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Marine Environmental Protection: Legal Obligations under MARPOL and Coastal State Jurisdiction

SHREY SINGH* AND VANSHIKA PURWAR**

ABSTRACT

The marine environment absorbs the largest share of the ecological burden generated by international shipping, an industry that carries over eighty per cent of global trade by volume. The International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78), is the principal treaty addressing operational and accidental pollution from vessels, structured around six technical Annexes covering oil, noxious liquid substances, harmful packaged substances, sewage, garbage, and air pollution. Yet MARPOL's efficacy cannot be assessed apart from the jurisdictional architecture of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS), which allocates prescriptive and enforcement competence among flag, port, and coastal States across differentiated maritime zones. This paper examines the interaction between MARPOL's substantive obligations and that jurisdictional framework, with particular attention to the tension between flag State primacy and the more limited, graduated authority coastal States exercise within the territorial sea and exclusive economic zone. Drawing on the jurisprudence of the International Tribunal for the Law of the Sea in M/V "Saiga" (No. 2), the European Court of Justice's ruling in Intertanko, and the domestic proceedings arising from the Erika and Prestige disasters, the paper argues that the layered jurisdictional scheme, while textually coherent, produces recurring enforcement gaps rooted in flag-of-convenience registration, uneven port State control, and the Article 211(5) ceiling on coastal State rule-making. The paper situates India's implementation of MARPOL through the Merchant Shipping Act, 1958, and its 2025 replacement within this framework, and closes with recommendations on strengthening coastal State capacity, regional enforcement cooperation, and Annex VI's greenhouse-gas obligations.

Keywords: MARPOL 73/78, UNCLOS, coastal State jurisdiction, flag State, port State control, vessel-source pollution, marine environmental law

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I. INTRODUCTION

Approximately ninety per cent of world trade by volume travels by sea, and with that volume comes a persistent risk of environmental harm arising from both the routine operation of ships and their occasional catastrophic failure.¹ Before the adoption of a coordinated international regime, it was lawful for a vessel to discharge oily bilge water, raw sewage, and garbage directly into the sea as a matter of routine operation.² The 1967 grounding of the *Torrey Canyon* off the coast of Cornwall, which released approximately 119,000 tonnes of crude oil into the English Channel, exposed the inadequacy of this position and catalysed the negotiations that produced the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78).³

MARPOL today binds more than one hundred and sixty States, whose fleets account for almost ninety-nine per cent of world merchant shipping tonnage, and regulates six discrete categories of pollution through its technical Annexes.⁴ Yet a treaty of this kind is only as effective as the jurisdictional machinery that permits its obligations to be enforced against the vessel that breaches them. The United Nations Convention on the Law of the Sea, 1982 (UNCLOS), supplies that machinery. Part XII of UNCLOS, read together with Part V (the exclusive economic zone) and Part II (the territorial sea), distributes prescriptive and enforcement competence over vessel-source pollution among three categories of States: the flag State whose nationality the vessel carries, the port State in whose harbour the vessel calls, and the coastal State off whose shores the vessel sails or the pollution occurs.⁵ This paper examines how these two regimes interlock, where that interlocking produces effective protection, and where it produces persistent gaps.

¹ INTERNATIONAL CHAMBER OF SHIPPING, *Shipping and World Trade: Driving Prosperity* (2023), <https://www.ics-shipping.org/shipping-fact/shipping-and-world-trade-driving-prosperity/>.

² See International Convention for the Prevention of Pollution of the Sea by Oil, May 12, 1954, 327 U.N.T.S. 3 (the 1954 OILPOL Convention, MARPOL's principal predecessor, addressed oil discharge alone and proved inadequate to the scale of the problem).

³ See generally Anuj Chopra, *MARPOL Convention: All Six Annexes Explained*, SHIPFINEX (2026), <https://www.shipfinex.com/blog/marpol>.

⁴ INT'L MAR. ORG., *International Convention for the Prevention of Pollution from Ships (MARPOL)*, [https://www.imo.org/en/about/conventions/pages/international-convention-for-the-prevention-of-pollution-from-ships-\(marpol\).aspx](https://www.imo.org/en/about/conventions/pages/international-convention-for-the-prevention-of-pollution-from-ships-(marpol).aspx) (last visited Oct. 11, 2026); INT'L MAR. ORG., STATUS OF IMO TREATIES: VOLUME I (SOLAS AND MARPOL) 127 (Sept. 30, 2026), <https://wwwcdn.imo.org/localresources/en/About/Conventions/StatusOfConventions/Status%202026%20-%20Vol.%20I%20SOLAS%20%26%20MARPOL%20only.pdf> (162 Contracting States to MARPOL 73/78, whose combined merchant fleets constitute approximately 98.89 per cent of the gross tonnage of the world's merchant fleet); INT'L MAR. ORG., STATUS OF TREATIES 2 (Sept. 5, 2023), <https://wwwcdn.imo.org/localresources/en/About/Conventions/StatusOfConventions/Status%20of%20IMO%20Treaties.pdf> (MARPOL 73/78: 161 Contracting States, 98.89 per cent of world tonnage).

