

ENFORCEMENT OF POLLUTION LAWS APPLICABLE TO VESSELS

ARTICLES 217-233

The provisions of enforcement are carefully designed to balance the opposing interests of the flag states and the coastal states. Just as the flag state has primary legislative jurisdiction over its vessels, it also bears the primary responsibility for ensuring that its vessels comply with international law.¹ In the event of a violation, the flag state is to institute investigations and proceedings.² Penalties provided by the laws and regulations of the flag state must be sufficiently severe to discourage violations, wherever they might occur.³ Although official vessels are not subject to these Convention provisions, similar measures are to be implemented for such ships by each state,⁴ which is also liable for any damage caused by its vessels.⁵

The coastal state, on the other hand, has been vested with rights (in varying degrees) to enforce pollution laws, although safeguards have been built in to ensure that this power can be exercised only to a limited extent. The measures, which can be taken,⁶ depend on the exact nature of the violation with regard to two sets of factors:

- 1) Location of violation: territorial sea, exclusive economic zone; location of vessel: territorial sea, exclusive economic zone, voluntarily in port
- 2) Intensity of violation: substantial discharge, major damage, any violation; reasons for acting: warranted by evidence, clear grounds for believing.

The measures the coastal state may take include request for information, physical inspection, proceedings, and even detention⁷. With some generalization, it can be said that the coastal state jurisdiction is strongest when the vessel is voluntarily in port⁸ and weakens with increasing distance of the location of the violation from the coast (zone by zone) and the impact of the damage or the threat of damage.

All measures must be taken in compliance with the safeguards given in Articles 223 to 233, which prohibit undue delay of a foreign vessel, excessive physical inspection, and general disregard for accepted international rules⁹ and provide for the release of vessels, subject to reasonable procedures such as bonding or appropriate financial security.¹⁰ If a detaining state has not released a vessel, the question is subject to compulsory dispute settlement.¹¹

Finally, coastal states taking measures have obligations to other affected states, particularly the flag state,¹² and to international organizations.¹³ The flag state must be notified of measures taken (although not in all circumstances), and all official reports concerning the measures must be submitted to the flag state.¹⁴ The flag state can institute proceedings itself, thus suspending -with certain exceptions - the proceedings in the coastal state.¹⁵ If a vessel has been detained, e.g., due to lack of seaworthiness,¹⁶ the flag state must be informed promptly.¹⁷

States are liable for damages or loss resulting from such measures if the measures are unlawful or unreasonable.¹⁸ This provision also applies to a port state, which investigates or institutes proceedings against a vessel based on an allegation of unlawful discharge on the high seas or in zones of other states (on request).¹⁹ Investigation reports are to be transmitted to the flag state or the coastal state upon request and instituted proceedings suspended.²⁰

¹ Art. 217, Para. 1

² Art. 217, Para. 4

³ Art. 217, Para. 8

⁴ Art. 236

⁵ *Ibid.*; Art. 31; 42; Para. 5; 235, 304

⁶ Art. 219-221

⁷ Art. 219; 220, (2)&(6)

⁸ Art. 220, Para. 1

⁹ Art. 226, Subpara. 1(a)

¹⁰ Art. 220(7); 226(1)

¹¹ Art. 292; 297(1)(c)

¹² Art. 223, 231

¹³ Art. 223

¹⁴ Art. 231

¹⁵ Art. 228

¹⁶ Art. 219

¹⁷ Art. 226, Subpara. 1(c); 231

¹⁸ Art. 232

¹⁹ Art. 218, Para. 2-3

²⁰ Art. 218, Para. 4

GENERAL ENFORCEMENT CONCEPT

ARTICLES 217-220 (ENFORCEMENT): 223-233 (SAFEGUARDS)

