

# Scrubbers and the Law

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# Introducing the problem

- The current sulphur limit for fuels is 0.50%, and 0.10% for Sulphur Emission Control Areas (SECAs)(MARPOL, Annex VI, reg 14).
- To comply with this standard, ships have a choice:
  - Use fuel oil with low sulphur content or,
  - Install an Exhaust Gas Cleaning System (EGCS, i.e., scrubber) to remove sulphur as approved by the national maritime administration issuing the SO<sub>x</sub> Emission Compliance Certificate (MARPOL, Annex VI, reg 4(1)-(2)).
  - IMO provides guidance on the use of EGCS (2015).
- ECGS produces a new form of marine pollution from toxic and acidic scrubber washwater, raising concerns over inconsistency with the United Nations Convention on the Law of the Sea, 1982 (UNCLOS).

# The law of the sea

- Negotiated during 1973-1982, UNCLOS is widely regarded as the constitution for the world's oceans (Koh, 1982).
- UNCLOS has 168 States Parties; no reservations are allowed.
- UNCLOS enjoys a generally higher order than other marine conventions:
  - Specific environmental obligations assumed under special marine environmental conventions should be carried out in a manner consistent with UNCLOS general principles and objectives (Art 237(2)).
  - Other agreements are expected to be compatible with UNCLOS (Art 311(2)).

# Definition of pollution

- “Pollution of the marine environment”:
  - means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities” (UNCLOS, Art 1).

# Expectations of States

- To protect and preserve the marine environment (Art 192).
- To take individual or joint measures to prevent, reduce and control pollution of the marine environment from any source (Art 194).
- To take measures in a manner that do not transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another (Art 195).
- To take measures to prevent, reduce and control marine pollution from technologies under their jurisdiction or control that may cause significant and harmful change (Art 196).
- To establish (through IMO) international rules and standards to prevent, reduce and control pollution of the marine environment from vessels (Art 211).
- States are responsible for the fulfilment of their international obligations concerning the protection and preservation of the marine environment (Art 235(1)).

## Where non-compliance occurs

- MARPOL Annex VI Regulations 4 (alternative means of compliance) and 14 (sulphur emission limits) *per se* are not necessarily inconsistent with UNCLOS.
- The use of scrubbers as an alternative compliance mechanism authorized by national maritime administrations, resulting in discharges in the marine environment, is the issue (IMO 2015 EGCS Guidelines, especially Part 10 on discharge).



# Potential role of ports

- Ports' potential for leadership and facilitating roles, e.g.:
  - Ban the discharge of scrubber washwater into marine areas under port jurisdiction.
  - Provide reception facilities for residues.
  - Ensure efficiencies in turnaround of vessels to minimize waiting.
  - Plan for alternative fuels.
  - Require use of shore power.
  - Consider green ship incentives.



Conclusion: A need to promote compliance with the law of the sea

- Treaty obligations must be performed in good faith.
- Obligations under environmental agreements should be carried out consistently with UNCLOS principles and objectives (Art 237(2)).
- MARPOL obligations should be carried out consistently with the law of the sea (Art 9(2)).
- IMO Member States certifying EGCS systems have an obligation to comply with their UNCLOS obligations to prevent pollution of the marine environment from scrubber washwater.
- The IMO EGCS Guidelines need to support compliance with UNCLOS.