⁵ United Nations Convention on the Law of the Sea arts. 211, 217–220, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

Part II traces the structure and substantive content of MARPOL. Part III sets out the jurisdictional scheme under UNCLOS as it applies to vessel-source pollution. Part IV analyses the leading jurisprudence, namely the *M/V “Saiga” (No. 2)* case, the *Intertanko* litigation before the European Court of Justice, and the domestic proceedings following the *Erika* and *Prestige* disasters, to illustrate how coastal State jurisdiction operates, and fails to operate, in practice. Part V considers India’s domestic implementation of this framework. Part VI offers a critical assessment of the principal gaps in the regime, and Part VII concludes with recommendations.

II. THE MARPOL FRAMEWORK: STRUCTURE AND SUBSTANTIVE OBLIGATIONS

A. Historical development

MARPOL was adopted at the International Maritime Organization (IMO) on 2 November 1973 but did not enter into force before a further spate of tanker casualties in 1976–77 prompted the negotiation of the 1978 Protocol, which absorbed the parent Convention; the combined instrument entered into force on 2 October 1983.⁶ A further Protocol adopted in 1997 added Annex VI on air pollution, which entered into force in 2005 and has since been strengthened through a 2011 chapter on mandatory energy-efficiency measures and IMO’s subsequent strategy on reducing greenhouse gas emissions from shipping.

B. The six Annexes

The technical content of MARPOL is carried in six Annexes, each addressing a discrete category of shipboard pollutant: Annex I regulates the prevention of pollution by oil; Annex II regulates the control of pollution by noxious liquid substances carried in bulk; Annex III addresses harmful substances carried in packaged form; Annex IV regulates pollution by sewage; Annex V regulates pollution by garbage, including a near-total prohibition on the disposal of plastics at sea; and Annex VI addresses air pollution and, since 2011, the energy-efficiency and greenhouse-gas performance of ships.⁷ Annexes I and II are mandatory for all parties; Annexes III through VI are technically optional, though in practice nearly universally accepted.⁸ Amendments are adopted periodically by IMO’s Marine Environment Protection

⁶ *International Convention for the Prevention of Pollution from Ships (MARPOL)*, *supra* note 4 (also recording the 1997 Protocol, the entry into force of Annex VI on May 19, 2005, and the chapter adopted in 2011 on mandatory technical and operational energy-efficiency measures).

⁷ DEP’T OF INFRASTRUCTURE, TRANSPORT, REG’L DEV., COMMC’NS, SPORT & THE ARTS (AUSTL.), *International Convention for the Prevention of Pollution from Ships (MARPOL)*, <https://www.infrastructure.gov.au/infrastructure-transport-vehicles/maritime/protection-marine-environment/marpol> (last visited Aug. 2026).

⁸ *Id.*; see also *International Convention for the Prevention of Pollution from Ships* art. 14(1), Nov. 2, 1973, 1340 U.N.T.S. 184, as modified by Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, Feb. 17, 1978, 1340 U.N.T.S. 61 [hereinafter MARPOL 73/78] (a State may declare

Committee (MEPC) under the tacit-acceptance procedure of Article 16, which allows an amendment to enter into force for all parties unless a specified proportion object within a fixed period, a mechanism that has permitted the Annexes to be updated far more readily than the framework Convention itself.⁹

C. The nature of the obligation: flag State duties and rule-making

MARPOL's obligations are, in the first instance, addressed to the flag State. Each Contracting Party undertakes to give effect to the Convention's provisions and its Annexes in order to prevent pollution from vessels flying its flag or of its registry, principally through construction, design, equipment, and manning standards enforced by mandatory survey and certification.¹⁰ This flag State orientation reflects the traditional structure of the law of the sea, under which a vessel on the high seas is subject to the exclusive jurisdiction of the State whose flag it flies.¹¹ The difficulty, examined further in Part VI, is that flag State primacy presupposes a "genuine link" between vessel and flag sufficient to ensure diligent enforcement, an assumption regularly defeated by open or flag-of-convenience registries with limited capacity or incentive to police their fleets.¹²

III. JURISDICTIONAL FRAMEWORK UNDER UNCLOS

Because MARPOL itself contains only a rudimentary enforcement mechanism, the practical reach of its standards depends almost entirely on the jurisdictional allocation set out in UNCLOS, particularly Part XII, Section 5 (rule-making) and Section 6 (enforcement). UNCLOS distributes competence over vessel-source pollution among flag States, port States, and coastal States, with the scope of each State's authority varying according to the maritime zone in which the vessel is located.

