Economic Community Treaty (Treaty of Rome, 1957)
- ii. The secondary legislation adopted under the Treaty (based in particular, on Art. 84. of the Treaty as amended by Article 16(5) of the SEA - 1986)
- iii. The jurisprudence developed by the EU Courts and the Commission
- iv. General principles of EU Law, (Power, 1999, p. 10).

The first observation regarding the EC shipping legislation is that the only express reference to "sea transport" is contained in Article 84 of the EEC Treaty³² as subsequently amended.

5.5.6.2 Community Legislation

Community law, adopted by the Parliament and the Council in the framework of the co-decision procedure-may take the following forms: regulations, directives, decisions, recommendations and opinions.

³¹ COM (2000) 603 final.

³² The provisions of the EC treaty directly relating to transport are encompassed in Part Three: Community policies, Title IV Transport, from Article 74 to 84. However, these provisions must be seen in the context of the EC Treaty as a whole. Article 74 of the EC Treaty reads: "The objectives of this Treaty shall, in matters governed by this Title, be pursued by Member States within the framework of a common transport policy."

According to McCormick (1999, p. 108) European legislative acts can be summarized as follows:

Regulations play a central role in developing a uniform body of law. Usually fairly narrow in intent, they are often designed to amend or adjust an existing law, are binding on all member states, and are directly applicable in the sense that they do not need to be transformed into national law and take immediate effect in all member states on a specified date ³³.

Directives are binding on member states in terms of goals, but it is up to the states to decide how best to achieve those goals. Directives usually include a date by which national procedure must be established, and the member states must inform the Commission what action they are taking.

Decisions are also binding, but are usually fairly specific in their intent and are aimed at one or more member states, at institutions or even individuals.

The other types of legislation: recommendations, resolutions and opinions are not binding.

5.5.6.3 The current *acquis communautaire* ³⁴ relating to maritime safety

In general, the Community has built its maritime safety laws based on IMO's relevant instruments. However, a number of European legislative initiatives related to maritime safety has come in the aftermath of the dramatic accidents that have occurred in European waters. Having said that, one can argue that the emergence of the UE in the field has been accident-driven.

However, nowadays, the Community Policy in the maritime safety field is already comprised of more than 20 acts of maritime safety legislation covering all key areas. The current maritime safety *acquis communautaire* is presented in Appendix 1.

³³ It must be published in the Official Journal of the European Communities.

³⁴ All the principles, policies, laws, practice and goals agreed and developed within the European Union in terms of maritime safety.

5.5.7 Final Comments

Various aspects of the European Union evolution in terms both of deepening and widening have contributed to its international presence in various fields of activity and shipping is one of these.

The European Commission's role in the maritime safety and environmental protection arena is nowadays a reality. Its position as a potential regional actor is strengthened on the one hand by the European Union's unique institutional structure, within which the Commission plays a central role, and on the other by the 15 EU Member States which still must be regarded as "traditional maritime nations", even though their fleets have greatly diminished during the last decades. However, even though Member States are still reluctant in surrendering their jurisdiction to "Brussels" in matters concerning maritime safety policy, their combined influence to provide force behind European Commission initiatives at international level cannot be ignored. The pressure they can exert within the IMO as a regional group was obvious in 2001 when the Commission had brought about the issue of phasing-out single-hulled tankers in the aftermath of Erika disaster, and as a result MARPOL Regulation 13G has been amended.

Nevertheless, the fact that the Commission does not speak on behalf of the EU Member States as to ensure that "everyone is singing from the same regulatory song sheet" is still causing unrest at European level. Indeed this might be considered one of the weaknesses of the European Commission in terms of co-ordinating the Members States within the IMO. However, this shortcoming is compensated by the highly evolved and sophisticated legal system that there exists within European Union. Therefore, the European Commission has the legal mechanism in place as to ensure compliance with the European shipping legislation.

Regarding the European Community shipping law, this is a regional body of law. Therefore, it should be complementary with the body of international law of shipping. In this respect, Mukherjee (2002, p. 153) states that:

The regulatory regime of the EC is highly sophisticated and has far reaching implications for its own member States as well as the rest of the shipping world.

However, its ultimate success and effectiveness as a body of regional shipping legislation lies in its continued ability to co-exist in harmony with the developments in maritime legislation at the international level, and to contribute meaningfully towards on-going efforts at unifying of the law.

In terms of maritime safety policy, the European Community has stressed and recognized since the “Safe Seas Policy” in 1993, the IMO’s pre-eminence in the rule-making process of international maritime law. However, it has never hesitated to affirm that if IMO’s international rules and regulations will not accommodate the European interests, the European Commission will come with regional regulatory solutions whether or not these comply with the internationally agreed rules. Considering this regional alternative if IMO fails to come with the proper rules and regulations is something of a U-turn with regard to the international approach stated in the Community’s maritime safety policy principles.

Nevertheless, for an international activity such as shipping where order and predictability of regulatory regime are sine qua non, the setting of new standards must be done at international level through the competent international organization, the IMO. Regional institutions or arrangements should complement the work of IMO in a constructive manner. Their input and energy must focus primarily on the enforcement of the existing rules and regulations. The European Commission can be a powerful enforcer of the IMO rules and regulations.

Chapter 6

6.0 Unilateralism and Regionalism at Sea in the area of maritime safety and protection of the marine environment

6.1 Unilateral and regional regulations

This chapter attempts to define unilateral and regional actions within the context of maritime safety and environmental protection regulations, how these actions have emerged, and what are the likely consequences of such actions.

6.1.1 Defining the unilateral actions

“Unilateralist attitudes”, from an International Law perspective, are defined by Dehaussy (1965)³⁵ as “the display of a State will to carry out certain legal acts, generating standards that form part of the legal system and produce limited effects”. According with Dupuy (2000), unilateralism may also denote the general tendency prevailing among some powerful states or groups of states to act without regard to respect for the equal sovereignty of their partners.

However, in the area of safety and marine environmental protection, unilateral actions are regulations or legal instruments enacted by national legislative or regulatory bodies (Boisson, 1999, p. 178). The problem with such regulations prescribing standards in order to enhance safety at sea and the protection of the marine environment is that they are created outside international conventions and “go beyond the general accepted international standards” which have been agreed upon thorough consensus by all concerned parties in a particular situation. Moreover, they exceed the competence such rule-making bodies have in applying the regulations upon subjects which are not under their jurisdiction, for example the enforcement or application of such standards on foreign vessels.

³⁵ As quoted by Boisson (1999, p.178)

To give a concise definition of unilateral actions which can be taken either by a single State, or by a group of States which collectively adopt individual measures with a similar content, unilateral actions or “one-side actions” in the area of safety and environmental protection are rules and regulations prescribing standards which go beyond the “generally accepted international standards”.

6.1.2 Unilateral actions: a matter of attitude, aims and tactics

In acting unilaterally States, either individually or collectively, are pursuing two aims. Firstly, the aim of such unilateral actions, is to “activate a decision–making process”, and secondly “to correct the deficiencies of the existing regulatory system”.

However, without taking into consideration at this point the objectivity or subjectivity of the reasons behind such actions, ultimately unilateral actions are a matter of attitude, a mode of behaving, or acting in order to protect some interests States may have in a particular situation or to achieve a particular goal.

For instance, in attempting to classify unilateral acts, Boisson (1999, p. 178), refers to the so-called “unilateral behaviour”. Accordingly, he identifies two different tactics States employ in fulfilling the aims of their actions. The first tactic corresponding to the aim of “activating the decision-making process” is intended to “exert pressure on organisations” but “rarely going beyond a threat”. In this case, States are launching official declarations emphasizing the need to speed up the implementation of internationally adopted provisions or to amend the existing conventions. Usually, the mass media amply comments on such actions. The second tactic, employed by States to fulfil the second aim “of correcting the deficiencies of the existing regulatory system”, is materializing the “threat” and States go beyond the threat, adopting their own regulations.

