

Introduction

During the last 50 years the world community has become increasingly aware of the need to protect the marine environment from pollution. The age-old assumption that the oceans have an infinite capacity to absorb contaminants introduced by man and through natural processes has been abandoned in the wake of a series of catastrophic incidents and a mountain of near overwhelming scientific research. A new body of international law has been developed on the prevention, reduction and control of marine pollution. Most of the new rules relate to vessel-source pollution, which accounts for less than 10 per cent of total marine degradation.

Only recently have states begun to develop the international law on marine pollution from land-based sources, which generate over 80 per cent of the contaminants introduced by man into the marine environment. Although there are now four regional agreements containing relatively detailed provisions on the prevention, reduction and control of land-based marine pollution (LBMP)* there is as yet no global convention specifically on the subject.

The international community's preoccupation with vessel-source pollution, which may well have been at the expense of pollution from land-based sources, is reflected in the 1982 United Nations Convention on the Law of the Sea. Only 2 of the Convention's 24 Articles on the protection and preservation of the marine environment are specifically directed at the creation and enforcement of controls on LBMP, although 14 Articles are directed at vessel-source pollution. While both Articles acknowledge the need for the international regulation of LBMP, the treaty as a whole assigns primary responsibility for LBMP control to nation states, thus leaving them free to determine when and where international action will be appropriate. This failure to develop international environmental law on LBMP control more fully signifies the reluctance, perhaps the inability, of the emerging legal regime to come to grips with the complex issue of LBMP. But it by no means indicates that LBMP is not a serious, indeed a very serious, problem whose effective management requires a variety of joint efforts by states.

Shortly after the conclusion of the 1982 UN Convention on the Law of the Sea, United Nations Environment Programme (UNEP)

*This abbreviation will be used throughout this work.

specifically recognized LBMP as one of the priorities of its future work programme. In 1983 UNEP invited all specialized United Nations agencies and all Member States of the United Nations to participate in an Ad-Hoc Working Group of Experts on the Protection of the Marine Environment against Pollution from Land-Based Sources. Eventually, 43 states and 19 inter-governmental and non-governmental organizations nominated experts to attend the meetings of the Working Group. After intensive preparation, the Working Group adopted the Montreal Guidelines for the Protection of the Marine Environment against Pollution from Land-Based Sources and, in 1985, the Governing Council of UNEP approved these Guidelines.

The introduction to the Montreal Guidelines states that they are addressed to governments with a view to assisting them in the process of developing appropriate bilateral, regional and multilateral agreements and national legislation for the protection of the marine environment against pollution from land-based sources. As far as international control is concerned, the Guidelines are suggested as a broad framework for the development of similar agreements in those regions where such agreements are called for; for the guidance of governments in areas which may not presently be covered by any regional agreements; and for the preparation in the longer term, should the need arise, of a global convention on pollution from land-based sources.

The intention of the Montreal Guidelines is to promote further development of international law on LBMP control, especially for states which have not yet taken steps to cooperate internationally in this field. They invite serious thought on the following issues:

- (i) What are the major difficulties encountered in the development of international law on LBMP control?
- (ii) How has the world community dealt with such complex issues and what has been achieved in terms of legal development?
- (iii) Has the existing international law on LBMP control, including the conventions which have not yet been in force and the new Montreal Guidelines, provided an appropriate framework for the development of international law on LBMP control? and
- (iv) What are the possibilities for and the directions which future legal development should take?

Very few of these issues have been analyzed to date and the analysis, if any, concerns policy-making rather than law-making, or law-making for a particular regional sea. The present study will provide a comprehensive examination of relevant issues with the object of providing an overview and an analysis of the development of contemporary international law of LBMP control.

This study will commence with a brief examination of the theoretical

and conceptual basis for the development of international law for marine pollution control in general. LBMP is merely a specific type of marine pollution and its regulation has to be within the general scheme of international legal development for the protection of the marine environment from pollution. To this end, the definition of marine pollution, the rational grounds for the legal control of marine pollution, the conceptual basis for the development of international law for marine pollution control, the available legal approaches and the factors that may influence the development of international law for marine pollution control are examined in Chapter 1.