A. Flag State jurisdiction

Article 217 obliges flag States to ensure compliance by their vessels with applicable international rules and standards, irrespective of where a violation occurs, and to investigate alleged violations and institute proceedings where the evidence warrants.¹³ Flag State primacy is reinforced by Article 228, under which proceedings by a port or coastal State in respect of a

that it does not accept Annexes III, IV and V; Annex VI binds only the parties to the separate Protocol of 1997).

⁹ MARPOL 73/78, *supra* note 8, art. 16(2)(f)(ii)–(iii), (g)(ii).

¹⁰ MARPOL 73/78, *supra* note 8, arts. 1(1), 3(1), 4(1); UNCLOS, *supra* note 5, art. 211(2) ("States shall adopt laws and regulations for the prevention, reduction and control of pollution of the marine environment from vessels flying their flag or of their registry.").

¹¹ UNCLOS, *supra* note 5, art. 92(1).

¹² UNCLOS, *supra* note 5, art. 91(1).

¹³ UNCLOS, *supra* note 5, art. 217(1), (4).

violation committed beyond its territorial sea must generally be suspended once the flag State, within six months, institutes proceedings on corresponding charges, subject to an exception for cases involving major damage to the coastal State or a flag State that has repeatedly disregarded its obligation to enforce the applicable rules effectively.¹⁴

B. Port State jurisdiction

Article 218 empowers a port State, when a vessel is voluntarily within one of its ports or offshore terminals, to investigate and, where the evidence so warrants, institute proceedings in respect of any discharge violation occurring outside that State's own internal waters, territorial sea, or exclusive economic zone, in violation of applicable international rules and standards.¹⁵ Port State jurisdiction under Article 218 is therefore not confined to protecting the port State's own maritime zones; it operates as a form of universal enforcement jurisdiction exercisable against any vessel that calls voluntarily at the port, subject to procedural safeguards including the flag State pre-emption mechanism described above.¹⁶ Port State control, administered in practice through regional memoranda of understanding (among them the Indian Ocean MOU of 1998, to which India is a party), remains one of the most effective instruments for detecting non-compliance because it allows physical inspection of the vessel without the evidentiary and diplomatic difficulties attending high-seas enforcement.¹⁷

C. Coastal State jurisdiction

Coastal State jurisdiction is the most zone-sensitive of the three and forms the principal focus of this paper. Within internal waters and ports, which fall wholly within the coastal State's sovereign territory, the State may impose access conditions, inspect vessels, levy fines, and detain ships, largely unconstrained by MARPOL or UNCLOS.¹⁸ Within the territorial sea, the coastal State enjoys full sovereignty subject to the right of innocent passage; Article 220(2) permits it to institute proceedings against a foreign vessel navigating in the territorial sea where

¹⁴ UNCLOS, *supra* note 5, art. 228(1); see also Arron N. Honniball, *Vessel-Source Marine Pollution and the Non-Suspension of Coastal State or Port State Proceedings: Pinpointing Flag States of Repeat Disregard in Article 228 of UNCLOS?*, EJIL: TALK! (Feb. 2, 2023), <https://www.ejiltalk.org/vessel-source-marine-pollution-and-the-non-suspension-of-coastal-state-or-port-state-proceedings-pinpointing-flag-states-of-repeat-disregard-in-article-228-of-unclos/>.

¹⁵ UNCLOS, *supra* note 5, art. 218(1).

¹⁶ *Id.* art. 218(4); *id.* art. 228.

¹⁷ MARPOL 73/78, *supra* note 8, art. 5(2) (inspection in port of ships required to hold MARPOL certificates); DIR. GEN. OF MAR. ADMIN. (INDIA), *Indian Ocean Memorandum of Understanding (IOMOU)*, <https://dgma.gov.in/international-cooperation/inter-cooperation-iomou> (last visited Oct. 11, 2026) (Memorandum finalised at Pretoria in June 1998 and in force from Apr. 1, 1999; secretariat in Goa).

