Please answer only one of the questions below.

Your assignment should not exceed 2500 words (including footnotes).

The assignment will be marked passed/not passed: but note that completing the assignment is a compulsory requirement for obtaining your Masters degree.

This is your big opportunity to practice your English writing abilities and legal argumentation: seek reference as to how to write on for instance www.uctshiplaw.com (click: ‘writing guide for law students’). There are also format requirements at the University of Oslo: www.jus.uio.no/juritek/raskesvar/maler/ (an English version is obtainable).

Your assignments are due at 11 am on Monday, 12 October 2009 in either electronic format or hard copy to Ida Stabrun (ida.stabrun@jus.uio.no, 4th floor St.Olavsgate 23).

1. Port of refuge: access to port by vessels in distress at sea

A vessel which has suffered an incident at sea may not be welcome by a coastal state. Coastal states may be reluctant to accept damaged ships into their waters and ports due to various safety risks (including environmental) such vessels may pose and economic consequences for the coastal state. At the same time, operations to prevent damage or pollution may be most effectively carried out in ports of refuge. The factual sequence of the Prestige is a case in point.

Identify the issues that the coastal/port State will face when it receives a request for a place of refuge. Discuss the contents and the scope of coastal state’s rights and obligations in relation to regulating access to its ports of vessels which may endanger the marine environment and related interests of the coastal state (notably, economic interests). You should also take account of the ship master’s obligations under SOLAS in a situation when his/her ship is in distress.

In your analysis, please take into account not only international regulation but also European Union action on this matter, notably Directive 2002/59 as amended by Directive 2009/17.

Suggested readings (you are expected to supplement these):

UN Law of the Sea Convention (Book 1 of the compendiums)
SOLAS Ch V.
Guidelines (IMO) on places of refuge for ships in need of assistance (Book 2 of the compendium at 217 et seq).
2. Illegal and deliberate discharge of oil from ships to sea

International regulation of discharge of oil by vessels to sea is found in MARPOL 73/78 which prohibits any discharges contrary to its provisions. Intentional, or deliberate discharge of oil and oily wastes from vessels is by far the largest contributor of ship sourced oil pollution of the sea. It is estimated that illegal discharge of oil accounts for eight times the amount caused by so-called ‘accidental’ oil spills like the Erika and the Prestige.\(^1\) The motive for discharging oily waste illegally to the sea is financial and ‘often attributable to a firm’s corporate culture’.\(^2\) In some cases, violators justify such discharges by the absence of reception facilities for such wastes in their ports of call.

The coastal or port State harmed by such a discharge may be interested in initiating proceedings against a vessel in breach of MARPOL provisions and eventually imposing sanctions for a MARPOL violation. However, it may face a number of challenges in this respect, notably, the flag State’s objections or other restrictions on its jurisdiction under international law.

In your assignment, please examine the international legal position relating to sanctioning discharges of oil by vessels at sea. More specifically you need to address the following two issues.

First, determine whether only accidental or deliberate discharges (or both) are prohibited by the relevant international provisions; the range of persons subject to liability and the possible exceptions for liability. Determine whether international conventions impose obligations on the States to adopt sanctions for discharge violations, and what type of sanctions is required from the States. It is interesting in this respect to examine the Directive 2005/35 (Book 3 of the compendium) and subsequent proposal to amend the Directive available at: <europa.eu> under ‘Documents’, Section EUR-LEX.

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\(^1\) OECD ‘Cost Savings Stemming from Non-Compliance with International Environmental Regulations in the Maritime Sector’ at 4 available at www.oecd.org.
\(^2\) Richard A. Udell, a senior trial attorney of the Environmental Crimes Section of the US Department of Justice.
Second, examine the jurisdiction of States (particularly coastal and port States) to detect and prosecute illegal discharge of oil by vessels to sea. It may be interesting in this regard to look at the manner in which the US prosecutes these offences. (See *United States v. Royal Caribbean Cruises. Ltd.* 11 F. Supp. 2d 1358 and *United States v. Royal Caribbean Cruises. Ltd.* 24 F. Supp. 2d 155 and/or *USA v. Ionia Management* 498 F.Supp.2d 477 and appeal at 555 F.3d 303). You are also encouraged to refer to solutions in your own home jurisdiction, if these are available.

**Suggested reading (you are expected to supplement these):**
MARPOL 73/78 Preamble, Arts 1-20, Protocol 1 (NB: these are not included in the compendium, available at i-law), Annex 1 (Book 2 of the compendium)
UN Law of the Sea Convention (Book 1 of the compendiums)

**3. Flag State’s obligations with respect to safety under international law**
The Flag State grants its nationality to the ships registered in its ship register and flying its flag and assumes responsibility for these ships sailing in the high seas and waters of other States. That is why the LOSC requires that there exists a genuine link between the ship and its flag State. However, in many cases, flag States impose very relaxed requirements on the ships relating to registration and sailing under their flags.

You are invited to examine more closely the obligations and responsibilities of the Flag State of the ship towards safety, including environmental safety, at sea. Further, you must specify the problems for safety arising thereof, identify the existing legal issues and suggest a possible regulatory solution or alternative solutions.

**Suggested reading (you are expected to supplement these):**
UN Law of the Sea Convention, Books 1 and 3 of the Compendium
Articles in Book 3 of the Compendium, under ‘Private actors’
Churchill/Lowe *The Law of the Sea*