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LAWYERS



International Marine Environmental Law (Marine Pollution)

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11 January 2010

Agenda

- United Nations Convention on the Law of the Sea (**UNCLOS**)
- International Convention on Civil Liability for Oil Pollution (**CLC**)
- International Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (**London Convention**)
 - Dumping of radioactive waste
- International Convention for the Prevention of Pollution of the Sea by Oil (**OILPOL**)
 - Torrey Canyon



Agenda

- International Convention on the Prevention of Pollution from Ships (**MARPOL**)
 - Argo Merchant
 - Amoco Cadiz
 - Exxon Valdez
 - Erika
 - Prestige



United Nations Convention on the Law of the Sea (**UNCLOS**)

- Came into force on 10 December 1982
 - Took more than 14 years to draft UNCLOS
- Comprehensive regime that establishes rules governing all uses of the oceans and their resources
- The Convention comprises 320 articles and nine annexes



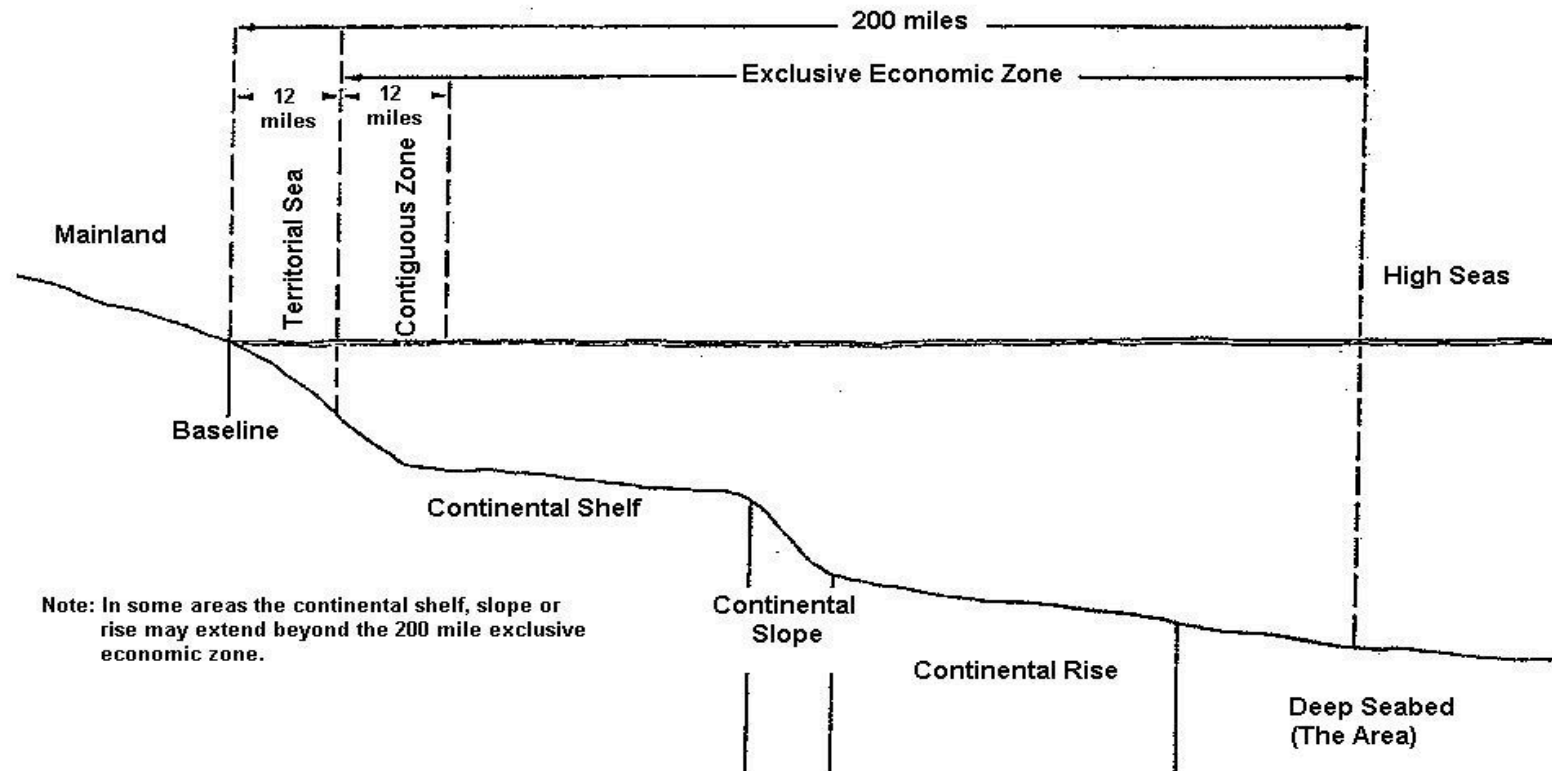
UNCLOS cont.