6.2 Causes of unilateralism

The main causes that bring about these “one-sided actions” in the area concerning the regulatory regime of safety at sea and environmental protection are: the inadequacy of the global regulatory system, and the recurrence of disasters at sea (Boisson, 1999, p.178 - 179).

6.2.1 The inadequacy of international regulatory regime

The inadequacy of the regulatory global system is attributed on the one hand to the international rule-making process and on the other hand to the rules and regulations made by such international rule-making institutions.

Regarding the international rule-making process the main drawback considered by the proponents of “one-sided action” is given by the difficulty of achieving a global consensus, and the slowness in the process of establishing and enforcing the legal provisions. With regard to the rules and regulations, Ringbom (1996, p. 275) stated that usually States have acted unilaterally when international rules and regulations have been considered ineffective; hence an action to compensate these shortcomings was deemed necessary.

However, IMO has been held responsible for this situation as being the main player in the international rule-making process in the area of maritime safety and marine environmental protection. Some are attributing to the slowness and inefficiency of IMO to its bureaucratic structures and the lack of power to adopt new stricter standards or to enforce those already existing. Scepticism goes further, questioning the real effectiveness of intergovernmental organisations and the institutional system itself (Boisson, 1999, p. 178).

6.2.2 Disasters at sea and the pressure from the media and public

Disasters at sea and the consequent loss of life and damage to the environment have nowadays become a subject of mass media attention and this has contributed to a certain extent to the public awareness of such problems. “There is a human fascination in disaster and the media inevitably focus upon dramatic pictures of vessels on fire or breaking up and surrounded by oil “(Kelly, 1994, p. 169).

However, “the public, who even in previously ‘maritime’ nations consider ships and shipping only when disaster strikes and there is a collision or stranding, believe what they are told by an only marginally better informed media” (Grey, 1993, p.29).

Today an accident affecting the coasts of a developed country is highly publicized worldwide. Unfortunately, the media are selective in their images. It is noteworthy to mention that the Braer incident in the Shetland Islands, in which there were no human casualties, attracted much greater press and television attention than the collision involving the ferry Dona Paz in the Philippines, in which over four thousands people were killed (Kelly, 1994, p. 169).

Nevertheless, public outcry and the influence of media over the governments is one of the factors that has been having an impact on the process of setting safety regulations after the occurrence of such accidents at sea. Commenting on the Erika disaster, Gantelet (2002, p.54) says: “There was pressure from the media and the public. There were countries, which demanded action, such as France. There has to be a coalition to push forward before the Commission launches in that adventure”.

As a reaction to public outcry, politicians have to become involved. Following a maritime accident, the public will exert a considerable pressure on the politicians. The public is always demanding fast decisions and no compromise; hence politicians who have a mandate and a responsibility towards their electors and, moreover they must keep riding on a wave of popularity, will always find a solution which usually, due to the shortness of time, is “based on a natural justice rather than on solid legal arguments” (Boisson, 1999, p. 178). Thus, a furious political call for fresh regulations following a maritime accident is likely to result in successful lawmaking, as most of those likely to be affected by regulations will be foreign (Grey, 1993, p.30).

6.3 Areas and justifications

Humanitarian or ecological considerations are the main arguments of States taking unilateral action on safety. The measures themselves are based on natural justice rather than on solid arguments (Boisson, 1999, p. 179).

The following paragraphs examine the relevant unilateral and regional actions manifested, first in the regulatory area of safety of life at sea and second in the area of the protection of the marine environment, as a consequence of maritime accidents.

6.3.1 Safety of Life

6.3.1.1 The RO-RO ferry losses – the issue of damage stability standard and the spread of unilateral and regional approaches to safety regulations

The Herald of Free Enterprise accident in 1987, together with the much more catastrophic Estonia accident that occurred in 1994, are clearly the events that have critically shaped the development of international regulations for Ro-Ro ferry design and operation for the year 2000 and beyond (Psaraftis, 2002, p. 12).

6.3.1.1.1 The Herald of Free Enterprise Car Ferry Disaster

The UK Government was the first to raise the prospect of unilateral action concerning ferry safety against the background of the Herald of Free Enterprise disaster³⁶ (Mott, 1992). The accident resulted in the death of 193 passengers and crewmembers.³⁷ The death toll after the capsizing of this vessel was the worst for a British vessel in peacetime since the sinking of the Titanic in 1912, (Boyd, 1996). Consequently, public opinion and the media pointed out the inadequacy of safety regulations concerning Ro-Ro ferries and called for urgent actions to be undertaken by authorities in order to prevent such disasters happening again (Boisson, 199, p. 180).

³⁶ The roll-on/roll-off passenger car ferry *Herald of Free Enterprise* capsized in the approaches to the Belgian port of Zeebrugge en route to Dover in England on March 6th, 1987. The vessel had left the port of Zeebrugge with her bow doors open allowing water to enter and flood the car deck.

³⁷ It was the combination of human errors (management, design and individual) that combined to result in the loss of 193 lives.

The British proposal

Based on the findings of the inquiry into the disaster ³⁸, the UK prepared several packages of measures to be considered for adoption within IMO. Most of these measures consisted in proposed amendments to the SOLAS 1974 Convention (Focus on IMO, January 1997, p.11). IMO examined all these proposals, and from April 1988 to December 1992 adopted a series of amendments to SOLAS 1974 regarding the safety of ro-ro passenger ships (Boisson, 1999, p. 180).

However, for the purpose of this paper the most relevant package of amendments proposed by the UK in the aftermath of the *Herald of Free Enterprise* disaster is the second one, submitted in October 1988, and known as the “SOLAS 90” standard. Within this package one of the most important amendments concerned regulation 8 of Chapter II-1 and was aimed at improving the stability of new ro-ro passenger ships in damaged conditions ³⁹. The amendment was adopted within IMO and applies to ships built after 29 April 1990, the date of the entry to force of this amendment, meaning that all ro-ro passenger ferries built since April 1990 have been built to improved damage stability standards (Focus on IMO, January 1997, p. 12-14).

The British threat

The adoption of the SOLAS 90 standard did not tackle the safety issue of the existing ships and some governments were still concerned with the safety level of this segment of the tonnage. In this respect, in April 1992, the UK proposed ⁴⁰ that the SOLAS 90 standard on damage stability must be made mandatory on the existing ro-ro passenger ships by May 1993 (Mott, 1992).

³⁸ Under the 1894 Merchant Shipping Act, a Court of Formal Investigation of the capsizing of the *Herald of Free Enterprise* was held in London between April and June 1987 before the Wreck Commissioner, the Hon. Mr. Justice Sheen.

³⁹ Work on the amendment had begun following the accident of the *European Gateway*, a ro-ro that in 1982 capsized due to a collision with another ship. This amendment was considered relevant for the ro-ro safety; hence the UK brought it forward.

⁴⁰ The proposal was based on the study initiated following the *Herald* disaster which showed that capsizing might still be a possibility if damage of the prescribed extent is received in the most vulnerable regions of the ship whilst operating in a moderate sea.

The International solution

Unfortunately, an international agreement on the UK proposal was not reached. Despite the unanimous recognition of the benefits brought by the SOLAS 90 in terms of safety, the majority of IMO member States felt that the standard was too high as to be retroactively applied to existing ships.

