

**TRACECA REGIONAL SEMINAR ON
MARPOL
AWARENESS AND IMPLEMENTATION**

Moldova – 21 to 23 July 2015

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MARPOL IMPLEMENTATION

- Legal considerations
- MARPOL how to do it
- Impediments to implementation
- Basic Maritime Administrations

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Links to UNCLOS

United Nations Convention on the Law of the Sea (1982)

- Framework Convention
- IMO input to avoid overlap/conflict

- References to UNCLOS provisions incorporated into several IMO instruments

- IMO only mentioned once (article 2 of Annex VII) but many references to "competent international organization"

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Complementary Provisions

Marpol enforcement influenced by International Law

MARPOL Section	UNCLOS Section
1(1)	94, 217(1)
4(2)	21(1), 56(1)(b), 211, 220, 228, 231
4(3)	217(7)
5	217(3)
5(2)	217(2)
6	218
7	226(1), 232
9(3)	91, 217, 220, 218
10	287

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UNCLOS Provisions

- United Nations Convention on the Law of the Sea (1982)
Strong focus on marine environmental issues;
(activities, dumping, vessels, atmosphere)
Gives Coastal jurisdiction to 200nm (EEZ)
 - Art. 192 - Obligation of States
 - Art. 194 - Responsibility of States to minimize pollution, including from ships
 - Art. 197 - Global/Regional cooperation
 - Art. 211 (2) - Flag State duty to adopt laws having at least same effect as IMO Conventions

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Forms of Jurisdiction

- Legislative jurisdiction
as prescribed for individual ships
- Enforcement jurisdiction
competence to enforce legislation thus prescribed

Both need to reflect flag, coastal & port State considerations
- When implementing MARPOL, all States are required to apply to ships of non-Parties **Article 5(4)**

“no more favourable treatment”

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Points for consideration

- Non-oppressive exercise of authority :
 - Prompt investigations
 - Sanctions – monetary (except for willful/serious discharge in territorial sea)

- Characterization of MARPOL offences (not defined):
 - Civil law – minor /serious / aggravated (severity of damage)
 - Common law – strict/absolute liability
 - Strict liability but affording due diligence defence

- Enforcement range : magistrate /civil / criminal courts

- Administrative sanctions : time/cost benefits v criminal, compound option

- Severe sanctions : can be expensive/burdensome proof process

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Sanctions

- Article 4 (1) requires sanctions wherever a violation occurs

- Article 4 (4) penalties must be "adequate in severity to discourage violations and shall be equally severe irrespective of where the violation occurred"

- Should avoid any perception that some States have less stringent sanctions than others

- Sanction provisions will often require effective technical support to be available

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Integrating MARPOL into National Law

- State maritime administration will have a legal section (e.g. as part of Department of Transport or as a separate entity such as Attorney General's Department)

- While circumstances will vary, highly desirable for a single body to have overall responsibility for ratification, legislation and implementation.

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Enabling Legislation

- Does existing legislation provide for integration of MARPOL ?
- If so, will an amendment be necessary or will new legislation be required?
- Review how other conventions have been introduced
- Timeline (entry into force three months after deposition of instrument of accession)
- For example of enabling legislation see Appendix 2 of **MARPOL How to do it**

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MARPOL - How to do it

Manual on the Practical Implications of Ratifying, Implementing and Enforcing MARPOL



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MARPOL – How to do it

- First published 1993, revision 2002 but over time many important amendments not incorporated
- Text revised - **new edition 2013**
 - Part I : Rights and Obligations
 - Part II : Preparations
 - Part III : Legal Aspects
 - Part IV : Implementing the Regulations
 - Part V : Technical Aspects of Enforcement
 - Part VI : Organisation

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MARPOL – How to do it

- Best introduction to MARPOL giving the reader a good overview on what is covered by the articles, protocols and Annexes of the Convention.
- Also good overview on rights and obligations of all stakeholders (flag State, port State, coastal State, shipowner and to some extent shipbuilder).
- Provides an excellent foundation for subsequent study of specific regulations and requirements of what is a rather complex Convention.

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PART IV: Implementing the Regulations

Chapters 9-14 explain what needs to be considered by various stakeholders

- 9 Implementing **Annex I**: Regulations for the prevention of pollution by oil
- 10 Implementing **Annex II**: Regulations for the control of pollution by noxious liquid substances
- 11 Implementing **Annex III**: Regulations for the prevention of pollution by harmful substances carried by sea in packaged forms
- 12 Implementing **Annex IV**: Regulations for the prevention of pollution by sewage from ships
- 13 Implementing **Annex V**: Regulations for the prevention of pollution by garbage from ships

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PART IV: Implementing the Regulations

- 14 Implementing **Annex VI**: Regulations for the prevention of air pollution from ships
- 15 Provision of reception facilities
- 16 Implementing **Protocol I**: Reports on incidents involving harmful substances
- 17 Implementing **Protocol II**: Arbitration
- 18 Duties of shipowners
Needs of shipowners whose flag State is not yet a Party to MARPOL or who are involved in domestic trade.
- 19 Equipment requirements – the options
Explanation of equipment requirements for shipowners whose flag State is not a Party to MARPOL or who are involved in domestic trade.
Different options for different types and sizes of ships, Annex by Annex

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Orders

- The legal system of some States may permit regulations to be made directly under the enabling legislation
 - Others may require an "order" approved by the government to bring the various parts of subsidiary legislation into effect
- An example is given in MARPOL
-How to do it Appendix 3.



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Regulations

- Most of the regulations in MARPOL and the Annexes can be directly reproduced as national regulations
- Some regulations are directed at the State and will accordingly need to be reworded
- Specimen national regulations for each Annex are given in appendices 4 to 9 of MARPOL-How to do it.