¹⁸ UNCLOS, *supra* note 5, arts. 8, 25(2); see also Zacharias L. Kapsis, *The Coastal State's Prescriptive and Enforcement Jurisdiction in Relation to Ship Source Pollution in Exclusive Economic Zone, Ports & Internal Waters*, LINKEDIN (Nov. 23, 2019), <https://www.linkedin.com/pulse/coastal-states-prescriptive-enforcement-jurisdiction-relation-kapsis-lf>.

there are clear grounds for believing the vessel has, during its passage, violated the coastal State's own laws and regulations adopted in accordance with the Convention or applicable international rules and standards, and this includes physical inspection and, where warranted, detention.¹⁹

Within the exclusive economic zone (EEZ), coastal State enforcement power narrows considerably. Article 220(3) permits a coastal State that has clear grounds for believing a vessel navigating in its EEZ has, in that zone, violated applicable international rules and standards to require the vessel to give information regarding its identity, port of registry, and last and next port of call.²⁰ Physical inspection is permissible under Article 220(5) only where there are clear grounds for believing the violation has resulted in a substantial discharge causing or threatening significant pollution and the vessel has refused to give information or the information supplied is manifestly at variance with the evident facts.²¹ Detention and institution of proceedings under Article 220(6) require an even higher threshold: clear objective evidence of a discharge causing or threatening major damage to the coastline or related interests of the coastal State, or to any resources of its territorial sea or EEZ.²² This graduated structure reflects a deliberate compromise struck during the Third UN Conference on the Law of the Sea between coastal States seeking to protect their waters and maritime States seeking to preserve freedom of navigation.

D. Prescriptive jurisdiction and the Article 211(5) ceiling

A coastal State's enforcement power under Article 220 is only as broad as its prescriptive jurisdiction permits. Article 211(5) allows a coastal State to adopt laws and regulations for its EEZ for the prevention, reduction, and control of pollution from vessels, but only where those laws and regulations conform to and give effect to generally accepted international rules and standards established through IMO.²³ A coastal State cannot, in its EEZ, simply legislate more stringent discharge standards than MARPOL prescribes; it is functionally bound by the international standard unless it invokes the narrow special-area procedure of Article 211(6) and secures IMO approval for additional measures in a clearly defined area where recognised technical reasons connected with oceanographical or ecological conditions justify special mandatory measures.²⁴ Within the territorial sea, by contrast, Article 211(4) permits somewhat

¹⁹ UNCLOS, *supra* note 5, art. 220(2).

²⁰ UNCLOS, *supra* note 5, art. 220(3).

²¹ UNCLOS, *supra* note 5, art. 220(5).

²² UNCLOS, *supra* note 5, art. 220(6).

²³ UNCLOS, *supra* note 5, art. 211(5).

²⁴ UNCLOS, *supra* note 5, art. 211(6)(a).

greater latitude provided the coastal State's laws do not hamper innocent passage.²⁵ This ceiling on prescriptive jurisdiction in the EEZ is the single most important structural constraint on unilateral coastal State environmental regulation and is examined further in the discussion of *Intertanko* below.

IV. JURISPRUDENTIAL ANALYSIS

A. The *M/V "Saiga" (No. 2)* case

The dispute between Saint Vincent and the Grenadines and Guinea, arising from Guinea's arrest of the tanker *M/V Saiga* after it bunkered fishing vessels within Guinea's EEZ, produced the first judgment on the merits of the newly constituted International Tribunal for the Law of the Sea (ITLOS) and remains the leading authority on the outer limits of coastal State jurisdiction in the EEZ.²⁶ Guinea sought to justify the arrest by applying its customs laws to a "customs radius" that extended into its EEZ. ITLOS held that this was impermissible: a coastal State's rights in the EEZ under Article 56 are confined to sovereign rights over natural resources and jurisdiction over artificial islands, installations and structures, marine scientific research, and protection of the marine environment, and do not extend to a general customs jurisdiction over vessels merely transiting or bunkering within the zone.²⁷ The Tribunal accordingly found Guinea's arrest, detention, and confiscation of the vessel and cargo to be in violation of the Convention.²⁸

Saiga is instructive for the present inquiry because it demonstrates the EEZ's character as a zone of enumerated, not general, coastal State competence: a coastal State's jurisdiction over vessel-source pollution in its EEZ under Article 220 must likewise be read as a limited grant, exercisable only within the graduated thresholds of Article 220(3), (5) and (6), and not as a general policing power over any vessel found in the zone. The Tribunal notably declined to resolve whether bunkering itself falls within coastal State competence under Article 56. ITLOS revisited the question in the *M/V "Virginia G"* case between Panama and Guinea-Bissau, holding that regulation of the bunkering of foreign vessels engaged in fishing within the EEZ falls within the coastal State's resource-management competence under Article 56 read with

²⁵ UNCLOS, *supra* note 5, art. 211(4).

