

International Environmental Law Course

Professor Hans Chr. Bugge

Main international instruments to prevent marine pollution from ships and land based sources

I Pollution from ships

1. General introduction:

A broad specter of global conventions with protocols. A complex field as it interacts with the general international regulation of shipping, and with complicated issues of international marine insurance.

The main idea: harmonization of rules for all international shipping.

Aim at both regular operations and accidents. Objectives:

- prevention of pollution,
- emergency and repair,
- compensation for pollution damage (liability).

Balance environmental concerns and international shipping interests.

Create *both obligations and rights* for the states that are parties.
(But not all states are parties...)

Much of the rules and regulations have come as the result of serious accidents (1968 Torrey Canyon (UK), 1978 Amoco Cadiz (France), 1989 Exxon Valdez (Alaska, USA), 1999 Erika (France), 2002 Prestige (Spain)).

The *International Maritime Organization* (IMO) is the main rulemaking body, with broad global membership. However, USA has some national rules, and EU is increasingly developing its own rules mainly based on port state jurisdiction.

The IMO rules are regarded as “*generally accepted rules and standards*” in the UNCLOS meaning. Some may also be accepted as customary law.

The IMO conventions partly *supplement UNCLOS rules* as regards jurisdiction and enforcement.

2. Prevention: The 1973/76/92 MARPOL Convention.

2.1 MARPOL: Convention on the Prevention of Marine Pollution from Ships, with annexes.

Detailed technical standards related to construction, equipment and technical installations to control pollution, and restrictions on discharge into sea areas.

Supplement the enforcement rules in UNCLOS, in particular as regards port state jurisdiction, based on port states' right to regulate *conditions of entry* to internal waters and ports:

- inspection of MARPOL Certificates
- in compliance with certificate rules?
- right and duty to hold back the ship in case of non-compliance
- inspection to supply evidence of a possible violation elsewhere ('in any place').

Europe (in particular after the Erika accident): "Paris Memorandum of Understanding": increased port state control and enforcement.

Port state enforcement more effective than flag state enforcement (?)

2.2 1996 Convention on Hazardous and Noxious Substances (HNS).

A Convention along the same lines as MARPOL

2.3 2004 Convention for the Control and Management of Ships' ballast Water and Sediments.

3. Preparedness, emergency action.

1969 (Torrey Canyon) Convention on Intervention on the High Seas in Cases of Oil Pollution Casualties (with a 1973 protocol for other substances).

Main point: coastal states may take all necessary measures – also on the high seas - to prevent, mitigate and eliminate "grave and imminent danger" to their coastline or related interests.

1990 (Exxon Valdez) Convention on Oil Pollution Prevention, Response, and Cooperation (OPPRC).

4. Liability for pollution damage.

4.1 The need for international rules on liability for pollution damage.

4.2 The difficult issues of

- liable subject(s): Who is the “polluter”? Who shall “pay”?
- conditions of liability, and possible exceptions
- liability with or without limitations?

4.3 1992 (1969) Convention on Civil Liability for Oil Pollution Damage

Obligation of the state parties: to legislate according to the international rules, as *flag state*.

Right of the state parties: to be compensated for pollution damage on the basis of the international rules, as *coastal state* victim of oil pollution.

Apply to oil tankers: ships transporting oil in bulk.

The “*owner* of the ship at the time of the accident” is *strictly* liable (art. III no 1).

Certain exceptions of “force majeure” type (art. III no. 2).

Other possible actors are *explicitly exempted* from possible liability (Art. III no. 4), including the “charterer” (usually, but not necessarily the owner of the transported oil). The “cargo owner” is not clearly exempted.

Limitation of the liability (varying with the ship’s size, etc. maximum some 120 mill. USD), unless the owner intentionally or through recklessness has caused the damage (art. V).

Liability covers direct and to some extent indirect damage and costs of clean-up.

A topic for discussion: Is the Convention really protecting the environment, or “protecting the shipping industry”?

EU has been particularly critical and tried to develop its own rules.

Some words on the recent Erika case before the French courts. The French oil company Total was found guilty as “cargo owner” of negligence in chartering Erika for oil transport, and liable for the pollution damage.

News 30 March 2010:

“French oil giant Total on Tuesday lost a bid to overturn a Paris court decision finding it guilty of negligence over a 1999 shipwreck and oil spill off the coast of Brittany. The Paris appeals court confirmed the conviction and a fine of 375,000 euros (500,000 dollars) that was imposed on Total in the 2008 ruling. Total was found guilty of failing to take into account the age of the tanker Erika and of ignoring maintenance problems when it chartered the rusty 25-year-old vessel. The Erika was carrying 30,000 tonnes of heavy fuel oil when it broke in two and sank off the Brittany coast on December 12, 1999, polluting a large stretch of coastline and killing tens of thousands of seabirds. The Paris criminal court had also ordered Total and three other parties in its initial ruling in 2008 to pay 192 million euros in compensation to civil plaintiffs in the case.”

4.4 1992 (1971) Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.

A Fund financed by a small tax levied on the purchase of oil transported by ship (oil companies).

Supplement to the shipowner liability, if necessary to cover the costs (the damage exceeds the limit, owner cannot be identified, etc...)

Also limited, but the maximum today amounts to some 1 billion USD.

4.5 2002 International Convention on Civil Liability for Bunker Oil Pollution Damage

Similar principles as for oil in bulk, but different in details.

4.6 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS).

Similar principles.

II Pollution from land-based sources (briefly).

This field is dominated by regional seas conventions

1992 OSPAR Convention as a case.

Full title: Convention for the Protection of the Marine Environment of the North-East Atlantic:

A combination of the earlier Oslo Convention on dumping of waste in the North Sea, and the Paris Convention on marine pollution from land-based sources.

Treats:

- pollution from land-based sources
- pollution for off-shore installations
- pollution by dumping and incineration at sea

An annex and detailed rules for each of these.

Plays a major role in reducing marine pollution by hazardous substances.

General obligation: States “shall ... take all possible steps to prevent and eliminate pollution”.

Principles:

- the precautionary principle
- the polluter pays principle
- “latest technological developments and practices”

Minimum regulation: States can take stricter measures than agreed pursuant to the convention.

A typical *framework* convention: Detailed rules in annexes and subsequent decisions and recommendations: gradual reduction and prohibitions of discharge of various hazardous substances.