IMO has always been reluctant to adopt measures regarding ship design to be applied retroactively to existing tonnage due to the fact these imply substantial design and construction improvements, usually very expensive; hence a huge financial burden imposed on the industry (IMO, 1992, p. 1). Although, traditionally, major changes to SOLAS have been restricted to new ships by the so-called “grandfather clause”, this time, in order to attenuate the consequences of UK’s unilateral action, IMO opted for a slightly modified scheme of the SOLAS 90 standard to be applied also to existing ships. Therefore, the majority, except the UK and Ireland, agreed upon introducing the new requirements for existing ships during an 11-year period beginning 1st October 1994. The date by which each vessel must comply with the April 1992 standard, depends on the A/Amax⁴¹ value attained.⁴²

The materialization of the threat - British unilateral action – Regional solution

The United Kingdom was not satisfied with the outcome of the MSC meeting, thus, it announced that it would consider national action as to ensure “the highest safety standards” for all Ro-Ro passenger ferries operating between its ports and the Continent of Europe. Consequently, on 27th of July 1993 a regional agreement was signed in London among eleven European Governments⁴³ and the European Commission. Under the terms of this Northwest European Agreement, all existing

⁴¹ A/Amax ratio is determined in accordance with a calculation procedure (MSC7Circ.574, 1991) as a simplified version of the probabilistic damage stability calculation of ships. It was adopted by IMO as a method to compare the survivability of one vessel against another in order to achieve a hierarchy for phasing-in purposes. It is not strictly a survivability standard but a comparative “safety” indicator.

⁴² For example, vessels with an A/Amax value less than 70% had to comply with the standard by 1st of October 1994, the date on which the amendments entered into force (IMO, 1997, p. 14).

⁴³ Belgium, Denmark, France, Germany, Greece, Ireland, the Netherlands, Norway, Spain, Sweden and the UK.

ro-ro passenger ships operating in a large area of North West Europe had to comply with the SOLAS 90 standard within a stricter overall timetable ⁴⁴.

The consequence

The UK unilateral action, which had arisen from the Herald of Free Enterprise accident, was a significant initiative, and paved the way toward the regional approach in the process of setting safety standards. The main cost of this action has been a “two-tier” approach of safety at sea: one for the North-West European countries and the other conducted by IMO for the rest of the world (Boisson, 1999, p. 181).

6.3.1.1.2. The Estonia disaster

The sinking of the Estonia in the Baltic Sea on the 28th September 1994 with the loss of more than 900 lives was not only “the worst ferry disaster in Europe during the last century, but also an event which revitalised in a spectacular fashion a safety debate which had flared intermittently since the Herald of Free Enterprise capsized in the Channel in 1987” (1995, Lloyds List, January 26).

The sinking of the Estonia was perceived as a catastrophic accident mostly in the Northern European countries rather than in other regions of the world. The fact that the Ro-Ro ferry is a very popular means of transport and an important component of the leisure and tourism industries in Northern Europe can justify to a certain extent the need for firm action to enhance the safety of existing ferries operating in this part of the world (Boisson, 1999, p. 182). However, mention must be made that the freight Ro-Ro service is increasing in volume and significance also in Southern Europe corridors; hence the voice of those interested in this part of the world has to be heard regarding the issue of safety of this means of transport.

From threat to unilateral action

Norway was the first to announce publicly that was prepared to act unilaterally regarding the safety of Ro-Ro ferries if measures to improve existing ships’ stability

⁴⁴ The existing ferries were required to achieve an A/Amax of 70% by October 1994, with the threshold progressively increasing so that 97% of one-compartment ships reach this target by December 2004 and a similar percentage of two compartment ships by 2007.

were not agreed at the international level. Norway stressed the need not only for a “fixed and easily understood standard”, but also for “quick action” (Prescott, 1994, 21 October). Therefore, in 1995, under very heavy pressure from public opinion, the threat materialized when Norway decided to act unilaterally. Accordingly, on 8th of August, the Norwegian Maritime Directorate published new design standards for existing ro-ro passenger vessels.

The international solution

IMO had adopted an unprecedented procedure to tackle the problem of Ro-Ro safety following the tragic loss of Estonia. It appointed a Panel of Experts⁴⁵ (POE) to identify the weaknesses in the existing SOLAS regulations and to propose within 5 months period a framework of amendments to SOLAS for improving the insufficient state of the art in the field of damage stability of RO-RO passenger ships (Papanikolaou & Vassalos, 2001, p. 11).

The November 1995 SOLAS Conference

The most controversial issue before the conference concerned the POE’s proposal that: “there should be universal acceptance of SOLAS 90 standard with the added requirement that Ro-Ro passenger ferry remain stable up to 50 cm of water on the vehicle deck, subject to certain freeboard and wave height criteria” (Prescott, 1995). The POE recommended that “the 50 cm rule” should be applied also to existing vessels, although it was recognized that this proposal could result in extensive modifications and that the costs would be very high so that some ships might have to be scrapped.

The General Assembly of the SOLAS ’95 Conference rejected POE’s proposal regarding “water on deck penalty concept” as a basis for a worldwide standard due to insufficient evidence and the severe practical impact on existing vessels (Papanikolaou & Vassalos, 2001, p. 11). Also, several Governments said that sea and weather conditions in their regions meant that the proposed standard was not necessary. Although the SOLAS 90+50 cm standard has been accepted only as an

option to the new rules, not an absolute requirement, the IMO did allow for higher standards, up to SOLAS 90 + 50 cm to be adopted regionally or bilaterally.

Due to the strong public pressure in Northern and Western Europe, the IMO assembly accepted a resolution, namely Resolution 14, allowing interested states to enhance the requirements of the generally accepted SOLAS 90 damage stability standard through bilateral agreements. Following this resolution seven signatory States from NW Europe came in February 1996 with the so-called “Stockholm Agreement”, revising the original “water on deck” concept introduced earlier by the IMO’s POE, but retaining the original “penalty idea” unchanged (Papanikolaou & Vassalos, 2001, p. 11).

6.3.2 Protection of the marine environment from vessel source pollution

Back in 1979, David Allan Fitch in a comment made in the Harvard International Law Journal on the issue of “unilateral action versus universal evolution of safety and environmental protection standards in maritime shipping” affirmed that the enactment of unilateral measures by States as a reaction to shipping accidents which result in extensive marine pollution in their territorial waters and/or along their coastline are a form of restrictive practice upon shipping industry.

Many countries for different reasons have a tendency to take unilateral measures in order to resolve short-term or long-term problems in their shipping industry. However, these unilateral measures impact upon shipping industry at large and the supposed solution to that particular problem will not be more than “shifting the problem”.

⁴⁵ On 4th October 1994, the Secretary General of IMO, Mr. O’Neil proposed that a complete review of the safety of RO/RO ferries be carried out by a selected POE. All appointed experts were made available and financially supported by the Governments or interested segments of the industry.

6.3.2.1 The oil tanker accidents and the issue of phasing out single hull tankers

The issue of phasing out single hulled tankers was brought about in 1990 when the United States enacted unilaterally the Oil Pollution Act, known as OPA 90, in response to the VLCC Exxon Valdez incident in 1989. This issue gained momentum in 1999 when the single hull oil tanker Erika sank off the Coast of France. The Erika incident fuelled Europe's arguments to push for an accelerated phase out of single hull tankers as opposed to what IMO agreed in 1992 through the amendments to MARPOL Annex I, and has culminated in 2003 in the aftermath of Prestige incident (2002).

6.3.2.1.1 The Exxon Valdez

The 1990 Oil Pollution Act (OPA 90), passed by the US in August 1991, which had stemmed more or less from the Exxon Valdez incident,⁴⁶ is considered the most significant unilateral regulatory move with far reaching consequences for the shipping industry; even though one piece of national legislation, OPA'90 has had worldwide implications with drastic ramifications on the design, operation and economics of waterborne petroleum transport (Psaraftis, 2002, p. 7).

In an article written by Blackburne & Brown⁴⁷, the authors stated that the OPA'90 had undermined any international consensus by introducing standards into what should be a predictable and certain international regulatory framework. Commenting on this unilateral action Horrocks (1992, p. 4) affirmed that the USA action had been a severe blow to the principle of international adoption of measures destined to shipping industry. It had forced the hand of other nations on the question of oil tanker design and had introduced new requirements on a range of other less striking, but none the less important aspects of tanker operation. In the same context, he stated that the USA could afford this unilateral attitude, "being large enough to ignore the rest of the world if it chooses to do so".