²⁶ *M/V "Saiga" (No. 2) (St. Vincent & the Grenadines v. Guinea)*, Case No. 2, Judgment of July 1, 1999, 1999 ITLOS Rep. 10.

²⁷ *Id.* ¶ 127; see also *Jurisdictional Rights under UNCLOS: The M/V Saiga Case* (2024), RESEARCHGATE, https://www.researchgate.net/publication/387318891_Jurisdictional_Rights_under UNCLOS_The_MV_Saiga_Case.

²⁸ *M/V "Saiga" (No. 2)*, *supra* note 26, ¶ 136.

Article 62(4), while adding that the coastal State does not have such competence with regard to other bunkering activities unless otherwise determined in accordance with the Convention.²⁹

B. *Intertanko v. Secretary of State for Transport*

The *Intertanko* litigation tested the outer edge of coastal State (and, by extension, regional) prescriptive competence directly against the Article 211(5) ceiling. Five shipping-industry bodies, among them the international associations of independent tanker owners and of dry cargo shipowners, challenged the validity of an EU directive that criminalised ship-source discharges resulting from “serious negligence”, a standard the claimants argued was more stringent than MARPOL’s own test for discharges resulting from damage to a ship, which are excused unless the owner or master acted with intent to cause damage or “recklessly and with knowledge that damage would probably result”.³⁰ The Grand Chamber of the European Court of Justice ultimately declined to review the directive’s validity against UNCLOS or MARPOL directly: UNCLOS was held not to establish rules intended to apply directly and immediately to individuals and to confer on them rights capable of being relied upon against States, and the European Community was not itself a party to MARPOL. Advocate General Kokott’s opinion is nonetheless instructive for its substantive analysis, reading UNCLOS’s general environmental provisions as made specific by MARPOL’s technical standards.³¹

The case illustrates two points relevant to this paper. First, the Advocate General treated the Article 211(5) ceiling as a genuine constraint even upon supranational or regional lawmaking that stands between the individual coastal State and the vessel: on her analysis, only rules on discharges that implement MARPOL are permitted outside the territorial sea, so that a regional body legislating for its member States’ EEZs is no freer than an individual coastal State to depart from IMO-established standards, although the Court, having declined review, did not itself reach the point.³² Second, it exposes the difficulty of enforcing UNCLOS and MARPOL obligations through domestic or regional courts where those treaties are not directly effective,

²⁹ *M/V “Saiga” (No. 2)*, *supra* note 26, ¶¶ 137–38; *M/V “Virginia G” (Pan./Guinea-Bissau)*, Case No. 19, Judgment of Apr. 14, 2014, 2014 ITLOS Rep. 4, ¶¶ 217, 223; *Jurisdiction of Coastal States over the EEZ*, IILSS, <https://iilss.net/jurisdiction-of-coastal-states-over-the-eez-based-on-law-of-the-sea-customary-international-law-and-losc/> (archived Aug. 12, 2024, at <http://web.archive.org/web/20240812224206/https://iilss.net/jurisdiction-of-coastal-states-over-the-eez-based-on-law-of-the-sea-customary-international-law-and-losc/>).

³⁰ Case C-308/06, *Int’l Ass’n of Indep. Tanker Owners (Intertanko) v. Sec’y of State for Transp.*, 2008 E.C.R. I-4057, ECLI:EU:C:2008:312; Directive 2005/35/EC, of the European Parliament and of the Council of 7 September 2005 on Ship-Source Pollution and on the Introduction of Penalties for Infringements, art. 4, 2005 O.J. (L 255) 11; MARPOL 73/78, *supra* note 8, Annex I, reg. 11(b)(ii).

³¹ *Intertanko*, 2008 E.C.R. I-4057, ¶¶ 47–52, 64–65; Case C-308/06, *Intertanko*, Opinion of Advocate General Kokott ¶¶ 64–65 (Nov. 20, 2007).