- Some key features of UNCLOS are:
 - Coastal states sovereignty
 - Freedom of navigation, over-flight, scientific research and fishing of the high seas
 - Land locked states have right of access and freedom of transit
 - States to promote development and transfer of marine technology
 - Settlement of disputes by peaceful means
 - Disputes submitted to International Tribunal for Law of the Sea established under UNCLOS



Legal responsibility in the marine area

An illustration on the different legal zones in the marine area under 1982 UNCLOS was shown:



Note: In some areas the continental shelf, slope or rise may extend beyond the 200 mile exclusive economic zone.

Source: Churchill & Lowe, The Law of the Sea, Manchester 1983



International Convention on Civil Liability for Oil Pollution Damage (**CLC**)

- Adopted 1969, came into force 1975
- Aim is to ensure that adequate compensation is available to persons who suffer oil pollution damage resulting from maritime casualties involving oil-carrying ships
- CLC applies to all seagoing vessels carrying oil in bulk as cargo



CLC cont.

- Liability for such damage on the owner of the ship
- 2000 Amendment to Protocol raised liability rates
- Provides for measures and mechanisms to prevent and reduce damage from oil pollution
- CLC does not apply to warships or vessels owned or operated by a State and used for non-commercial service



International Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (**London Convention**)

- Convention in force since 1975
- Further modernised by the London Protocol
 - Entered into force on 24 March 2006
- One of first global conventions to protect marine environment from human activities
- Objective - to promote the effective control of all sources of marine pollution and to prevent pollution of the sea by dumping of wastes and other matter



London Convention and Protocol cont.

- Under the London Convention and Protocol all dumping is prohibited except for possibly acceptable wastes on a 'reverse list'
- Parties to Convention have implemented regulatory programmes to assess the need and impact of dumping
- Promotes sound waste management and pollution prevention
- Guidelines have been developed
- Enforcement



London Convention and Protocol cont. – Soviet disposal of radioactive waste

- In 1990s the Yablokov Report documents the dumping of high-level radioactive waste in the Arctic
- Highlighted the limitations of the compliance system
- Ultimately, the London Convention stimulated compliance
 - Led to regional efforts to enforce the London Convention – Russo-Norwegian Environmental Commission and the International Arctic Seas Assessment Programme
 - International shaming of the Soviet regime – Consultative Meetings under the London Convention
 - Building capacity – international assistance to develop treatment and storage projects



International Convention for the Prevention of Pollution of the Sea by Oil (**OILPOL**)

- OILPOL was adopted in 1954 (and amended in 1962, 1969 and 1971)
- Primarily addressed pollution resulting from routine tanker operations and discharge of oily wastes from machinery spaces
- Attempted to tackle the problem of pollution of the by oil in two main ways:
 - 'prohibited zones'
 - provision of facilities for the reception of oily water and residues.



OILPOL cont.



- Torrey Canyon
 - In 1967 it ran aground while entering the English Channel
 - Largest oil spill at the time – 120,000 tons of crude oil spilled
 - Incident highlighted deficiencies in the existing system for payment of compensation
 - Led to the formation of MARPOL



International Convention for the Prevention of Pollution from Ships (**MARPOL**)

- Main convention covering pollution by ships from routine operational or accidental causes
- MARPOL is a combination of two treaties adopted in 1973 and 1978 (and amended over the years)
- 1978 MARPOL Protocol, which absorbed the 1973 convention entered into force on 2 October 1983



MARPOL cont.