⁴⁶ On March 24, 1989, the Liberian registered VLCC "Exxon Valdez" ran aground on Bligh Reef in Prince William Sound, Alaska, spilling approximately 240,500 barrels of crude oil into the Sound. The oil covered approximately 800 nm of shoreline.

⁴⁷ Which appeared in 1991 in Lloyds List, entitled "The US Oil Pollution Act – a unilateral step"

The unilateral action

In the aftermath of the Exxon Valdez incident the United States, dissatisfied with the ineffectiveness of the international standards on the prevention of pollution from ships, adopted the Oil Pollution Act (OPA) 90. Accordingly, the US unilaterally imposed strict standards on the design specifications of oil tankers (double-hull requirements) on both new and existing oil tankers, set according to vessel age limits (between 23 and 30 years, as from 2005) and according to deadlines (2010 and 2015) for the phasing out of single-hull oil tankers.

OPA 90 required new oil tankers to be double hulled and established a phase out scheme for existing single-hulled tankers. New oil tankers under OPA 90 included those built after 1990, but for tankers already on order it also included tankers delivered up to January 1st, 1994. Older single-hulled tankers had been phased out starting in 1995 and the final date for phase out of all single-hulled tankers is to be the year of 2015. The phase out date for single hull vessels carrying oil in bulk as cargo was based upon age of vessel, vessel's gross tonnage, and vessel design type (single hull, or single hull with double side (DS) or double bottom (DB) voids).⁴⁸

A foreign single hull vessel must meet the US double hull standards. The phase out schedule for single hull vessels over 5000 gross tons began January 1, 1995, and ends January 1, 2015. All single hull tank vessels, including those with double sides or double bottom, that are less than 5000 gross tons, can continue carrying oil in bulk in U.S. waters before January 1, 2015.

The International response

The US came also to IMO, calling for double hulls to be made a mandatory requirement under the MARPOL 73/78 Convention. The IMO members were fully aware of the implications of such requirements and IMO as the industry's standard setting body had to act cautiously, on the one hand having to protect the interests of all its members and on the other hand having to cope with this unilateral action trying to attenuate its disruptive effect upon the shipping industry at large.

There was a lot of resistance from the oil industry to the proposal of making double hull requirements mandatory. Also, some Member States suggested that measures addressing the existing ships should be contemplated and other designs should be accepted as equivalents. Accordingly, the IMO commissioned in 1991 a study into the comparative performances of double hull and mid-height deck tanker design the main outcome of which was that the two designs could be considered as equivalent, although each gives a better or worse outflow performance under certain conditions.

However, in 1992 the "double hull" requirements for tankers, applicable to new ships as well as to the existing ships according with a phase out scheme were made mandatory by amending Annex I of MARPOL. New-build tankers are covered by Regulation 13F, while Regulation 13G applies to existing crude oil tankers of 20,000 dwt and product carriers of 30,000 dwt and above. Regulation 13G came into effect on 6th of July 1995.

New oil tankers under MARPOL 13F included those built after 6 July 1996. The existing tankers had to comply with the requirements of Regulation 13F no later than 30 years after their date of delivery. Older single-hulled tankers were phased out starting in 1995 and the final date for the phasing out of all single-hulled tankers was set to 2015. The Convention also introduced a timetable for phasing-out single hull tankers by 2005. Three categories of single hull tankers were identified.

The differences between the American system and the International system has meant that, as from 2005, single-hull oil tankers banned from US waters on account of their age would begin to operate in other parts of the world, hence shifting the risk of pollution to other areas. The European Commission has been concerned about this situation and therefore has believed that an appropriate Community response was required to take effect before 2005, an important deadline since it is the date from which single-hull oil tankers banned from US waters will start to be used in European waters.

⁴⁸ http://www.uscg.mil/hq/g-m/nvic/10_94/n10-94.htm

6.3.2.1.2 The Erika

The European Parliament had been clearly worried for a long time with the increased risk of pollution presented by the imminent arrival of single hulled tankers banned from American waters under OPA 90, but authorized to operate under the then current IMO legislation, namely MARPOL 13 G. Something had to be done to prevent this and the loss of the Erika in December 1999 proved to be the catalyst for Europe's action as to push forward the issue of single hull tankers in order to protect its coastline.⁴⁹

More than 10,000 tones of heavy fuel oil were spilt, causing serious damage to fauna, flora, fisheries and tourism, as well as potential public health, polluting about 400 kilometres of France's coastline.

The European Commission response

In the aftermath of the Erika accident, the Commission responded by adopting the "Communication on the safety of oil transport by sea"⁵⁰, on the 21st of March 2000, only about three months after the accident. In this Communication the Commission proposed a two – stage action plan: on short and long term, each stage having dedicated a legislative package known as Erika I and Erika II.

The short term package, Erika I, encompasses three legislative proposals aimed at tightening the Community legislation on maritime safety. These are summarized below.

The first proposal included a substantial amendment to the existing Directive on the inspection of ships by the Port State in order to make the checks in ports more stringent since the mechanism of PSC proved to be at the moment still inadequate. That proposal basically aimed to ban ships that fall below the standards (including

⁴⁹ The Malta registered oil tanker Erika experienced a structural failure as she was crossing the Bay of Biscay in heavy waters." Following this major failure the vessel foundered some 30 nautical miles South of the Point de Penmarc'h in Brittany. Both sections of the vessel eventually sank in about 120 m. of water in a position fairly close to where the vessel broke in two following an unsuccessful attempt to tow the stern section further out to sea.

⁵⁰ COM (2000) 142 final

drawing up a black list of ships which may no longer enter EU waters) and to step up inspections on board “hazardous” ships, including oil tankers.

The second proposal included an amendment of the existing Directive with regard to classification societies for which the Maritime Administrations of the Member States delegate a major proportion of their inspection powers, especially as regards the structural quality of ships. Its aim was to centralize and harmonize the approval procedures for those societies, to impose specific penalties (suspension or withdrawal of approval) on societies failing to perform their duties and, in general terms to supervise the activities of those societies more closely.

The third proposal of the Erika I package focused on oil tanker safety aiming at a general ban on single-hull oil tankers in line with a timetable similar to that set by the United States, (2005, 2010 and 2015, depending on tonnage); hence enabling double-hull oil tankers to be introduced more quickly (in 2010). The timetable of phasing out single hull tankers had been set earlier than the timeframe provided for in MARPOL Regulation 13G.

Although this measure was not directly linked to the causes of the accident, the idea underlying this proposal was to reduce the gap between the phasing out schemes in force within the USA and Europe. In this respect, Lalis (2000, p. 3) clearly stated that the measure regarding single hull tankers had nothing to do with the causes of the Erika accident. She also mentioned that the impact of OPA 90 on trade patterns had been very well known, and Europe considered that it must avoid “getting all the rust buckets that will be prohibited from visiting US waters”. The European Parliament asked for a solution to this problem and the Commission acted accordingly.

The threat of EurOPA 2000

The accident prompted the European Commission to create an independent EurOPA 2000⁵¹ and push for an advancement on the phase-out dates of all sizes of

⁵¹ EurOPA 2000 concept was borrowed from Herrera's (2001) paper. It is an analogy with OPA 90

single hull tankers, not just above 20,000 dwt as agreed in MARPOL 13G (the third proposal of Erika I package).

Europe had indeed an uncompromising stand regarding the issue of single hull tankers. France reacted very strongly to having its coast polluted. It stirred up its EU partners who had taken the issue to heart and consequently Europe was considering its own maritime safety agenda as well as twisting the IMO's arm to do it its way.⁵² Again, the international safety agenda received a firm shove forwards from the loss of the product carrier tanker Erika.