³² *Intertanko*, Opinion of Advocate General Kokott, *supra* note 31, ¶¶ 68–69.

leaving compliance to depend substantially on diplomatic and IMO-centred mechanisms rather than judicial review at the suit of private parties.

C. The *Erika* and *Prestige* disasters: enforcement in practice

The sinking of the *Erika* off Brittany in December 1999, which spilled some 19,800 tonnes of heavy fuel oil, and of the *Prestige* off Galicia in November 2002, which released an estimated 63,000 tonnes of its cargo of some 77,000 tonnes, are the two episodes most frequently invoked to illustrate the gap between the jurisdictional text of UNCLOS and its practical enforcement.³³ In the *Erika* litigation, French courts upheld the criminal conviction of the charterer and cargo owner, Total, notwithstanding arguments that French law could not be applied because the vessel sank outside French territorial waters, in the exclusive economic zone, and that its application conflicted with international conventions to which France was a party; France's Cour de cassation confirmed the conviction in September 2012. In related civil proceedings brought by the commune of Mesquer, the European Court of Justice, on a reference from the Cour de cassation, had held that oil accidentally spilled at sea following a shipwreck and washed up on the coast constitutes "waste" for the purposes of EU law, so that the seller of the oil and charterer of the ship may be treated as a producer of that waste where it contributed to the risk of the pollution occurring, extending liability under the polluter-pays principle.³⁴

The *Prestige* proceedings reached a markedly different result. In 2013, a Spanish provincial court acquitted the vessel's captain, chief engineer, and the former director-general of the Spanish Merchant Marine of environmental crimes, finding no established criminal responsibility for the sinking itself, while convicting the captain only of disobeying instructions during the emergency.³⁵ The acquittal was appealed, and civil liability proceedings continued for over a decade thereafter. In January 2016 the Spanish Supreme Court reversed the acquittal of the captain, convicting him of a crime against the environment committed through serious negligence, and held the vessel's insurer directly liable up to its policy limits, a ruling itself later

³³ *Prestige Oil Spill*, WIKIPEDIA, https://en.wikipedia.org/wiki/Prestige_oil_spill (last visited Oct. 11, 2026); *Erika (Law)*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Erika_\(law\)](https://en.wikipedia.org/wiki/Erika_(law)) (last visited Oct. 11, 2026); see INT'L OIL POLLUTION COMP. FUNDS, INCIDENTS INVOLVING THE IOPC FUNDS 2009, at 3, 9 (2009), https://iopcfunds.org/wp-content/uploads/2018/12/2009_ENGLISH_INCIDENT_REPORT.pdf (*Erika*: cargo of 31,000 tonnes, of which some 19,800 tonnes were spilled; *Prestige*: 76,972 tonnes carried, of which an estimated 63,000 tonnes were released when the vessel broke in two and sank some 260 kilometres west of Vigo).

³⁴ *French Highest Court Upholds Total Conviction in Erika Oil Spill*, COASTAL CARE (Sept. 25, 2012), <https://coastalcare.org/2012/09/french-highest-court-upholds-total-conviction-in-erika-oil-spill/>; *The Erika Decision: Implications for Charterers and Owners of Oil Cargoes*, LEXOLOGY (2009), <https://www.lexology.com/library/detail.aspx?g=f3bf0d19-fa54-4095-a4a2-28132b9bcb6e>; see Cour de cassation [Cass.] [supreme court for judicial matters] crim., Sept. 25, 2012, No. 10-82.938 (Fr.); Case C-188/07, *Commune de Mesquer v. Total France SA*, 2008 E.C.R. I-4501 (operative part, points 2–3).

³⁵ *Spanish Court Acquits Accused in Prestige Oil Spill*, FRANCE 24 (Nov. 13, 2013), <https://www.france24.com/en/20131113-verdict-prestige-oil-tanker-spill-spain-court-france-coast-coruna>.

complicated by an English High Court ruling on the compatibility of that judgment with the arbitration clause in the insurance contract.³⁶ Read together, *Erika* and *Prestige* demonstrate that coastal and flag State enforcement, even after a catastrophic discharge that fouls a coastal State's shoreline, is frequently protracted, jurisdictionally contested, and dependent on the accident of which State's courts, and which body of domestic law, ultimately hears the case, a contingency the UNCLOS/MARPOL jurisdictional scheme does relatively little to resolve once the vessel itself has been lost.

