

The Limits of Coastal State Jurisdiction in relation to Foreign Ships
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The International Chamber of Shipping (ICS)¹ has serious concerns regarding the growing use of unilateral and regional regulatory measures affecting global shipping that exceed the jurisdictional limits established under international law and/or depart from internationally agreed standards. ICS calls on States to reaffirm their commitment to the global regulatory frameworks and principles and to abide by their existing international obligations, in particular as reflected in the United Nations Convention on the Law of the Sea.

Introduction

In recent years, there have been growing efforts by coastal States to extend the application of their domestic laws to internationally-trading foreign ships in their internal waters, territorial seas, and beyond. This has increasingly been done through unilateral and regional measures regulating matters relating to operations on board foreign vessels which have traditionally fallen within the exclusive jurisdiction of the flag State. Examples include measures relating to employment conditions for crew, greenhouse gas (GHG) emissions, the use of exhaust gas cleaning systems (EGCS), ship reporting obligations, and other technical and operational requirements applicable to foreign vessels engaged in international trade. While ICS acknowledges the objectives pursued by some of these measures, it should be noted that internationally agreed rules and principles already exist for the regulation of many of these issues, while work on others is already underway through relevant international organisations and multilateral processes.

Unilateral and regional coastal State measures are nevertheless increasingly adopted and often impose requirements on foreign vessels that go beyond international standards developed at the global level. Taken together, these efforts by coastal States reflect a gradual erosion of the principle of exclusive jurisdiction of the flag State over ships flying its flag. This development raises significant concerns for the global shipping industry. International shipping depends fundamentally on uniform global regulation, legal certainty and predictability, and the consistent application of internationally agreed rules. The fragmentation of maritime regulation through unilateral and regional approaches risks creating overlapping legal obligations, conflicting enforcement standards, increased compliance burdens, and operational uncertainty for shipowners. Ultimately, this also results in increased costs that are inevitably passed on to consumers in those coastal States regulating through unilateral and/or regional approaches. It also risks disrupting the carefully balanced international frameworks and principles governing global shipping, as reflected in customary international law, the United Nations Convention on the Law of the Sea 1982 (UNCLOS), and international maritime conventions, adopted through the International

¹ The International Chamber of Shipping (ICS) is the principal global trade association representing shipowners and operators in all sectors and trades and is concerned with all technical, legal, employment affairs and policy issues that may affect international shipping. Its membership comprises 40 national shipowners' associations around the world including in Asia, Europe, the Americas, Australia and New Zealand and whose member shipping companies operate over 80% of the world's merchant tonnage.

Maritime Organisation (IMO) and the International Labour Organisation (ILO).

For these reasons, which are further discussed below, ICS continues to emphasise the importance of preserving the global rules-based maritime order, the role of the flag State as the principal regulator within the international maritime regulatory frameworks, and the continued development of globally applicable standards through multilateral cooperation.

UNCLOS and the balance of jurisdiction

ICS is concerned that the growing regulation of foreign ships engaged in international trade by coastal States acting unilaterally or through regional initiatives challenges the jurisdictional balance carefully established through customary international law and codified and developed under UNCLOS, which has long served as the constitutional framework governing the oceans and international navigation.

Articles 92 and 94 of UNCLOS establish that every ship must sail under the flag of one State and is subject to the jurisdiction and control of its flag State, which carries both rights and responsibilities. These include administrative, technical and social matters concerning the ship. The flag State is also responsible to take such measures for ships flying its flag as are necessary to ensure safety at sea and compliance with the relevant international maritime conventions. The extent to which coastal States are entitled to exercise jurisdiction over foreign ships varies by maritime zone and is subject to strict legal limitations. ICS highlights that this balance is essential to ensuring freedom of navigation, uniform regulation, legal certainty and predictability, and the efficient and competitive operation of global shipping.

High Seas

When a ship is operating on the high seas, Article 92 further provides that the ship is subject *exclusively* to the jurisdiction of its flag State. The principle of exclusive flag State jurisdiction is comprehensive and is subject only to very limited exceptions expressly provided for in UNCLOS or other international treaties. However, in relation to the matters addressed in this paper, neither UNCLOS nor any other international agreement confers upon a coastal State the right to impose its domestic requirements, or to enforce those requirements, against a foreign ship operating on the high seas. This is so, for example, whether the requirements concern crew employment conditions, their working arrangements, ship emission reduction targets, and the installation and use of ship equipment such as EGCS. By seeking to do so, coastal States encroach upon regulatory responsibilities that UNCLOS allocates to the flag State and in respect of which the flag State has assumed an international legal obligation to perform such responsibilities.

ICS also notes that the International Tribunal for the Law of the Sea has consistently recognised that the principle of exclusive flag State jurisdiction is an inherent component of freedom of navigation under Article 87 of UNCLOS, and that any exercise of jurisdiction over foreign ships on the high seas, outside of the recognised exceptions, is a breach of freedom of navigation. Importantly, this is no less so where a coastal State seeks to enforce such requirements only when the ship subsequently calls at one of its ports.