IMO was put under heavy pressure. First, it had to stave off the prospect of Europe acting unilaterally on imposing EurOPA 2000, reiterating that IMO is the proper forum where regulatory reform has to be done. Secondly, it had to reach a consensus among its members in order to meet Europe's demand for an accelerated phase out scheme of single hull tankers. A danger would have arisen from this in that had the IMO not agreed to EC rules an inefficient double standard and two-tier market in shipping would have been created. In this respect, the Secretary General of IMO, stated that:

Above all, we must ensure a united, global response to the issue raised by the Erika sinking. Any attempt to impose regional standards will simply divert the problem elsewhere. If the European Union, for example, imposes its own restrictions on tankers, we should not expect the ships that are displaced would go straight to the scrap yard. They will simply move to trade elsewhere (O'Neil, 2000, p. 29, IFSMA Newsletter).

However, the EC did not materialize its threat of going unilaterally on the issue of single hull tankers and decided to negotiate its proposals within IMO. Thus, since March 2000, it has been lobbying heavily with the IMO to incorporate its measures regarding the phasing out of single hull tankers into an amended MARPOL 13G. By April 2001, the IMO had approved a new global timetable for accelerating the phasing out of single-hull oil tankers. During the 46th session of the Marine

⁵² As Bill Box related in April 2001, Seatrade.

Environment Protection Committee (MEPC 46, April 23rd – 27th) IMO Member States agreed to a timetable that will see most single-hull oil tankers eliminated by 2015 or earlier.⁵³

6.3.2.1.3 The Prestige and EurOPA 2003

The EU now has one of the best regulatory arsenals in the world to guaranty maritime safety. It is essential that these measures be put into effect with the utmost resolution and speed. The Commission for its part will continue its efforts and purpose following up measures to complete these rules and banish the spectre of a new Erika disaster. *EU Commissioner Loyola de Palacio, Commenting on Erika I and II legislative packages.*⁵⁴

Yet, on the 13 November 2002, the Prestige, a Bahamas–flagged single-hulled tanker loaded with 77, 000 tones of heavy fuel oil, was involved in an accident off the coast of Galicia. Due to extremely bad weather conditions, on 19 November, the vessel sank to some 4,000 meters below sea level. A large quantity of fuel oil was released into the sea during the sinking with further oil spillage observed for a considerable time after that. The pollution has affected the coastlines of Spain, Portugal and even France. It is calculated that approximately 40,000 tones of fuel oil leaked out of the tanker.⁵⁵

Recalling the Erika accident, the Commission noted in its communication in the aftermath of the Prestige accident that “when another 26-year old single-hull tanker sank...it became clear that the international and previously agreed EU schemes were not sufficiently ambitious”. Moreover, in a Communication to the European Council on proposed actions to deal with the effects of the Prestige disaster COM (2003) 195 final, from 5th of March 2003, it was stated that the Prestige accident confirmed the validity of the Erika I and II legislative packages, emphasizing the fact that had the measures been in force at the time, the Prestige would had been taken

⁵³ The delegation of the United States, however, reserved its position on the draft text, stating that it had hoped a position closer to that enshrined in its own national regulations (OPA 90) would be reached.

⁵⁴ As quoted by Psaraftis in the WMU Journal of Maritime Affairs, 2002, p. 3

⁵⁵ COM(2002) 780 final /20.12.2002.

out of service two months before the disaster. This fact gave an impetus to the European Community and brought forward the date from which single-hull tankers are to be phased out and double hull vessels phased in.

There has been speculation as to whether the European Commission would revive its initial regional phase-out schedules. Consequently, since the Prestige incident, the Secretary General of IMO has embarked on a number of activities having the aim to persuade the European Commission that:

IMO is the forum where safety and pollution prevention standards affecting international shipping are considered and adopted. Regional or unilateral application to foreign flag ships of national or regional requirements, which go beyond the IMO standards, would be detrimental to international shipping and should be avoided.⁵⁶

The Secretary-General of IMO received on 10th of April 2003 from all the fifteen Member States of the EU, each of which is a Party to the MARPOL Convention, a set of formal proposals to change certain provisions of the Convention. In essence, the proposals call for further acceleration of the phase-out timetable for single-hull tankers, an immediate ban on the carriage of heavy grades of oil in single-hull tankers and for the CAS (adopted in 2001 in the wake of the 1999 Erika incident) to be applied to tankers of 15 years of age and above (IMO News no.2, 2003, p.6).

At the opening of the 49th Session of the MEPC, held between: 14-18 July 2003, the IMO Secretary-General addressed the delegates to ensure that the proposals to amend oil tanker regulations in the MARPOL convention, brought to IMO in the wake of the Prestige incident must be treated in a “realistic, pragmatic and well-balanced” way as to

...not cause or lead to any negative repercussions which might damage the concept of universality in the regulation of shipping, discriminate against other regions of the world, have negative repercussions on the supply of oil, undermine the authority of IMO, confuse the industry as to which regulations prevail, and permit other regions to create their own regimes if in disagreement with IMO.

⁵⁶ IMO Briefing, 2003, 8th January

Now it remains to be seen if the majority of IMO Member States will accept the European proposals. “Whatever happens at the IMO, the Europeans, in their knee-jerk reaction to the Prestige incident, will have opened a can of worms that will have consequences far beyond the boundaries of Europe”.⁵⁷

Post Scriptum

“Had the Erika I and II legislative packages been in force at the time, the Prestige would have been taken out of service two months before the disaster.”

“Had the Prestige been given access to sheltered waters, it might have been possible to have transferred the cargo and the effects of pollution could have been controlled and minimised”.⁵⁸

6.4. Summary

The Herald of Free Enterprise accident and the tragic loss of Estonia have been the events that have critically shaped the development of international regulations for Ro-Ro ferry design and operation. These two Ro-Ro ferry disasters and the events that followed them illustrate that “regionalisation of safety standards” for Ro-Ro ferries is nowadays a reality (Boisson, 1999, p.184).

This has culminated in a two-tier approach to safety pertaining to RO-RO passenger ships. On the one hand there is the international standard, notably SOLAS'90 as the global standard for all existing ferries with dates of compliance ranging from 1st October 1998 to 1st October 2010, and on the other hand there is a regional standard, namely the “Stockholm Agreement”, an enhanced stability and safety standard beyond the requirements of the international standard pertaining to RO-RO passenger ships operating in North West Europe. The dates of compliance with the provisions of this agreement had ranged from April 1st 1997 to October 1st, 2002. However, due to practical reasons even within the North West European safety enclave there is a North-South division. The fact that the Mediterranean countries opposed this standard as too drastic, this standard does not apply in Southern

⁵⁷ Lloyds List, July 11, 2003. US likely to jump into IMO single-hull debate, by Bradford.

⁵⁸ Lloyd's List, March 20, 2003, Refusing refuge a danger says O'Neil, by Sandra Spears

Europe yet is causing “unrest”, particularly at the European level (Papanikolau & Vassalos, 2001, Abstract).

However, the regulations that have emerged to enhance the safety of Ro-Ro ferries focus on technological solutions that enhance the survivability of the vessel and the people onboard in case of flooding, rather than prevent the circumstances for the latter to occur. In the circumstances both the Herald of Free Enterprise and Estonia investigations revealed that part of the causes of these accidents were attributed to human error, the rules deal with the ferry design and the mitigation of damage (material and human) once the undesirable events happen (Psaraftis, 2002, p. 12).

The Prestige disaster proved once again that reactive measures triggered by disasters and taken under political pressure, are not the optimum for preventing a repetition of the disaster. Unfortunately tanker accidents often attract the attention of the media; hence the public reacts and the politicians act. As mentioned by Bergmeijer (1997, p. 5) “one should resist political pressure for hasty decisions and should carefully balance the quality and effectiveness of an anticipated measure against haste. And that is IMO is bound to do”.

For example it is widely accepted that the main reason behind both the Exxon Valdez and Erika accidents was failure in the human element part. As mentioned by Psaraftis (2002, p. 8) in the Exxon Valdez case, the US NTSB determined as probable causes the use of alcohol by the ship’s master, the failure of the third mate to properly manoeuvre the vessel because of fatigue, and the failure of the vessel traffic service because of inadequate manning levels, among other factors. In the Erika case, faulty inspection procedures by the Italian classification society RINA, and faulty maintenance procedures were speculated as probable causes.

