

## INTERNATIONAL LEGAL REGULATION OF THE WORLD OCEAN PROTECTION FROM POLLUTION

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**Abstract.** The article is concerned with the scientific study of international cooperation aimed at preventing marine pollution and protecting it from contamination with legal support. The paper gives an analysis of international legal acts regulating the main directions of cooperation in the protection and preservation of the marine environment.

**Keywords:** marine environment, environment protection, pollution, the international legal regime, oil, hazardous substances and waste, dropping, reimbursement.

*DOI: <http://dx.doi.org/10.23856/2111>*

### Introduction

The waters of the oceans are a holistic system that directly affects the planet's climate, the flora and fauna and the processes of human life. But in his turn man actively impacts on the ecological state of the marine environment, and unfortunately, the technological revolution has led to a number of adverse effects in the ecosystem of the world ocean.

Intensification of navigation, the use of seas and oceans for the disposal of industrial waste and by-products of other forms of human life, marine pollution as a result of river outflow led to the emergence of acute problems related primarily to the pollution of the world ocean. Therefore, the effectiveness of measures to protect and preserve the ecosystems of the oceans and seas can be ensured only by international legal means.

Thus far, there has established and continues to develop a comprehensive international legal regime for the protection and preservation of the marine environment, including regulation both horizontally (depending on the source of contamination), and vertically (global and regional).

The methodological basis of the study is dialectical and systematic approach to the analysis and evaluation of legal regulation of relations in the sphere of activities of the legal regime of protection, conservation and the prevention of marine pollution

Results and conclusions are derived from general and specific methods of scientific knowledge: formal-logical, comparative-legal, system-structural and others.

In addition, general scientific research methods are used: observation, generalization, comparison. Formulation and substantiation of theoretical positions, practical recommendations and conclusions are made using proven methods applied in sciences in international, administrative, civil, environmental law and ecology, philosophy, geography, government, economy.

The theoretical basis of the research consists of works by S.V. Kivalov, E.V. Dodina, S.O. Kuznetsova, O.A. Zharkova, M.M. Kalenchenko and others.

### **The normative base of research is international treaties and conventions in the field of marine environment, national legislation of Ukraine**

Conducting a comprehensive analysis of the legal regime of protection, conservation and the prevention of marine pollution, detection of essential peculiarities of the legal regime of marine areas for the realization of effective international cooperation, requires solving the main task - to study the main international instruments of protection and preservation of the marine environment.

International legal regulation of protection of the marine environment from pollution at the universal level - is primarily a huge number of agreements. The history of international treaties begins in the middle of the twentieth century.

Every year seas and oceans fill up with a huge amount of garbage, waste, oil. The interests of ensuring the protection of biological resources of the sea, the interests of rational use of bio-resources require the use of concerted actions by all the participants of sea fishing.

This question was studied in detail by the United Nations in 1949-1951. At the initiative of the UK government in 1954, in London there was summoned an international conference on the prevention of pollution by oil. As a result of discussions, the Conference adopted the International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL, 1954). This is the first multilateral agreement reached in order to reduce pollution of the marine environment, which in fact was the first international treaty in the field of marine environment.

A significant threat to the marine environment has always represented accidents of ships, especially tankers loaded with oil. In 1967 there was one of such largest accidents, which resulted in the tanker *Torrey Canyon* to throw 100 thousand tons of oil to sea. In this regard, in 1969 under the auspices of the International Maritime Organization, there was summoned Diplomatic Conference in Brussels, wherethe International Convention on Civil Liability for Oil Pollution Damage (CLC) of 1969 was adopted (The International Convention on Civil Liability for Oil Pollution Damage, 1969). Subsequently, Protocols in 1976, 1984, 1992 and Amendments in 2000 were adopted in Convention of 1969.

This convention marked the beginning of international legal regulation of preservation and protection of the marine environment.

The Convention of 1969 provides the states participating in it with the right to take, on the open sea in respect of vessels of other member states of the Convention in the event of serious accidents, any necessary measures to prevent, reduce or eliminate serious and imminent danger that represent for their banks and the respective interest of contamination or threat of oil pollution at sea as a result of the event. This provision introduces significant removal to the principle of exclusive jurisdiction of the flag state of the vessel at sea.

The Convention is based on the principle of strict liability of the ship owner for damage caused by oil pollution and provides for a system of compulsory financial security of such liability.