Exclusive Economic Zone (EEZ) and continental shelf

In the EEZ and on the continental shelf, coastal States have only limited jurisdiction under UNCLOS and their right to extend domestic laws to foreign flagged ships is strictly confined

to specific purposes recognised under Articles 56(1)(a) and 77 respectively, notably relating to exploring and exploiting fisheries and other natural resources. Beyond these limited rights, ICS recalls that, pursuant to Articles 58(1) and 78(2), ships navigating in the EEZ and the waters above the continental shelf continue to enjoy freedom of navigation and remain subject to the exclusive jurisdiction of their flag State. This limited and functional nature of coastal State jurisdiction in the EEZ and on the continental shelf means that coastal States may not regulate activities taking place beyond the jurisdiction conferred upon them by UNCLOS, nor seek to enforce such requirements against foreign vessels through subsequent port State actions. Where coastal States do so, they are in breach of freedom of navigation. This includes the application of domestic requirements relating to seafarers' employment and working conditions, as the rights and jurisdiction conferred by Articles 56(1)(a) and 77 do not extend to the regulation of such matters.

Article 56(1)(b)(iii) also grants coastal States jurisdiction in the EEZ with regard to marine environmental protection. However, this jurisdiction is very limited and must be exercised consistent with freedom of navigation and most importantly within the broader framework covering environmental jurisdiction codified in Part XII of UNCLOS. Concerning ship-sourced pollution, this right of coastal States to adopt laws for the prevention, reduction and control of pollution from foreign vessels in their EEZ is therefore limited by Article 211(5) to measures that conform to, and give effect to, generally accepted international rules and standards established through the IMO. As such, where no such internationally rules and standards yet exist, coastal States have no right to unilaterally impose additional requirements on foreign ships navigating in the EEZ, as is currently the case in relation to measures directed at achieving net-zero GHG emissions.

Territorial sea

Although coastal States enjoy sovereignty over their territorial sea, the exercise of their jurisdiction over foreign ships is legally constrained by those ships' right of innocent passage. Coastal States may adopt laws and regulations relating to innocent passage only in the areas specified in Article 21(1) of UNCLOS. Article 21(2) also provides that coastal State laws and regulations shall not apply to the design, construction, manning or equipment of foreign ships unless they give effect to generally accepted international rules or standards. Whereas Article 24(1) requires coastal States not to hamper innocent passage and not to impose requirements that have the practical effect of denying or impairing this right.

These limitations reflect the fundamental premise of UNCLOS that, given the global importance of shipping and the need to ensure smooth and unimpeded navigation for the facilitation of global trade, matters relating to the operation of ships engaged in international navigation should remain subject to flag State jurisdiction and internationally agreed rules and standards, developed through the IMO and, where relevant, the ILO. Accordingly, coastal States may not unilaterally impose domestic requirements – for example, concerning the use of ship equipment such as EGCS – that go beyond those standards and have the practical effect of denying or impairing the right of innocent passage.

ICS therefore stresses that measures applicable to foreign ships transiting territorial waters must remain consistent with these limitations and consistent with internationally agreed rules and standards so as not to undermine navigational rights and flag State jurisdiction.

Internal waters and ports

Coastal States have full sovereignty over their internal waters and are entitled to enact and enforce domestic laws in this maritime area, which may also be applicable to foreign ships entering their ports. Notwithstanding this territorial jurisdiction of the coastal State, ICS notes that the flag State nevertheless continues to exercise concurrent jurisdiction over ships flying its flag in such circumstances. For this reason, in practice, and as a matter of international comity, coastal States have traditionally refrained from regulating matters relating to the internal affairs of internationally-trading foreign ships (such as seafarers' employment conditions and other working arrangements), recognising that such matters are generally governed by the flag State and internationally agreed rules and standards.

While coastal States may impose certain requirements on foreign ships as port entry conditions, ICS emphasises that an appropriate balance should be maintained between coastal State and flag State jurisdiction, ensuring that relevant national laws do not impose requirements to foreign ships that are incompatible with internationally agreed standards.

Impact on International Maritime Conventions and Multilateral Framework

ICS is also concerned that this proliferation of unilateral and regional measures jeopardises the international understanding reached with the international maritime conventions underpinning global shipping and undermines the role of international organisations such as the IMO and the ILO as the competent multilateral bodies responsible for developing uniform and globally applicable standards which are necessary for global trade.

International shipping relies on internationally agreed rules developed through the IMO and the ILO, including conventions relating to safety, environmental protection, training, and social and labour standards. The growing use of unilateral and regional measures that conflict with, or depart from, these frameworks risks undermining the consistent implementation of international maritime conventions and reducing the predictability and coherence of the global maritime legal order. This regulatory divergence can increase operating costs, foster hidden protectionism and distort competition. If such measures become more widespread, they could erode the competitive neutrality on which international shipping depends and diminish the central role and importance of the IMO and the ILO as the principal forums for developing and maintaining global maritime rules.

ICS therefore stresses that all standards applicable to global shipping must continue to be developed by the IMO and the ILO, consistent with the allocation of jurisdiction between flag and coastal States under international law, and on the basis of international consensus.

Conclusion

ICS recognises the objectives pursued by coastal States in areas such as environmental protection, social and labour standards, and maritime safety and security. However, it is important for such objectives to be pursued in a manner consistent with the allocation of jurisdiction between flag States and coastal States under international law and with the internationally agreed rules and standards.

ICS therefore invites all States to reaffirm their commitment to the rules-based international order reflected in UNCLOS and to the continued multilateral development of international shipping standards through the IMO and, where relevant, the ILO. Maintaining this framework is essential for preserving safe, efficient and sustainable global shipping.