Given the above-mentioned reasons, some questions might be posed. Which was the analysis that supported the formulation of such regulations prior to their adoption? Did they fail to include other elements that indeed would have made a difference to the Prestige accident not occurring?

An answer to these questions is offered by the Bergmeijer (1997, p. 5) who states that international rules and regulations aimed at protecting the marine environment fulfil their purpose if they meet at least the following criteria before being promulgated:

The necessity for having the rule should be acknowledged and the need, the technical feasibility and economical viability should be demonstrated. The rule should solve and not just shift the problem and should meet established safety standards. And, last but not least the rule should be understood by the operator and be controllable in an objective way by a third party.

PART III

Chapter 7

0.7 The Internationalization, unilateralism and regionalization in the context of the 1982 United Nations Law of The Sea Convention

7.1 Background

The analysis and scrutiny of the issue of the internationalization, unilateralism and regionalization of maritime safety and environmental protection regulations in the context of the 1982 UNCLOS is timely taking into consideration the latest regulatory measures envisaged by the European Commission in the aftermath of the Prestige incident in order to minimize the risk of future accidents.

The EC regional attempts to deal with pollution problems through the establishment of regional vessel-construction standards imposed on foreign vessels, and to prohibiting the entry of single-hulled oil tankers carrying heavy oil products into European Union ports, terminals and anchorages are clearly in breach of the relevant provision of the UNCLOS.

France, Spain and Portugal have unilaterally attempted to ban single hull tankers in transit crossing the waters of their Exclusive Economic Zones. These actions have created a precedent and since 18th of February 2003, Israel has imposed age limits on tankers entering its waters. Tankers of 20 years and above (in the Gulf of Eliat) and of 25 years or more (in the Mediterranean) that carry persistent oil have been banned from Israeli territorial waters (Fairplay, 20 February 2003, p.16).

Moreover, the revision of the UNCLOS in order to afford better protection for coastal States, including within the 200-miles EEZ, against risks associated with the passage of ships constituting a danger to the environment and which do not comply with safety standards is another issue on European Union agenda in the aftermath of Prestige incident (COM (2003) 105 final, p. 11).

These attempts by EU Member States have created confusion and concern among the shipping industry stakeholders.

7.2 The process of adoption and enforcement of the international standards

Regarding the issues of safety at sea and pollution from ships, UNCLOS clearly emphasizes the concept of internationally agreed and evolved standards as opposed to regional ones.¹ The relevant articles that illustrate this fact are presented in Appendix 2.

7.2.1 The adoption of the international standards - the Global mandate of IMO

IMO is explicitly mentioned in only one of the articles of UNCLOS, namely Article 2 of Annex VIII². Nevertheless, several provisions in the Convention refer to the IMO as the “competent international organization”³. In its capacity as competent international organization, IMO is empowered to promote the ‘general adoption of the highest practicable standards in matters concerning the maritime safety, efficiency of navigation and prevention and control of marine pollution from ships’.

7.2.2 The enforcement of the international standards

IMO itself does not have the jurisdiction to enforce the regulations and standards that it establishes. The enforcement of these regulations concerning safety of navigation and the protection of the marine environment is decentralized. It is primarily the responsibility of the flag States. flag State jurisdiction is supplemented by the enforcement powers of the coastal States and of the port States (Wolfrum 1999, p.233).

The following paragraphs examine the relevant provisions of UNCLOS relating to a State jurisdiction to develop and enforce standards concerning safety of vessels and the prevention of pollution from ships. It follows the functional approach ⁴.

¹ LEG/MISC/3/Rev.1, 2003.

² Annex VIII- Special Arbitration. Article 2 – Lists of experts

³ When the expression “competent international organization” is used in the singular in UNCLOS it refers exclusively to IMO.

⁴ One aspect of the development of this Convention is that although we are speaking about maritime zones, notionally the LOS Convention is not a zonal convention. The focus is on the functions to be

7.2.2.1 Flag State Jurisdiction and International Standards

According to Art. 94(3) of UNCLOS the flag State is responsible for regulating safety at sea, and for setting standards of construction, design, equipment and seaworthiness of ships. These responsibilities also include taking measures to prevent pollution. In this respect, Article 211(2) stipulates that a flag State has the competence to adopt laws and regulations for the prevention, reduction and control of pollution of the marine environment from vessels flying its flag or of its registry. However, the laws and regulations enacted by the flag State must have at least the same effect as generally accepted international rules (Art. 94 (5)).

Even when the ship is within the territorial jurisdiction of other states, the flag State does not lose its jurisdiction; regardless of where it is operating, a ship must therefore comply with the laws of its own flag.

7.2.2.2 Coastal State Jurisdiction

The internal waters remain the zone within a State has the jurisdiction to prescribe standards. A State has the widest powers and the main limitations according with those voluntarily agreed to in the relevant treaties (Abecassis & Jarashow, 1985, p.102). The coastal State jurisdiction to regulate vessels depends on its sovereignty or sovereign rights over maritime zones contiguous to its coasts.

7.2.2.2.1 Internal Waters

In internal waters, such as ports, the coastal State is free to apply national laws and determine conditions of entry for foreign vessels. According to art. 211(3) of the LOS, a coastal State may establish particular requirements for the prevention, reduction and control of pollution of the marine environment as a condition for the entry of foreign vessels into its ports or internal waters or for calling at its off-shore terminals. However, these particular requirements must give “effect to generally accepted international rules and standards”. Moreover, these particular requirements do not have to hamper the right of innocent passage. Also, they have

carried out within each particular maritime zone, which are based on the “Principle of Equity” that governs everything in the LOS Convention (Mukherjee, 2003).

the obligation to communicate such requirements to the competent international organization.

7.2.2.2.2 Territorial seas (TS)

In the territorial sea, the coastal State also enjoys sovereignty, and with it the power to apply national law. However, ships of all states enjoy the right of innocent passage through the territorial sea.

Concerning the competence to adopt standards, by art. 21(1)(a) and (f), the coastal State, exercising its sovereignty within the territorial sea, may adopt rules and regulations in conformity with the provisions of the Convention and other rules of international law to regulate innocent passage through the territorial sea in respect of the safety of navigation and the prevention, reduction and control of pollution. However, the most important thing is that Art. 21(2) of the 1982 UNCLOS excludes from the coastal State's jurisdiction the right to regulate the construction, design, equipment, and manning standards for ships, unless giving effect to international rules and standards, which primarily means the MARPOL and SOLAS Conventions. The reason for this exclusion is self-evident. The intention is that it must be uniformity in relation with these issues. If every state set its own standards on these matters ships could not freely navigate in the territorial seas of other states.

Another important limitation on the coastal state's jurisdiction with regard to matters above mentioned is that it must not hamper the right of innocent passage through the territorial sea or suspend the right in straits used for international navigation. The vessels of all nations enjoy this right and it is an essential safeguard for freedom of maritime navigation. However, foreign flag vessels are not exempted from coastal State laws, but these laws must be in conformity with international relevant conventions⁵ and must not have the practical effect of denying passage.

7.2.2.2.3. The Exclusive Economic Zone (EEZ)

The EEZ must be regarded as a separate functional zone of a *sui generis* character, situated between the territorial sea and the high sea (Churchill & Lowe, 1999,

p.165). According to Article 56⁶ (1) (a), the coastal State does not enjoy sovereignty over its EEZ. It has certain sovereign rights for the purpose of exploring and exploiting the natural resources of the seabed, its subsoil and the superjacent waters, and it has certain limited jurisdictional rights, *inter alia*, with regard to the protection and preservation of the marine environment.