V. INDIA'S DOMESTIC IMPLEMENTATION

India gave effect to MARPOL through the Merchant Shipping Act, 1958, which was amended over successive years as India acceded to the several Annexes. Part XI-A, dealing with the prevention and containment of pollution of the sea by oil, was substituted in its modern form by the Merchant Shipping (Amendment) Act, 1983, which also inserted Part X-B establishing a civil liability regime for oil pollution damage consistent with the International Convention on Civil Liability for Oil Pollution Damage, 1969; the Merchant Shipping (Amendment) Act, 2003 then amended Part XI-A following India's accession to Annexes III, IV and V.³⁷ Enforcement has been carried out principally through the Directorate General of Shipping (DGS), now the Directorate General of Maritime Administration, which surveys and certifies Indian-flagged vessels under rules made under Section 356E and the certificates required by Section 356C; Section 356G empowers surveyors to board Indian and foreign vessels alike to verify compliance, and under Section 356H a ship found in contravention within India's coastal waters may be detained until the contravention is rectified, a detention fee being imposed in practice.³⁸ India has also implemented the 0.5% m/m global sulphur cap under Annex VI, applicable to Indian ships and to foreign ships calling at Indian ports, and operates a centralised "Swachh Sagar" portal for waste reception facilities at Indian ports.³⁹

³⁶ *Prestige Oil Spill*, *supra* note 33; see Tribunal Supremo [T.S.] [Supreme Court], Sala de lo Penal, Jan. 14, 2016 (No. 865/2015, Rec. No. 1167/2014) (Spain) (convicting the master of a crime against the environment through serious negligence and declaring the London P&I Club directly liable up to the limit of its policy).

³⁷ The Merchant Shipping Act, 1958, No. 44, Acts of Parliament, 1958 (India), pts. X-B, XI-A (Part XI-A substituted by Act 12 of 1983, § 11); Statements of Objects and Reasons to the Merchant Shipping (Amendment) Act, 1983 (Act 12 of 1983) and the Merchant Shipping (Amendment) Act, 2003 (Act 59 of 2003), reproduced at <https://indiankanoon.org/doc/681709/>.

³⁸ PRESS INFORMATION BUREAU, GOVERNMENT OF INDIA, *Steps Taken for Prevention and Control of Pollution from Ships* (Mar. 5, 2020), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1605383>; The Merchant Shipping Act, 1958, *supra* note 37, §§ 356C, 356E, 356G, 356H; DIR. GEN. OF MAR. ADMIN. (INDIA), *The Merchant Shipping Act & Rules, 2025*, <https://dgma.gov.in/mercantile-marine-law/the-merchant-shipping-act-2025> (last visited Oct. 11, 2026).

³⁹ *Steps Taken for Prevention and Control of Pollution from Ships*, *supra* note 38.

This framework has since been replaced. The Merchant Shipping Act, 2025, enacted by Parliament to replace both the Merchant Shipping Act, 1958, and the colonial-era Coasting Vessels Act, 1838, and in force from 15 March 2026, restates India's MARPOL obligations, chiefly in Part VII on the prevention and containment of pollution from vessels, within a statute of sixteen Parts and 325 sections that also gives effect to SOLAS, the Ballast Water Management Convention, and the Nairobi Wreck Removal Convention, and introduces updated penalties for non-compliance with safety and environmental requirements.⁴⁰ For a coastal State with a coastline exceeding 7,500 kilometres and rapidly expanding port throughput, this consolidation is a significant development, though its practical effect will depend on the subordinate rules made under the new Act and on the maritime administration's continued capacity to conduct the physical inspections that Article 220 enforcement, at every level of severity, ultimately requires.

VI. CRITICAL ASSESSMENT: STRUCTURAL GAPS IN THE REGIME

Three structural difficulties recur across the material examined above. First, flag State primacy under Article 217, though textually robust, is undermined wherever the flag itself is one of convenience: a registry with limited resources or limited stake in the vessel's compliance record has correspondingly limited incentive to investigate and prosecute violations by ships flying its flag, and Article 228's pre-emption rule can, absent the repeated-disregard exception, allow a passive flag State to forestall more motivated port or coastal State proceedings for violations beyond the territorial sea simply by instituting nominal proceedings of its own.