For full compensation to victims of the damage after the pollution after the preparatory work within the International Maritime Organization in Brussels in 1971 there was summoned the Diplomatic Conference that adopted the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND) of 1971 (The

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971). Further Convention of 1971 was changed in already mentioned Protocols of 1976, 1984, 1992, and Amendments of 2000.

The owner of a tanker carrying more than 2,000 tons of oil in bulk as cargo is obliged to provide insurance or other financial security to cover their liability under the Convention. On board the tanker there should be a certificate confirming the existence of such financial security responsibility.

Only the states that have become parties of the Convention on Civil Liability can become participants of the FUND Convention.

The main objectives of the Convention on the Fund are to provide additional compensation to those who could not obtain full and adequate compensation for the damage from pollution of the Convention on civil liability and also compensation to the ship owner of liability incurred under this Convention.

Today, the compensation paid by the Fund in connection with the incident, is limited to the amount of 135 million. SDRs - units of Special Drawing Right.

In 2000, the Legal Committee of the IMO adopted amendments to the limits of liability in the Protocol of 1992 to change the International Convention on Civil Liability for Oil Pollution Damage, 1969, which entered into force on November 1, 2003 and the Protocol of 1992 to the Convention Fund of 1971.

The International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) of 1990 (The International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990) entered into force on 13 May 1995. According to this Convention the parties individually or jointly take all appropriate measures in accordance with the provisions of this Convention and its Annexes of preparedness in the event of an incident causing oil pollution and the fight against it. The Convention does not apply to any warship; a military auxiliary or other ship owned or operated by the state and is used only on government non-commercial service. However, each Party shall ensure, through appropriate measures that do not hinder the operation or operational capabilities of such ships owned or operated by it, that such vessels were in compliance as far as it is reasonable and practicable, in accordance with this Convention.

At the International Conference on the control of harmful anti-fouling systems held on 1 - 5 October 2001 at the headquarters of the International Maritime Organization, the International Convention on the Control of Harmful Anti-fouling Systems on Ships (AFS Convention) was adopted (The International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2011). Until 2001 there were no international rules for the control of harmful anti-fouling systems. At the same time, some used on ships anti-fouling systems create a significant risk of toxicity and other chronic effects on ecologically and economically important marine organisms and can also cause damage to human health as a result of eating seafood. The new Convention complements the existing international rules of protection of the marine environment, including MARPOL 73/78 (The International Convention for the Prevention of Pollution from Ships, 1973).

In 1996 there was adopted the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS) (The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996), developed under the auspices of the International Maritime Organization. Until now, the Convention has not gained force, though eight states are involved in it. The 1996 Convention on liability and

compensation for damage caused by shipping hazardous and harmful substances established the international legal regime of liability and compensation for damage caused by shipping hazardous and harmful substances. The economic consequences of damage, caused by such transportation, are shared between the ship owner and the receiver of hazardous and noxious substances carried by ship as cargo. The Convention of 1996 is based on the same principles as the Liability Convention of 1992 and the Fund Convention of 1992.

The Convention on Civil Liability for Oil Pollution Damage caused by sea hazardous and harmful substances carriage of 1996 requires that a vessel carrying dangerous and hazardous substances had a certificate on the financial security of civil liability for pollution damage caused by shipping hazardous and noxious substances.

According to the Convention on Civil Liability for Oil Pollution Damage caused by shipping hazardous and harmful substances of 1996, when compensation paid by the owner of the vessel is insufficient or they are generally exempt from responsibility, the international hazardous and noxious substances Fund pays the compensation to the aggrieved taking into account the compensation paid by the ship owner for the loss. Such an international Fund, established in accordance with the Convention of 1996, is formed at the expense of contributions from importers/receivers of hazardous and noxious substances.

In 1972 at the intergovernmental London Conference the International Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter was concluded. The London Convention of 1972 (sometimes it is called dumping, from the English dumping – unloading, dumping, flooding) confirms that harmful waste products are buried in the World Ocean deliberately. All the categories of hazardous waste or materials are listed in two different applications which offer either their absolute prohibition (Annex I: Organohalogen compounds. Mercury and mercury compounds. Cadmium and cadmium compounds. Persistent plastics and other persistent synthetic materials. Crude oil, fuel oil, heavy diesel oil, and lubricating oils, hydraulic fluids, and any mixtures containing any of these, taken on board for the purpose of dumping. High-level radio-active wastes or other high-level radio-active matter. Materials in whatever form (e.g. solids, liquids, semi-liquids, gases or in a living state), or a special permit validity (Annex II: arsenic, lead, copper, and their compounds, zinc, organosilicon compounds, cyanides, fluorides, beryllium, chromium, nickel and their compounds, vanadium).