7.2.2.2.3.1 Coastal State Prescriptive Jurisdiction

The coastal State regulatory jurisdiction over vessels is limited to the application of international rules for enforcement purposes only (Art 211(5)). Therefore, coastal states have acquired little real discretion about the kind of pollution legislation they may apply in the EEZ. In particular, as in the TS, they are denied the power to set their own construction, design, equipment, and manning standards for ships.

However, coastal States are allowed to adopt special mandatory measures for defined areas of their EEZ because of special oceanographical and ecological conditions, but are required to work through the competent international organization.⁷ However, the most important thing is that such additional laws and regulations may relate to discharges or navigational practices but shall not require foreign vessels to observe design, construction, manning or equipment standards other than generally accepted international rules and standards (Art 211(6) (c)).

Nevertheless, the essential point remains that the Convention's articles on the regulation of vessels pollution by coastal states are primarily important as a basis for enforcement of MARPOL and other relevant international standards, and do not authorize "creeping jurisdiction" over the high seas (Birnie & Boyle, 2002, p.375).

7.2.2.2.3.2 Enforcement jurisdiction of coastal and port State

Coastal State enforcement rights are limited in the EEZ. Vessel detention and institution of proceedings is allowed where there is clear objective evidence that a violation of vessel-source pollution laws and discharge has actually resulted, causing or threatening major damage (Zwaag & Smilie, p.250).

⁵ IMO Conventions

⁶ Rights, jurisdiction and duties of the coastal State in the Exclusive Economic Zone

7.3 Concluding Remarks

The threat that regionalism at sea may take a highly exclusionary or jurisdictionally expanding form is quite evident in the light of the latest measures envisaged by the European Commission in the aftermath of the Prestige disaster. The EC regional attempts to deal with pollution problems through the establishment of regional vessel-construction standards imposed on foreign vessels, and to prohibiting the entry of single-hulled oil tankers carrying heavy oil products into European Union ports, terminals and anchorages underpin this statement

According to the relevant provisions of UNCLOS presented earlier, such actions are conflicting with UNCLOS and the relevant international conventions. Any attempts of these States at further encroachments on ocean freedoms are likely to be marginal at best and may not be worth the political costs or the risks involved. In their aim to protect their coastlines from the risk of vessels pollution, European coastal States must have due regard for the rights and duties of the other States. In exercising their sovereignty over the internal waters and territorial sea these Coastal States are free to adopt and enforce their national pollution laws, but such laws must give effect to the generally accepted international standards. Moreover, foreign vessels' innocent passage within the territorial sea and internal waters must not be hampered. As for the EEZ, in conformity with their sovereign rights over this maritime zone, coastal States' regulatory jurisdiction over foreign vessels is limited to the application of international rules and for enforcement purposes only. Moreover, all vessels enjoy the freedom of navigation within their EEZ. Furthermore, the 1982 UNCLOS Convention excludes from the coastal State's jurisdiction the right to regulate construction, design, equipment and manning, unless it gives effect to international rules and standards (MARPOL and SOLAS).

The UNCLOS is a comprehensive treaty, which provides *inter alia* the global legal framework governing the area of maritime safety and vessel-source pollution. The Convention must be seen as a fairly treaty, serving the world community's interests at large. Furthermore, one of the main purposes of the Convention is to keep a

⁷ The coastal States shall publish the limits of any such particular, clearly defined area (Art 211(6) (a)).

balance between these various interests and to avoid the potential obstruction to shipping activity that might be caused by the imposing of differing national requirements. Therefore, the Convention imposes on States the obligation to establish international rules and standards to enhance safety at sea and to prevent and control vessel source pollution. Moreover, the formulation of these standards must be done within IMO, which has the competence of setting the highest practicable standards in the area of safety at sea and vessel- source pollution prevention.

The Law of the Sea Convention does not make any reference to regional rules as to be applied in terms of maritime safety and prevention of pollution from ships. Ringbom (1996, p. 280) is of the view that regulation of shipping at regional level would provide no added value as far as prescriptive powers are concerned. Certainly, there seems to be no problem if a group of States aggregate and exercise collectively their separate jurisdictional competencies – for example, by agreeing to a common regime within their combined economic zones, or by agreeing to establish common regulations for vessels of their own nationalities on the high seas. However, there are certain principles from which regional arrangements cannot derogate. In this respect Mink (1977, Opening Address) states that “the freedom of navigation, over flight and associated activities beyond narrow territorial sea, and passage through straits are principles of universal application that cannot be impaired by unilateral or regional arrangements”.

In conclusion, the global dimension of the UNCLOS should not be disregarded. There is no question of global law of the sea being replaced by regional regimes for the oceans. Rather they will complement each other, for this there is room for both regimes (Nelson, 1996, p. 25).

PART IV

***The sea unites nations, rather than divides them.
It creates a world of neighbors.***

Klaus Töpfer, UNEP

Chapter 8

8.0 Final Conclusion

The Internationalization process as it has manifested in the area of maritime safety and environmental protection illustrates the quest for uniformity. Therefore, the leitmotif of this paper is that the “*shipping industry needs a uniform regulatory framework*”. This uniformity can only be achieved through the establishment of international agreed standards, which in the field of maritime safety and vessel source pollution, only IMO as designated by the 1982 UN Law of the Sea Convention is empowered to do.

The need for order and predictability in an international activity such shipping is a sine qua non. Lack or inadequacy of uniformity in international maritime law would lead to serious practical and legal difficulties for those involved in the business. Without uniform laws ships traverse the seas of the world through what is described as “patchwork quilt” of legislation.

Various national or regional standards divergent from the international ones represent a barrier to shipping. They accelerate the fragmentation of the regulatory regime and bring legal uncertainty and arbitrariness leading to the risk of a two-tier safety regime. Indeed, the proliferation of unilateral and regional safety regulations as a response to the tragic shipping accidents has led to the creation of a two-tier safety regime.

The risk of a two-tier safety regime

Safety is a relative concept, in both economic and cultural terms. Maritime accidents cost money. The prevention of such mishaps through enacting new rules and regulations also implies money; hence safety is an expensive issue. Safety has been more actively pursued among advanced societies than by those struggling with development priorities (Plaza, 1998, p.2). Accordingly, developing countries with a lack of financial resources and proper expertise and knowledge in administering

and implementing the safety regulations might have difficulties in obtaining the level of safety required by the developed maritime nations. In this respect, greater North-South solidarity and mutual understanding is required to hamper the emergence of a two-tier safety regime. This concept can be translated into reality and practice as “a high level of safety for rich countries and a low level of safety for the third-world countries, ... would have to confine their third world shipping activities to domestic traffic within their national waters” (Boisson, 1999, p.520).

It is in this light that usefulness of having internationally agreed safety regulations must be seen and understood. The main purpose of international safety regulations is to assure an adequate safety standard to which all signatory nations will subscribe in equal degree, thereby providing an equitable economic footing (Plaza, 1998, p.2). Moreover, the rules and regulations aimed at enhancing safety and providing better protection of the marine environment must be based on sound judgments and a compelling need rather than on political expediency.

As far as reducing the risk of pollution from shipping casualties is concerned, unilateral and regional actions will not lead to a solution in terms of reducing the risk of pollution. These actions can only lead to solutions leading to a negative impact on the shipping industry, as they would only shift the problem and not solve it permanently.

There is a need for consistency between regional rules and all acceptable principles and rules of contemporary international law. Regional rules must be seen as complementary or correlated with international rules. This is an essential condition for shipping due to its international character. International standards should be considered for benchmarking any national or regional initiative in setting standards. This is because International standards provide a reference framework, and a common language for all stakeholders and create "a level playing field" for all competitors. Moreover, international standards provide the basis for further developments.

In shipping, national or regional initiatives are not rejected by IMO. In reality the laws governing safety aspects of shipping have been developed within IMO by a continuous process of interaction among its Member States. Moreover, within the IMO, States are empowered to put forward their proposals of the most diverse and conflicting character and other states are given the option to weigh and appraise these proposals and ultimately accept or reject them. Hence, the IMO provides the forum where States through a continuous constructive dialog make the decisions and ultimately set the standards.

