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REGULATION OF DUMPING IN SOMS: AN ISSUE ON THE HORIZON?

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PART 1

THE IMO AND THE DUMPING CONVENTIONS

INTERNATIONAL TREATIES ON OCEAN DUMPING

- 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972 London Convention)
- 1982 UN Convention on the Law of the Sea (UNCLOS)
- 1996 Protocol to the 1972 London Convention (1996 Protocol)

IMO & 1972 LONDON CONVENTION

- 1972 London Convention is strictly speaking not an IMO Convention
- However, since 1977, the IMO has been responsible for the performance of secretarial functions such as the organization and servicing of the Consultative Meetings of the Contracting Parties
- The IMO also performs secretarial functions for subsidiary bodies reporting to the Consultative Meetings of the Contracting Parties

IMO & 1996 PROTOCOL

- IMO has adopted a Strategic Plan to encourage States to ratify and implement the 1996 Protocol
- Plan includes the provision of technical assistance to less developed countries that have declared their intention to become contracting parties to the 1996 Protocol
- IMO Website contains a Flyer on the Convention and Protocol, and a Paper on the Benefits to States of Becoming a Party to the Protocol

STATUS OF 1972 LONDON CONVENTION AND **CIL** 1996 PROTOCOL

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- **1972 London Convention** - entered into force on 30 August 1975
 - 87 States Parties as of 6 August 2018
- **1996 Protocol** - Entered into force on 30 March 2006
 - 50 States Parties as of 6 August 2018
- China, Japan and Korea are parties to both 1972 London and the 1996 Protocol
- Philippines is a party to both 1972 London and 1996 Protocol
 - **no other ASEAN State is a party to either**
- IMO is currently providing technical assistance to several ASEAN countries under a NORAD grant to ratify and implement certain conventions, including the 1996 Protocol

RELEVANCE TO SOMS

- Indonesia, Malaysia and Singapore are likely to come under increased pressure from the IMO and the international community to ratify the 1996 Protocol and pass laws and regulations to regulate ocean dumping
- The 1996 Protocol would apply to dumping in the sea, that is, in all marine waters other than the internal waters of States
- The 1996 Protocol also requires coastal States to regulate the disposal of dredged material as its disposal at sea constitutes dumping

PART 2

UNCLOS AND THE DUMPING CONVENTIONS

WHAT IS DUMPING ?

- The definition of “dumping” in 1982 UNCLOS is the same as in the 1972 London Convention
- "Dumping" means:
 - any deliberate disposal at sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;
 - any deliberate disposal at sea of vessels, aircraft, platforms or other manmade structures at sea.

WHAT IS NOT DUMPING ?

- "Dumping" does not include:
 - the disposal at sea of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea . . .
 - placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Convention.

1972 LONDON vs 1996 PROTOCOL

- **1972 London** takes a “permissive approach” – can dump with permit unless on “black list”
- **1996 Protocol** takes a “prohibitionist approach” – dumping is prohibited unless it is waste listed in annex
- **1996 Protocol** also requires States parties to report to the IMO on the disposal of wastes within its internal waters, including dredged materials

OBLIGATIONS ON PARTIES TO UNCLOS TO REGULATE DUMPING

- All Parties to UNCLOS are under a legal obligation to pass laws and regulations to regulate dumping -
 - in its maritime zones
 - from ships flying its flag
 - from ships loaded in its territory
- All parties to UNCLOS are also under an obligation to **enforce** such laws and regulations

OBLIGATIONS UNDER UNCLOS TO REGULATE DUMPING

- **States shall adopt laws and regulations** and take other measures as may be necessary to prevent, reduce and control pollution of the marine environment by dumping.
- Dumping within the **territorial sea** and the **exclusive economic zone** or onto the **continental shelf** shall not be carried out without the express prior approval of the coastal State
- National laws, regulations and measures **shall be no less effective** in preventing, reducing and controlling such pollution **than the global rules and standards.**

WHAT ARE THE GLOBAL RULES AND STANDARDS?

- No agreement on whether the “global rules and standards” are those in 1972 London or those in 1996 Protocol
- There are 87 Parties to 1972 London and 50 Parties to the 1996 Protocol
- This may be one reason why the IMO Secretariat has a Strategic Plan to promote ratification of the 1996 Protocol

UNCLOS OBLIGATION TO ENFORCE LAWS ON DUMPING

- Article 216. Laws and regulations adopted in accordance with this Convention **shall be enforced**:
 - by the **coastal State** with regard to dumping within its territorial sea or exclusive economic zone or onto its continental shelf;
 - by the **flag State** with regard to vessels flying its flag or vessels or aircraft of its registry;
 - by **any State** with regard to acts of loading of wastes or other matter occurring within its territory

RECOMMENDATIONS

1. Littoral States should review their laws and regulations to ensure that they are not in breach of their obligation under UNCLOS to regulate dumping in their territorial sea and EEZ, from vessels flying their flag or from vessels loaded in their territory
2. Littoral States should do a study to determine the extent to which current activities in the SOMS, including the dredging of sea lanes, would be regulated if they become parties to the 1996 Protocol
3. Littoral States should examine the pros and cons of ratifying the 1972 Convention and/or the 1996 Protocol

Thanks for Your Attention

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