The Convention offers two types of deliberate burials: The discharge of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea; Vessels, aircraft, platforms and other artificial structures submersion.

17 Feb 1978 the International Convention for the prevention of pollution from ships, 1973, adopted the Protocol, which, according to MARPOL 73, is considered a stand-alone document and the new Convention in fact. The Convention for the prevention of pollution from ships, 1973 is replaced by the Protocol of 1978 (MARPOL 73/78), which entered into force on October, 2, 1983. MARPOL 73/78 consists of articles of the Convention itself, the Protocol which contains issues concerning harmful substances discharge, the Protocol on arbitration and six annexes containing:

1. Regulations for the prevention of pollution by oil;
2. Regulations for the control of pollution by noxious liquid substances in bulk;
3. Regulations for the prevention of pollution by harmful substances carried by sea in packaged forms, or in freight containers, portable tanks or road and rail tank wagons;
4. Regulations for the prevention of pollution by sewage from ships;
5. Regulations for the prevention of pollution by garbage from ships;

#### 6. Regulations for the prevention of pollution by atmosphere from ships.

Assuredly, the basic Treaty in the international legal standard system aimed at the protection and preservation of the marine environment is The United Nations Convention on the Law of the Sea (UNCLOS) 1982 (The Convention on the Law of the Sea, 1982), which has made a significant contribution to the development of the protection and preservation regime for the marine environment. The 1982 Convention considers issues of environmental safety in the context of the global regulation of all activities of States on the World ocean use and study. Part XII "Protection and preservation of the marine environment" sets the cooperation principles of different States to prevent, reduce and control pollution of the marine environment. Most sections of the UN Convention on the sea law 1982 contains important international law standards, while Part XII «Protection and preservation of the marine environment» sets the cooperation principles of States to prevent, reduce and control pollution of the marine environment, thereby creating a legal basis for international community interacting to protect the oceans from contamination. The basis of this mechanism is broad and multifaceted cooperation of all the States to achieve safe, both for the marine environment and international navigation as well (Zharkova, 1996: 89).

Thus, the international community has developed numerous international instruments to prevent the pollution of the marine environment, established procedures, measures and obligations for all the States to ensure the preservation of the World Ocean. Searching for ways of uniting efforts of the States to successfully solve the environmental protection problems and problems of rational use of natural resources should be carried out taking into consideration the universally recognized international legal principles of cooperation, what is the legal duty of States, regardless of their form, the state system, cooperation on the international peace and security maintenance, and even contribution into the international environmental law improvement.

### **Conclusions and suggestions**

Studying the main international legal marine environment protection and preservation ways allows us to conclude that there are rules for the environmental protection, rules for world and regional States cooperation directly or via competent international organizations to formulate and elaborate international rules, standards, practices and procedures according to the UN sea law Convention of 1982 for the marine environment protection and preservation, taking into account characteristic regional features (Kalenchenko, 2008: 20). However, despite a number of positive achievements in the creation of legal mechanisms for global and regional cooperation in the marine environment protection and preservation, there are many provisions that cannot be applied due to their General nature, their uncertainty or inconsistency. Institute of sanctions for violations of international norms and standards for the marine environment protection and preservation has not still been developed adequately in any international legal acts. It demonstrates the necessity of further development and improvement of international legal instruments to ensure environmental security of the World Ocean. Special conventions on the marine environment protection established an effective mechanism to prevent marine pollution, determined procedures, measures and obligations of States to ensure the preservation of the oceans. A big number of international treaties concerning the protection of the marine environment suggest that today the principle of the marine environment protection has already been formed in the international sea law. Greening is becoming more and more a characteristic feature of the modern international sea law. This

is especially true in the merchant shipping field, where the most clear and consistent implementations of international legal standards are aimed at the environmental protection.

International legal World Ocean protection is characterized by the most developed system of appropriate rules and institutions. Exactly sea Conventions and the mechanisms of their rules implementation and enforcement are a good pointer to continue carrying out effective international legal measures aimed at the marine environment protection and preservation.

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