Second, the graduated thresholds of Article 220 (information, inspection, and detention, keyed respectively to increasing severity of discharge and harm), while a sensible compromise between coastal protection and navigational freedom in the abstract, place a substantial evidentiary burden on the coastal State at precisely the moment, mid-incident, when reliable evidence of discharge volume and consequent harm is hardest to obtain. The *Prestige* proceedings illustrate the practical cost of this evidentiary burden: more than a decade after the casualty, the trial court acquitted on the central environmental charge notwithstanding a spill of historic proportions, because criminal responsibility for the casualty itself could not be established to the requisite standard, and that responsibility was fixed only on appeal to the

⁴⁰ The Merchant Shipping Act, 2025, No. 24, Acts of Parliament, 2025 (India), §§ 131–143, 324; Ministry of Ports, Shipping & Waterways, Notification S.O. 1244(E) (Mar. 10, 2026) (appointing Mar. 15, 2026 as the date of enforcement); *Merchant Shipping Act, 2025*, WIKIPEDIA, https://en.wikipedia.org/wiki/Merchant_Shipping_Act,_2025 (last visited Oct. 11, 2026); Anushka Tripathi, *The Merchant Shipping Act, 2025: Redefining a New Era for India's Maritime Sector*, RESEARCH & INFO. SYS. FOR DEVELOPING COUNTRIES (Sept. 9, 2025), <https://ris.org.in/en/node/4239>.

Supreme Court in 2016, even though the coastal and flag States concerned were never in serious doubt as to which vessel had caused the harm.

Third, the Article 211(5) ceiling on coastal State prescriptive jurisdiction in the EEZ, as Advocate General Kokott read it in *Intertanko*, means that coastal States seeking standards more protective than MARPOL's own must either work through the special-area procedure of Article 211(6), a process requiring IMO approval and therefore multilateral consensus, or accept that their EEZ regulation cannot outpace the international baseline. This is a defensible constraint against jurisdictional fragmentation and a proliferation of inconsistent regional standards, but it also means the pace of vessel-source pollution regulation in the EEZ is set, in practice, by the speed of IMO's own rule-making, including the currently unfolding negotiations over mandatory greenhouse-gas measures under Annex VI, rather than by any individual coastal State's assessment of the risk its own waters face.

VII. RECOMMENDATIONS

A number of incremental reforms would narrow the gaps identified above without requiring wholesale renegotiation of UNCLOS or MARPOL. First, regional port State control regimes, of the kind already operating in the Asia-Pacific, Europe, and elsewhere, should be extended and better resourced in regions, including South Asia, where inspection coverage remains uneven, since Article 218 port State jurisdiction does not depend on the vessel having caused any harm to the inspecting State and is accordingly less vulnerable to the evidentiary difficulties that attend coastal State enforcement under Article 220.

Second, IMO's tacit-acceptance amendment procedure should continue to be used to bring Annex VI's greenhouse-gas provisions to full mandatory effect promptly, since the alternative, individual coastal States attempting unilateral EEZ measures against ship emissions, would sit uneasily with the Article 211(5) ceiling as the Advocate General read it in *Intertanko* and risks precisely the jurisdictional fragmentation that provision was designed to avoid.

Third, India and comparable coastal States with long coastlines and expanding traffic should prioritise the subordinate rule-making and inspection capacity needed to operationalise the Merchant Shipping Act, 2025, particularly the training and staffing of surveyors empowered to exercise Article 220 functions, since a modernised statute confers little additional protection without the administrative capacity to exercise the jurisdiction it grants.

Fourth, the repeated-disregard exception in Article 228 warrants clearer articulation, whether through IMO guidance or State practice, so that coastal and port States facing a documented

pattern of flag State inaction are not required to relitigate, in each individual case, whether that exception has been triggered.

VIII. CONCLUSION

MARPOL and UNCLOS together supply a textually coherent, if jurisdictionally intricate, framework for regulating vessel-source pollution: substantive standards fixed multilaterally through IMO, enforcement distributed among flag, port, and coastal States according to the maritime zone concerned, and coastal State prescriptive ambition deliberately capped at the international baseline outside the narrow special-area procedure. The jurisprudence examined in this paper (*Saiga*'s insistence that EEZ competence is enumerated rather than general, *Intertanko*'s treatment of the Article 211(5) ceiling, endorsed by the Advocate General but left judicially untested by the Court, and the protracted and divergent outcomes of the *Erika* and *Prestige* litigation) shows that this framework performs unevenly once tested against the practical difficulties of flag-of-convenience registration, the evidentiary demands of Article 220, and the slow multilateral pace at which new standards, including those addressing shipping's greenhouse-gas footprint, can be agreed. None of this suggests the framework requires abandonment; it suggests, rather, that its next phase of development lies less in new treaty text than in the capacity-building, regional cooperation, and consistent State practice needed to make the jurisdiction the text already grants genuinely effective, a task in which coastal States such as India, now operating under a modernised domestic statute, have a direct and growing stake.