- MARPOL currently has six annexes:
 - Annex I – Regulation for the for the Prevention of Oil
 - Annex II – Regulation for the Control of Pollution by Noxious Liquid Substances
 - Annex III – Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form
 - Annex IV – Prevention of Pollution by Sewage from Ships
 - Annex V – Prevention of Pollution by Garbage from Ships
 - Annex VI – Prevention of Air Pollution from Ships



MARPOL – Argo Merchant



- Ran aground off the coast of Massachusetts in December 1976, spilt 27,000 tonnes of oil
- At the time, MARPOL had not been ratified
- US demanded further regulations on tanker safety
- In 1978 the Conference on Tanker Safety and Pollution Prevention adopted a 1978 Protocol to MARPOL expanding the requirements for tankers



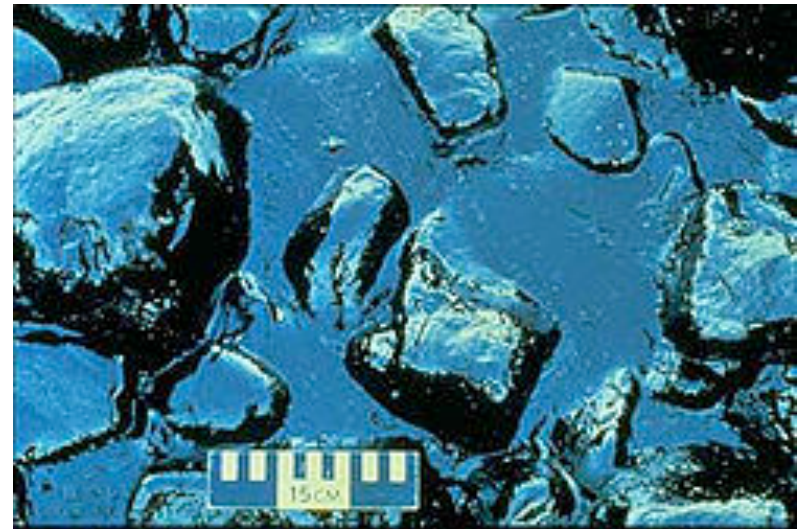
MARPOL – Amoco Cadiz

- On 16 March 1978 the Amoco Cadiz ran aground off the coast of France and spilt 223,000 tonnes of crude oil
- Provided impetus to the ratification of MARPOL
- The French government presented claims totaling \$2 billion to United States courts.
- France was awarded \$120 million from the American oil company Amoco and the shipbuilder in 1990.



MARPOL – Exxon Valdez

- On 24 March 1989 the Exxon Valdez ran into the Bligh Reef in King William Sound in Alaska and spilt 10.8 million US gallons (40.9 million litres) of oil
- The United States introduced its *Oil Pollution Act 1990*
- The United States went to the International Maritime Organization to push for double hulls to be made a mandatory requirement of MARPOL
- In 1992 the amendments to MARPOL requiring mandatory double hulls were adopted



MARPOL – Exxon Valdez

- In 1994, a jury awarded plaintiffs \$287 million in compensatory damages and \$5 billion in punitive damages. Exxon appealed and the Ninth Circuit court reduced the punitive damages to \$2.5 billion
- Exxon then appealed the punitive damages to the Supreme Court which capped the damages to \$507.5 million in June 2008.
- On August 27 2008, Exxon Mobil agreed to pay 75% of the \$507.5 million damages ruling to settle the 1989 Exxon Valdez oil spill off Alaska
- In June 2009, a federal ruling ordered Exxon to pay an additional \$480 million in interest on their delayed punitive damage awards



MARPOL – Erika



- On 12 December 1999 the oil tanker Erika broke into two
- 14,000 tonnes spilled and 100 miles of Atlantic coastline polluted
- Acceleration of the phase-out of single-hulled tankers by 2012 (amendments adopted in April 2001)
- In January 2008 a French court has found energy company Total, the owner and manager of the tanker, and the Italian RINA classification firm guilty of negligence and ordered them to pay 192 million euros (AU\$320 million) in damages
- An appeal has been lodged



MARPOL – Prestige

- 13 November 2002 while carrying a 77,033 metric tons, one of its twelve tanks burst during a storm
- 19 November 2002 the ship split in half, and sank completely releasing over 20 million gallons of oil into the sea off the Spanish coast
- Led to calls for further changes to MARPOL to accelerate the adoption of double-hulled tankers and other measures



MARPOL – Prestige

- In May 2003, Spain brought civil suit in the Southern District of New York against the American Bureau of Shipping
- On 2 January 2007, the lawsuit was dismissed.
- The presiding judge ruled that ABS is a `person as defined by the CLC and, as such, is exempt from direct liability for pollution damage and the US Courts have no jurisdiction.



Conclusion

- A comprehensive international regulatory regime to prevent marine pollution (particularly oil spills) has developed
- Where to from here?



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L A W Y E R S