Regionalism in the area of maritime safety and environmental protection is a reality today. This does not mean that regional groups cannot contribute. In the area of maritime safety and environmental protection there exists a place for regional organizations to act. They can play an effective role in complementing the work of IMO and flag States in implementing and enforcing the international standards. The effectiveness of regional approach can be seen in the area of Port State control, and also in HELCOM. HELCOM Copenhagen Declaration, 2001 is an excellent example of how a number of relevant safety measures can be taken and agreed at regional level without compromising the leading role of the IMO. In this way we may deduce that the concept of regionalism is welcome to provide solutions to challenging contemporary problems. If regionalism manifests in a destructive way, which discriminates against non-regional nations, however, the possibilities for confrontational conflict will increase. However, in matters affecting the inherent rights pertaining to States with regard to use of the sea activities or shared resources of the oceans, not one single nation or any single group of nations can legitimately completely “go it alone”, ignoring the interests of others.

IMO will continue to remain the forum where all national and regional initiatives will be brought, discussed and agreed upon. The author feels that at this point in time, IMO should not be marginalized by regional or unilateral initiatives. It must be noted that throughout research for this paper the author has identified a strong support from the part of leading maritime nations for IMO and international regulations as opposed to regional regulations. The shipping industry cannot afford to continuously

defeat IMO's work improving safety standards through open, reasoned and constructive dialogue among all stakeholders.

Uniform standards possible?

IMO mirrors opinions of its members, those 162 States that make the decisions within IMO and adopt the standards. International conferences and institutions are only as effective as governments choose to make them. Therefore, for member states to criticize the Organization for its slowness or inefficiency seems ridiculous.

The International Organization for Standardization (ISO) ¹ is the world's largest developer of standards and illustrates that international standards are needed and should be applied uniformly all over the world. Many of ISO's members also belong to regional standardization organizations e.g. British Standard Institute (BSI) etc. and this is considered by the ISO as a "bridge" which links it with regional standardization activities.

ISO has recognized regional standards organizations representing various regions², but this recognition is based on a commitment by the regional bodies to adopt ISO standards - whenever possible without change - as the national standards of their members and to initiate the development of divergent standards only if no appropriate ISO standards are available for direct adoption. Borrowing from the ISO example, and for the sake of uniformity, regional organisations should refrain setting standards that conflict with international ones.

Prospects

The proliferation of unilateral and regional actions will end with the implementation of the Formal Safety Assessment (FSA) methodology as a modern tool for regulating ship safety. As shown in this research, the development of safety regulations as a "knee-jerk" reaction to maritime disasters is counterproductive. Therefore, a scientific and risk based approach to the accidents and their underlying

¹ <http://www.iso.ch/iso/en/aboutiso/introduction/index.html#two>

causes, is needed in order to ensure that the measures which are developed address the risks. The FSA methodology contains elements that could provide future ship safety regulations with a more scientific basis than the present reactive prescriptive regulations.

The author feels that IMO should benefit from introducing of an effective flag State audit scheme. This may be critical to the future standing of IMO. An international regulator must have tools to ensure the compliance of its rules and regulations. The audits would highlight areas where technical assistance may be required and ways of achieving it. The key concepts of this tool are contained in A 919 (22), which stresses the need of member States to have in place an adequate and effective system to exercise control over ships entitled to fly their flag. The overarching aim of this tool is that all members have to comply with safety and environmental protection Convention of the IMO.

The author, however, wishes to conclude by saying that the three concepts of internationalization, unilateralism and regionalization must be seen as interdependent and all together form the whole when looking at shipping legislation. Therefore, they should exist harmoniously. The author feels that unilateral and regional solutions to shipping problems must be regional in design but international in concept; as international regulations complement national solutions and shipping has an international character.

² Africa, the Arab countries, the area covered by the Commonwealth of Independent States, Europe, Latin America, the Pacific area, and the South-East Asia nations

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APPENDIX 1

ACQUIS COMMUNITAIRE

The European Union *acquis communautaire* relating to maritime safety currently consists of:

- Council Directive 94/58, OJ 1994 L 319/28 on minimum standards of training for seafarers.
- Council Directive 92/29, OJ 1992 L113719, on the Minimum Safety and Health Requirements for Improved Medical Treatment on Board Vessels.
- Council Directive 94/57, OJ 1994 L 319/20 common rules and quality standards for ships inspections and classification societies;
- Council Regulation 2978/94, OJ 1994 L319/1 on the implementation of IMO rules on tonnage measurements of ballast spaces in more environmentally friendly segregated ballast oil tankers (SBTs)
- Council Directive 93/75 on requirements for vessels servicing EU (“Eurorep”)
- Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations
- Council Regulation (EC) No 2978/94 of 21 November 1994 on the implementation of IMO Resolution A.747(18) on the application of tonnage measurement of ballast spaces in segregated ballast oil tankers
- Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control)

Erika I Package

- Directive 2001/105 of 19 December on the control of national ship inspection and survey organizations repealing Directive 94/57 of 12 December 1994
- Directive 2001/106 of 19 December on PSC repealing Directive 95/21 of 7 July 1995
- Regulation 417/2002 of 18 February 2002 on the accelerated phasing-in of double hull or equivalent design standard for single hull tankers (repealing regulation 2978/94 (on segregated ballast oil tankers))

Erika II Package

- Directive 2002/59 of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Directive 93/75 of 13 September 1993.
- Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency.

Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (Text with EEA relevance)

Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) and amending the Regulations on maritime safety and the prevention of pollution from ships

Regulation (EC) No 417/2002 of the European Parliament and of the Council of 18 February 2002 on the accelerated phasing-in of double hull or equivalent design requirements for single hull oil tankers and repealing Council Regulation (EC) No 2978/94

Retrieved from the WWW:

http://europa.eu.int/eur-lex/en/lif/reg/en_register_073030.html

APPENDIX 2

Relevant articles UNCLOS regarding the international standards

UNCLOS is acknowledged to be an "umbrella convention" because most of its provisions, being of a general kind, can be implemented only through specific operative regulations in other international agreements.

This feature is reflected in several provisions in UNCLOS, which require that States "take account of", "conform to", "give effect to" or "implement" the relevant international rules and standards developed by or through the "competent international organization" (IMO). These are variously referred to as "applicable international rules and standards", "internationally agreed rules, standards, and recommended practices and procedures", "generally accepted international rules and standards", "generally accepted international regulations", "applicable international instruments" or "generally accepted international regulations, procedures and practices".

The articles and provisions of UNCLOS that are of particular relevance in this context are the following:

In the area of safety, the relevant articles are:

Article 21(2), refers to the "generally accepted international rules or standards on the design, construction, manning or equipment" of ships;

Art.211 (6) (c), refers to the "generally accepted international rules and standards"; art. 217 (2), which refers to the "applicable international rules and standards" and article 94(3) and (5), which refers to the "generally accepted international regulations, procedures and practices" governing the construction and equipment of ships, as well as the manning of ships, taking into account "applicable international instruments".

Regarding the prevention of pollution from vesse:

Art. 211 (1) “States...shall establish international rules and standards to prevent, reduce and control pollution of the marine environment from vessels ...”

Art 211 (2) “ ...such laws and regulations shall at least have the same effect as that of generally accepted international rules and standards established through the competent international organization or general diplomatic conference.”

Art 218 (1) “... applicable international rules and standards established through the competent international organization or general diplomatic conference.”

Art 220 (1) “laws and regulations adopted in accordance with this Convention or applicable international rules and standards for the prevention, reduction and control of pollution from vessels “

Source: International Maritime Organization (2003, February 17). Implications of the United Nations Law of the Sea for the International Maritime Organization. (LEG/MISC/3/Rev.1, 2003, p. 4). London: Author