

MARINE POLLUTION AND INTERNATIONAL LAW

JUSTICE RS FRENCH

19 April 2007

1. Historical Cultural Perceptions of the Sea – Vast Invulnerable

K Patton – *The Sea Can Wash Away All Evils – Modern Marine Pollution and the Ancient Cathartic Ocean* (Columbia University Press, November 2006)

Grotius – 1625

Vattel – 1750

2. Practical Imperatives for an International Legal Regime

20th Century - oil
- noxious substances

Oil Spill Statistics – ITOPF

1970s 3,142,000 tonnes

1980s 1,176,000 tonnes

1990s 1,138,000 tonnes

2000 – 2006 176,000 tonnes

Major part of volume spilt from a few large spills

Most spills small – less than 7 tonnes

Loading, discharging and bunkering

Other forms of pollution

Washings from tanks

Sewage

Garbage

Contaminated ballast

Land based pollution

Nuclear waste

Air pollution

Seabed based oil wells

3. Development of International Maritime Organisation (IMO) and Associated Conventions

1926 International Maritime Conference – Convention not ratified

- 1948 Convention of the Inter-Governmental Maritime Consultative Organisation (IMO Convention)
- 1958 IMO Convention ratified by necessary 21 States
Article 1(a) IMO purposes

IMO Today

- 167 Member States
- 300 staff
- UK based

- 1954 Convention for the Prevention of the Pollution of the Sea by Oil – OILPOL 54 – UK Government inspired

- 1958 OILPOL 54 in force

- 1959 IMO takes over OILPOL 54

- 1967 OILPOL 54 amendments

- 1967 Torrey Canyon accident – bombed by UK in international waters to burn oil

- 1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (INTERVENTION CONVENTION)

- 1969 International Convention on Civil Liability for Oil Pollution Damage (CLC)

- 1969 TOVALOP – Voluntary Agreement between Tanker Owners to assist in meeting civil liabilities

- 1971 International Covenant on the Establishment of an International Fund for Oil Pollution Damage (FUND CONVENTION)

- 1971 CRISTAL – Voluntary Oil Industry Agreement

- 1971 Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material

- 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (LONDON CONVENTION)
- Amended 1996, amendments in force March 2006

- 1973 Protocol Relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil (PROT)

1973/78

International Convention for the Prevention of Pollution from Ships (MARPOL 73/78)

1976 Convention on Limitation of Liability for Maritime Claims

1990 International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC)

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

2000 Protocol on Preparedness, Response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances (HNS Protocol)

2001 International Convention on Control of Harmful Anti-fouling Systems on Ships (AFS)

2001 International Convention on Civil Liability for Bunker Oil Pollution Damage

2004 International Convention for the Control and Management of Ships Ballast Water and Sediments

4. **MARPOL 73/78**

MARPOL is the principal international convention dealing with the prevention of pollution of the marine environment by ships from operational or accidental causes. It includes regulations designed to prevent and minimise pollution from ships, both accidental and from routine operations. It includes six technical Annexes.

Annex 1 Regulations for the Prevention of Pollution by Oil

Annex 2 Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk

Annex 3 Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form

Annex 4 Prevention of Pollution by Sewage from Ships

Annex 5 Prevention of Pollution by Garbage from Ships

Annex 6 Prevention of Air Pollution from Ships

Annex 1 by itself comprises 109 pages and has recently been comprehensively amended and came into force in the amended form on 1 January 2007

5. **United Nations Conventions**

1982 United Nations Convention on the Law of the Sea (UNCLOS)

Article 192 – Obligation to protect marine environment

Article 211 – General obligations to prevent reduce and control pollution of the marine environment from vessels.

1989 Basel Convention – The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

- Entered into force 1992

- It fills a loophole left by the LONDON CONVENTION

6. **Commonwealth/State Legislative Powers**

Commonwealth/State statutes to be understood in the light of the Offshore Constitutional Settlement between Commonwealth and States of 1979

Application of s 51(xxviii) of the Constitution

Coastal Waters (State Powers) Act 1980

Power to States to legislate up to 3 miles offshore.

Concurrent power.

Commonwealth laws on marine pollution and environmental protection apply outside the 3 mile limit unless the State or Territory has not made a relevant law within the limit, eg where State Act only partly covers the field.

7. **Commonwealth Laws Implementing Marine Pollution Conventions**

7.1 *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*

Navigation Act 1912, Divisions 12, 12A, 12B and 12C

Marine Orders Parts 91-96 covering oil, noxious liquid substances, harmful packaged substances, garbage and sewage

All giving effect to MARPOL 73/78

- 7.2 *Protection of the Sea (Oil Pollution Compensation Fund) Act 1993*
And associated States giving effect to FUND CONVENTION
 - 7.3 *Protection of the Sea (Powers of Intervention) Act 1981*
Giving effect to INTERVENTION CONVENTION
 - 7.4 *Protection of the Sea (Civil Liability) Act 1981*
Giving effect to CLC.
 - 7.5 *Protection of the Sea (Shipping Levy) Act 1981*
 - 7.6 *Environment Protection (Sea Dumping) Act 1981*
Gives effect to LONDON CONVENTION
 - 7.7 *Hazardous Waste (Regulation of Exports and Imports) Act 1989*
Gives effect to Basel Convention
 - 7.8 *Environment Protection and Biodiversity Conservation Act 1999*
8. There is also an array of State and Territory Laws giving effect to Convention obligations within the 3 mile zone.
9. **The Protection of the Sea (Prevention of Pollution from Ships) Act 1983**
- Seven parts – each Part includes an interpretation provision giving to its terms the same meaning as the same term in the equivalent MARPOL Annex – prohibition provisions – eg on discharges of oil or oily mixtures – s 9 creates offence – like prohibitions with respect to noxious substances etc
10. **Criminal and Civil Liability**
- 10.1 Criminal liability imposed by the Protection of the Sea (Prevention of Pollution from Ships) Act and equivalent State Statutes.
 - 10.2 Civil liability imposed by the relevant Civil Liability Acts.

Conclusion

Marine Environment Protection and associated provisions relating to criminal and civil liability, compensation and insurance and a large array of regulatory requirements constitute a complex system and one changing rapidly. The rate of amendment to the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* is indicative of the dynamic nature of this field. There have been 30 amendments to the Commonwealth Act since it was enacted in 1983.

Reported cases are few and far between in the area of civil liability. There is a substantial list of prosecution proceedings with reference to outcomes on the AMSA website.

Further reading:

White MWD, *Australasian Marine Pollution Laws* (2nd Edition, Federation Press, 2007)

Halsbury's Laws of Australia Vol 12 s 180 – Environment Ch (7) Marine Pollution

The Laws of Australia Vol 14 Ch 3 – Marine Pollution

For brief High Court consideration of the MARPOL history see: *Morrison v Peacock* (2002) 210 CLR 274