



Book - Unit 3 - Regional Seas Agreements

Book - Unit 6 - Regional Seas Agreements

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Course: Introductory Course to the International Legal Framework on Marine Pollution

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1. UNEP Regional Seas Programme

UNCLOS requires parties to enter into regional agreements to formulate and establish rules, standards, practices and procedures for the protection of the marine environment, to supplement rules established at the international level (article 197). Framework agreements for protection of the environment have been created in almost every marine region of the world. Thirteen regional framework agreements have been developed under the UNEP Regional Seas Programme. A legal regime for the North East Atlantic Ocean was developed by regional states prior to the Regional Seas Programme being adopted.

The UNEP Regional Seas Programme was initiated in 1974 covering thirteen regional seas programmes involving 143 coastal states and territories. They are Black Sea, Wider Caribbean, East Asian Seas, Eastern Africa, South Asian Seas, ROPME Sea Area, Mediterranean, North-East Pacific, Northwest Pacific, Red Sea and Gulf of Aden, South-East Pacific, Pacific, and Western Africa.

There are also five 5 partner programmes for the Antarctic, Arctic, Baltic Sea, Caspian Sea and North-East Atlantic regions. The Regional Seas Programme involves development of an Action Plan for the protection of the marine environment in each region. These facilitate target setting, regional cooperation and capacity building in pollution control. Plans are regularly reviewed and have evolved to address broader sustainable development concerns for coastal zones and in most cases the Action Plan is underpinned with a legal framework in the form of a regional Convention and associated Protocols to address specific issues.

2. Conventions

The twelve regional conventions currently in force are:

- Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (“1976 Barcelona Convention”), adopted on 16 February 1976 and entered into force in 1978;
- Convention on the Protection of the Black Sea against Pollution (“1992 Bucharest Convention”) adopted in April 1992 and entered into force in 1994;
- Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (“1983 Cartagena Convention”) adopted in 1983 and entered into force in 1986;
- Convention on the Protection of the Marine Environment of the Baltic Sea Area (“1974 Helsinki Convention”) adopted in 1974 and entered into force in 1980;
- Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment (“1982 Jeddah Convention”) adopted on 14 February 1982 and entered into force on 20 August 1985;
- Kuwait Regional Convention for Cooperation on the Protection of the Marine Environment from Pollution (“1978 Kuwait Convention”) adopted in 1978 and entered into force in 1979;
- Convention for the Protection of the Marine Environment and Coastal Area of the South-East Pacific (“1981 Lima Convention”) adopted in 1981 and entered into force in 1986;
- Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region (“1985 Nairobi Convention”) adopted in 1985 and entered into force in 1986;
- Convention for the Protection of Natural Resources and Environment of the South Pacific Region (“1986 Noumea Convention”) adopted in 1986 and entered into force in 1990;
- Convention for the Protection of the Marine Environment of the North-East Atlantic (“1992 OSPAR Convention”) adopted on 22 September 1992 and entered into force on 25 March 1998;
- Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (“1981 Abidjan Convention”) adopted in 1981 and entered into force in 1984; and,
- Framework Convention for the Protection of the Marine Environment of the Caspian Sea (“2003 Tehran Convention”) adopted in 2003 and entered into force in 2006

One Convention has yet to enter into force:

- Convention for Cooperation in the Protection and Sustainable Development of the Marine and Coastal Environment of the Northeast Pacific (“2002 Antigua Convention”) adopted 2002

Legal agreements adopted under the Regional Seas Programme tend to reflect the structure and principles of part XII of the Law of the Sea Convention and provide a framework for more specific standards to be adopted, usually in the form of protocols. The range and kinds of protocols is continually expanding.

3. Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean

The Mediterranean Region provides the leading model of regional seas agreements, with the oldest and most frequently revised convention, and an extensive range of protocols. The Mediterranean Sea is a virtually closed ocean that is highly vulnerable to pollution. Rapid expansion of large cities around the Mediterranean Sea contributes to the overwhelming pressure on the region's marine, terrestrial and water resources. To address these challenges, states in the region adopted the 1976 Barcelona Convention. So far, the Convention has as 22 country-parties bordering the Mediterranean Sea.

Key provisions

The most important features of the 1976 Barcelona Convention include:

- Article 1 which describes the Conventions coverage as the Mediterranean Sea itself and its gulfs and seas but not the internal waters of parties;
- Articles 4 to 8 which declare that the objective of the Convention is to protect the marine environment of the region from pollution from sources including ships, aircrafts, dumping of wastes and from exploitation and exploration of the continental shelf and seabed; and
- Article 8 which requires parties to ensure that activities carried out within their territories do not discharge pollutants into rivers that end up emptying them into the waters in the region. Article 9 which requires parties to cooperate, in the case of an emergency, by taking joint action to mitigate the impacts of pollution from land- based activities or from other sources.

Protocols related to pollution

As with most of the regional seas conventions, the Barcelona Convention is a framework formed of articles of a general nature which, though adopted of UNCLOS, are consistent with its chapter XII. Protocols and annexes specifying concrete measures must supplement the framework agreement for the Convention to effectively address problems in the region. The Barcelona Convention is complemented by seven protocols, more than any other region. These are:

- The Protocol for the Prevention of Pollution by Dumping from Ships and Aircraft was adopted 16 February 1976 and entered into force on 12 February 1978. In 1995, it was amended and renamed Protocol for the Prevention and Elimination of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft or incineration at Sea. The amendment has not yet come into force.
- The Protocol concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and other Harmful Substances in Cases of Emergency was also adopted on 16 February 1976 and entered into force on 12 February 1978. Nearly 30% by volume of all international sea-borne trade originates or is directed to the Mediterranean ports, or passes through the sea, while some 28% of the world's sea-borne oil traffic transits the Mediterranean. To address prevention of pollution from shipping, the Protocol was amended on 25 January 2002, and renamed the Protocol Concerning Cooperation in Preventing Pollution from Ships and in Cases of Emergency, Combating Pollution in the Mediterranean Sea, which entered into force on 17 March 2004.
- The Protocol for the Protection of the Mediterranean Sea against Pollution from Land- Based Sources was adopted on 17 May 1980 and entered into force on 17 July 1983. Land- based pollution presents 80% of harm done to the Mediterranean Sea. To complement pollution discharge limits operative at the end of the pipe, the Protocol was amended on 7 March 1996 and entered into force on 11 May 2008. The renamed Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities set in place systemic pollution prevention standards that address controls to pollution generating processes.
- The Protocol concerning Mediterranean Specially Protected Areas was adopted on 2 April 1982 and entered into force on 23 March 1986. In June 1995, it was amended and renamed the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean. The amendment came into force on 12 December 1999.
- The Protocol for the Protection of the Mediterranean Sea against Pollution resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil was adopted on 14 October 1994 and came into force on 24 March 2001.
- The Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal was adopted on 1 October 1996 and entered into force on 19 January 2008.
- The Protocol on Integrated Coastal Zone Management in the Mediterranean was adopted on 21 January 2008 and entered into force on 24 March 2011.

4. Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region

The Wider Caribbean region, comprising 28 island states and 18 continental countries, is a complex region of natural beauty encompassing both tropical and sub-tropical ecosystems. Ranging from coral reefs to mangrove forests to sea grass beds, each with unique wildlife, it is considered by many scientists to be one of the world's most biodiverse regions.

For example, Colombia and Mexico are among the ten richest countries in the world in terms of terrestrial and plant species. Despite wide disparities in the densities of population, levels of economic development and access to resources, all the states in the Caribbean region share similar environmental problems. Nearly 100% of the population of its islands are coastal and the region experiences hurricanes and other devastating climatic and oceanographic conditions. Tourism is a fast-growing industry in many regional states and they are undertaking development activities along the coastline, such as ports and harbours, with negative consequences on their environments.

Key provisions

The 1983 Cartagena Convention is a comprehensive framework type, making requirements on parties, for example, to conduct Environmental Impact Assessments (“EIA”) of their planned and on-going projects to determine their potential to cause marine pollution (article 12).

Article 15 of the Convention designates UNEP as its Secretariat, responsible for functions including coordination of implementation activities. Disputes arising under the Convention are to be resolved through negotiation and other peaceful means. In the absence of a negotiated resolution, matters are to be referred to arbitration.

Protocols related to pollution

The 1983 Cartagena Convention has been supplemented by some unique and unusual protocols specifying detailed pollution control measures, namely:

- The 1983 Protocol concerning Cooperation in Combating Oil Spills in the Wider Caribbean Region entered into force in 1986. It requires parties to act individually, as well as to cooperate by providing assistance to each other, to establish and maintain means of responding to oil spill accidents which result in or pose a significant threat of, pollution to the marine and coastal environment.
- The 1990 Protocol concerning Specially Protected Areas and Wildlife (“SPAW”) entered into force in 2000 and was specifically intended to implement article 10 of the Cartagena Convention, which requires the establishment of specially protected areas. Its objective is to protect rare and fragile ecosystems and habitats, including endangered and threatened species.
- The 1999 Protocol concerning Pollution from Land- Based Sources and Activities entered into force in 2010 and requires parties to take appropriate measures to prevent, control and reduce pollution from transboundary movement of wastes.

5. Convention for the Protection of the Marine Environment of the North-East Atlantic

The 1992 OSPAR Convention was adopted on 22 September 1992 and entered into force on 25 March 1998. It has sixteen parties: Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom, and the European Union. The Convention replaced two earlier conventions: the Convention for the Prevention of Marine Pollution by Dumping From Ships and Aircraft (“Oslo Convention”), which came into force in 1974, and the Convention for the Prevention of Marine Pollution from Land-Based Sources (“Paris Convention”), which came into force in 1978.

The objectives of the 1992 OSPAR Convention, as stated in its Preamble, are threefold:

- To safeguard human health from marine pollution in the area;
- To conserve marine ecosystems, particularly by preventing and controlling pollution;
- To restore waters that have been adversely affected by pollution. OSPAR regulations cover all the oil-producing coastal states of Western Europe.

Unlike many of the regional seas agreements, it applies to the internal waters of parties, that is, not only to the territorial sea, high seas, seabeds and subsoil adjacent to parties in the North-East Atlantic and North Sea region.

Key provisions

To meet its objectives, article 2(2)(a) of the 1992 OSPAR Convention obligates parties to apply the precautionary principle. This means that parties are to take measures to prevent marine pollution when there is reason to believe that proposed activities in or near the marine environment may create hazards to human health, interfere with legitimate uses of the waters, or harm the living organisms in the waters, even if there is no conclusive evidence that these adverse impacts will definitely occur. Another unique feature of article 2 is that it requires parties to apply the polluter pays principle. Parties are to ensure that the cost of measures taken to prevent, control and reduce pollution as well as the cost of any damage resulting from pollution is borne by the person who pollutes the waters.

In addition, article 2 of the Convention introduces unusually sophisticated controls on land-based pollution using best available technology standards. Parties are required to ensure that their pollution control programmes make full use of best available techniques and best environmental practices to prevent, reduce and control pollution to the fullest extent.

Articles 10, 11 and 12 establish an OSPAR Commission made up of representatives of each party. The Commission has decided to allow Non-Governmental Organizations to participate in the development of its Plan and Programme to facilitate pollution control and other measures. In addition, the Convention provides for the establishment of technical and scientific bodies to implement recommended strategies and to conduct monitoring and assessments.