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Reception Facilities

- MARPOL Regulations are directed at Governments
- Legislation will need to clearly state which authority or agency is responsible for provision of reception facilities
- An outline of suitable regulations is given in 'MARPOL - How to do it' at appendix 10

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Summary of Legal Issues

- Preparation of :
 - 'instrument of accession'
 - enabling legislation / 'order'
 - regulations for implementing Annexes I to VI
 - regulations for provision of reception facilities
 - regulations for reporting incidents
 - procedures to deal with violations
 - clearly established sanctions

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Status of Convention by Country

	Annex I/II	Annex III	Annex IV	Annex V	Annex VI
Azerbaijan	x	x	x	x	x
Bulgaria	x	x	x	x	x
Georgia	x	x	x	x	
Kazakhstan	x	x	x	x	
Republic of Moldova	x	x	x	x	
Romania	x	x	x	x	x
Turkey	x	x	x	x	x
Turkmenistan	x	x	x	x	x
Ukraine	x	x	x	x	x

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Impediments to implementation

Overcoming the Barriers

Possible Barriers

1. Government not committed to accession
 - no support to commence process of accession
 - delays in obtaining 'parliamentary time'
2. Lack of awareness of MARPOL benefits by Government, the public, flag and domestic shipping industry and fishing industry
3. No clear agency appointed to take a lead or disagreement amongst agencies
 - Maritime/environmental responsibilities split

Possible Barriers

4. Limited financial and human resources to prepare for and undertake accession
5. Difficulties or delays in obtaining legal services to develop domestic legislation
6. Unclear on requirements regarding provision of ship waste reception facilities
 - Lack of finances to establish reception facilities
7. Insufficient resources to enforce Annexes
 - Port State inspections, coastal surveillance, access to legal services for prosecution

Government not committed to accession ?

- Need to establish strategy to obtain ministerial and Government interest, critical issues, benefits of accession:
 - reduction of pollution from ships in own seas
 - reduction in damage to marine environment



Government not committed to accession

- reduction in damage/loss to fishing and aquaculture; consequential sustained fishery and increase in profits
- ability to prosecute offenders, increase funding for marine environmental protection from fines and penalties



Lack of awareness of MARPOL ?

- Need to establish strategy to inform all stakeholders about MARPOL and its benefits
 - take information from seminars/workshops and share with colleagues in own agency
 - hold similar meetings for other agencies
 - set up a national MARPOL coordinating committee
 - hold workshops for ports, shipping and fishing vessel communities to explain benefits and how it will affect them

No clear agency to take lead or disagreement amongst agencies ?

- Hold joint departmental working group tasked with:
 - establishing criteria for deciding which agency is best placed to take matter forward
 - need to consider full government and private sector stakeholder interests
 - may need to consider sharing responsibilities between environment and maritime agencies

Limited financial and human resources ?

- No need to implement all provisions at once
 - set priorities and time table for implementation
 - spread work by sharing responsibilities across agencies, but make sure one agency takes lead
 - identify budget requirements for future years and get government commitment

Difficulties or delays in obtaining legal services to develop domestic legislation ?

- Discuss matter with agency responsible for domestic legislation
- Seek ability to hire own legal adviser
- Outsource development of legislation
- Seek assistance of legal departments in other agencies
- Make use of examples in IMO's MARPOL How to do it (2013 edition)
- Obtain copies of legislation from neighbouring countries

Unclear on requirements regarding provision of ship waste reception facilities ?

- Review IMO Comprehensive Manual on Port Reception Facilities (under review)
- Seek advice from ships visiting ports in your country on their requirements i.e. conduct study with comprehensive questionnaire
- Hold discussion with ports and private sector regarding financing reception facilities, see IMO Comprehensive Manual on Port Reception Facilities

Insufficient resources to enforce MARPOL Annexes

- Investigate accessing/sharing information from own military patrol vessels and aircraft as well as surveillance vehicles where these exist
- Request Civil Aviation authority to alert all air traffic in your air space to report sightings of oil slicks



ADMINISTRATION - MS

FLAG STATE



PORT STATE



COASTAL STATE

Developing maritime policy, strategy and action plan(s) are a crucial requirement



Functions of the Administration

- Legislation / Regulations / Instructions
- Ship particulars & records / design approval
- Ship surveys / reports / certificates
- Delegation / monitoring
- Inspections /investigations
- Prosecutions / Records / Reports
- Non-convention duties (small ships/domestic)
- Monitoring adequacy of Reception Facilities
- Training needs
- Links to IMO

Training Requirements



- Marine administration's staff to be fully conversant with MARPOL
- Administration's staff to be technically competent to fulfil their obligations
- (MARPOL How to do it – 2013 ed – Chapter 24 refers)
- Need to recruit/train more qualified staff
- Ship-owners conversant with MARPOL?
- What training do ships' masters/crew need?

Training Options

- Visit other experienced marine administrations, as envisaged under MARPOL Art. 17.
 - Art. 17 – Promotion of technical cooperation
- Training of key personnel
- Equipment for monitoring and control
- Reception facilities

Training Options

- National courses or Regional training (IMO + TC databases)
- World Maritime University
- MARPOL part of curriculum of seafarers and examination for certificates
- Shipmasters to be aware of onboard procedures for MARPOL

OBLIGATION OF A MS



GISIS

Global Integrated Shipping Information System

GISIS is a free, web-based system providing access for Member States to provide and maintain data, together with controlled access to the public of authorized information, as previously agreed by Member States

19 modules

GISIS