Nevertheless, LBMP has distinct features from other forms of marine pollution. Any international law designed to control LBMP has to have its own characteristics. In other words, the applicability of the general scheme for international legal development on marine pollution to a specific type of pollution has to be considered together with the specific features of the particular type of pollution concerned. Chapter 2 will examine the special features of LBMP control from scientific, economic and social perspectives. In this Chapter, the control strategies suggested by scientists and economists are also examined because the very purpose of legal development is to provide a regime to ensure the realization of strategies which will induce direct control measures. This examination will be conducted mainly in the context of national policy-making, given that the nation states are still the primary actor in international law-making. An appreciation of the economic and political factors which may influence national policies for LBMP control is essential in the search for and understanding of the accepted compromises between what should be done internationally and what should be left to the states themselves.

A search for the applicable internationally agreed principles, norms, rules, standards and recommended practices and procedures will be undertaken in Chapters 3, 4 and 5 in the context of general international law, global efforts and achievements and regional efforts and achievements. Special attention will be given to the theoretical bases and methodology that have been used. This will provide concrete references for states which will develop new international agreements, both at the regional and global levels, under the guidance of the Montreal Guidelines, which have been formulated on the basis of the existing principles, norms, rules, standards and recommended practices and procedures.

As the 1985 Montreal Guidelines are expected to be adhered to by states in the development of both national legislation and international law, a detailed analysis and evaluation of the Guidelines is provided in Chapter 6. A special effort is made in this Chapter to identify the basis of each guideline in existing international law and to determine whether the guidelines in question introduce new concepts expressly

or by implication.

Chapter 7 will offer a general evaluation of the current legal development of LBMP control after summarizing the theoretical basis of the existing international law, pointing out the weaknesses and indicating the key to future developments. This Chapter concludes with recommendations for the future development of international law on LBMP control.

The overall conclusion which will be advanced by this study is that the world community has already developed a set of principles, norms, rules, standards, and recommendatory practices and procedures for the development of international law on LBMP control. Their viability would seem to depend on potentially conflicting national and international interests. Since the subject-matter of LBMP control is so complex in scientific, economic and political terms, the controversies between nationalism and internationalism appear to be major obstacles.

The international legal regime of LBMP control, which the international community has developed, has the following features:

- (i) it is mainly developed at the regional level—however, the possibility of global development remains open;
- (ii) it retains a high degree of flexibility when adopting uniform rules;
- (iii) most of its obligations are positive, especially those calling for cooperation, whilst negative obligations are limited to the reduction in the discharge of selected toxic substances;
- (iv) general mandatory obligations are followed by recommendatory implementation measures;
- (v) its rules on responsibility, liability and compensation have the status of implementation measures but are not of major legal concern; and,
- (vi) national enforcement is placed under international supervision.

Beyond all the specifics, the writer believes that contemporary international law on LBMP control represents at least an appropriate, if not the best possible, response to a complex, multidisciplinary problem. The law may not appear practical in the sense of being “enforceable”, but keeping in mind the difficulties of the subject-matter, it does attempt to regulate the behaviour of states with regard to the prevention, reduction and control of LBMP representing an impressive achievement in international diplomacy and environmental protection.

Nevertheless, the international law on LBMP is still in its formative stage—the stage where a framework is still being developed. Owing both to the lack of international enforcement measures in the contemporary international law on LBMP control and to strong nationalism, the key to the implementation of the existing inter-

national regime by states which have accepted it, and by states which are expected to participate in future international law-making, is to constantly raise the consciousness of both government decision-makers and the public in general. Such consciousness should be raised on broad ecological grounds to cover all adverse effects of LBMP and will lead to a strong incentive for states to reconcile their national interests with the common interest of mankind.

At the outset, the author wishes to emphasize the paucity of research materials in this new and very rapidly developing field of study. The primary materials that are available are not voluminous and certainly have been fully utilized. This situation recalls to the writer's mind an ancient Chinese proverb: "casting a brick to attract jade". It is hoped that this study will make the proverb a reality.

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August 1986