Abbreviations TS = Territorial Sea, EEZ = Exclusive Economic Zone

COASTAL STATE: Rights and Obligations	FLAG STATE- Rights and Obligations
<p><i>General</i></p> <ul style="list-style-type: none"> - Promptly notify flag state of any measures taken and submit reports (Art. 231) - Minimum standards of proceedings (Art 223) - Enforcement by officials only (Art. 224) - Safety of navigation must not be endangered (Art 225) - Foreign vessels may not be discriminated (Art 227) - Liability for unlawful measures (Art. 232, 304) - Release of detained vessels on appropriate security (Art 220(7), 226(1)(b)) 	<ul style="list-style-type: none"> - Ensure compliance of vessels with international law (Art. 217) see. previous layout - Must be informed (in cases of proceedings from matters in TS) and given official reports (Art 218-220,231) Must exercise penal jurisdiction and institute investigations (Art 217 (4-8))
<p><i>Information</i></p> <ul style="list-style-type: none"> - Vessels navigating in TS or EEZ which have possibly committed violation in EEZ must provide information (Art 220(3)) 	<ul style="list-style-type: none"> - Must ensure that vessels give required information (Art 220(4))
<p><i>Physical Inspection</i> (examination of certificates only, for more extensive inspection, see Art 226(1)(a))</p> <ul style="list-style-type: none"> - Vessels navigating in TS (Art 220(2)) - Vessels navigating in TS or EEZ and substantial discharge in EEZ and refusal to give information or case justifies inspection (Art. 220(5)) 	
<p><i>Investigations</i> by "port state"</p> <ul style="list-style-type: none"> - Vessel voluntarily in port and discharge on high seas (elsewhere, on request) (Art 218(3)) 	<ul style="list-style-type: none"> - Records on request (Art. 218(4))
<p><i>Proceedings</i></p> <ul style="list-style-type: none"> - For possible violation by vessels voluntarily in port <ul style="list-style-type: none"> (a) violation in TS and EEZ of law in accordance with Convention (Art. 220(1)) (b) discharge on high seas and evidence to warrant proceedings (Art 218(1)) or on request (Art 218(2)) - Vessel navigating in TS and evidence to warrant proceedings (Art 220 (2)) - Vessel navigating in TS or EEZ and major damage or threat of such in EEZ (220(6)) 	<ul style="list-style-type: none"> - <i>Suspension</i> (Art 228) If violation beyond TS, proceedings to be suspended if flag state institutes proceedings <i>unless</i> e.g. major damage in EEZ - Port state proceedings (Art 218) to be suspended on request of affected coastal state (Art. 218(4); subject to Art 228) - Right of attendance (Art 223)
<p><i>Detention</i></p> <ul style="list-style-type: none"> - Vessel navigating in TS and evidence so warrants - Navigating in TS or EEZ and major damage or threat of such in EEZ (Art. 220(6)) - Violation affecting the seaworthiness of vessel (Art 219, 226(1)(c)) 	<ul style="list-style-type: none"> - Release of vessels (Art 226(1)(b-c), 220(7), 292) - Prompt notification (Art. 226(1)(c), 231)
<p><i>Penalties</i></p> <ul style="list-style-type: none"> - Only monetary penalties can be imposed (Art 230) except in cases of wilful and serious act of pollution in TS (Art 230(2)) 	<ul style="list-style-type: none"> -Suspension in case of violation beyond TS (see above: Proceedings) (Art, 228)
<p><i>Maritime casualties</i></p> <ul style="list-style-type: none"> - Take measures (Art. 221) 	

PORT STATE ENFORCEMENT

(ARTICLE 218)

- 1st Condition: Vessel must be voluntarily in port
 2nd Condition: There must be a violation of applicable international rules and standards established through the competent international organization or diplomatic conference

Discharge (as defined by the Convention for the Prevention of Pollution from Ships (MARPOL), 1973) means, in relation to harmful substances or effluents containing such substances, any release howsoever caused from a ship and includes any escape, disposal, spilling, leaking, pumping, emitting, or emptying (Three exceptions related to dumping, activities in the Area, and scientific research are not given here.)

Abbreviations TS = Territorial Sea, EEZ = Exclusive Economic Zone

PROCEEDINGS Where evidence so warrants

Location of Violation	Location of Damage or Threat of Same	Basis for Institution of Action	Suspension
Any place	Any place	Request of flag state	Art 228
High seas	—	Rights of port state	Art 228
Internal waters, TS, or EEZ of foreign state High seas or	Affecting the internal waters, TS or EEZ of port state	Rights of port state	Art 228
Internal waters, TS, or EEZ of any state	In internal waters, TS, or EEZ of another state	Request of affected or threatened state	Art 218(4) (Art 228)
Internal waters, TS, or EEZ of a state	—	Request of state where violation occurred	Art 218(4) (Art 228)

INVESTIGATION: Believed to have occurred in, caused, or threatened damage to

Any place	Any place	Request of flag state	Records of investigation are to be transmitted to flag state or state requesting action Art 218, Para 4
High seas	—	Rights of port state	
Internal waters, TS, or EEZ	—	Request of state where violation occurred	
—	Internal waters, TS, or EEZ	Upon request of affected state	

Further Readings: - Port States, Page 103