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Marine Pollution from Land-based Sources: specific and regional regimes

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OVERVIEW OF KEY SCHOLARSHIPS

Pre- UNCED,1992

1. Boczek, B.A., ‘International Protection of the Baltic Sea Environment Against Pollution: A study in marine regionalism’ *American Journal of International Law* 72(4) (1978) 782-814
2. Christiansen, S.B., ‘Marine Pollution Control in Europe’ *Marine Policy* 8(1) (1984) 44-55

Post- UNCED,1992

3. Hey, E., IJlstra, T., and Nollkeamper, A., ‘The 1992 Paris Convention for the Protection of the Marine Environment of the North-East Atlantic: A Critical Analysis’, *International Journal of Marine and Coastal Law* 8(1) (1993) 1-49
4. Ehlers, P., ‘The Helsinki Convention, 1992 Improving the Baltic Sea Environment’, *International Journal of Marine and Coastal Law* 8(2) (1993) 191-243
5. Kirk, E.A. and Silfverberg, H.M., ‘Harmonisation in the Baltic Sea Region’ *International Journal of Marine and Coastal Law* 21(2) (2006) 235-258

6. Vinogradov, S., 'Marine Pollution via Tranboundary Watercourse – An Interface of the 'Shoreline' and 'River-Basin' Regimes in the Wider Black Sea Region' *International Journal of Marine and Coastal Law* 22(4) (2007) 585-620

The following articles provide relevant information about the distinctive characteristics and particular problems of specific regional regimes dealing with marine pollution from land-based sources. They also provide some information about how those particular regimes respond to their individual problems.

1. The Baltic Sea States were amongst the earliest to address marine pollution from land-based sources. In his article titled '*International Protection of the Baltic Sea Environment Against Pollution: A study in marine regionalism*' B.A. Boczek, discusses some of the measures adopted by them in the 1970s and so provides a useful source for those interested in the development of this area of law. The article focuses on the way in which the Baltic States address protection of the Baltic Sea environment. It highlights the unique nature of the Baltic Sea and points to land-based pollution, particularly industrial discharges as major contributors to the environmental deterioration of the Baltic Sea. It briefly reviews national efforts to control marine pollution before discussing how international cooperation was developed amongst interested States. It is interesting to see how environmental cooperation allowed the Parties to sidestep political disagreements during the formal discussions and led to firm cooperation of the Baltic Sea. Finally, the article reviews the substantive and procedural contents of the Baltic Convention and makes some comparisons with other regimes.

2. There are two disclaimers worth noting before reading the article titled '*Marine Pollution Control in Europe*' by S.B. Christiansen. The first is that, despite the title referring to pollution control in Europe, the article focuses only on control in the north-east Atlantic region. Secondly, the article does not focus exclusively on marine pollution from land-based activities: it covers a range of pollution issues. It does, however, contain some very useful insights. The article reviews four conventions relating to the protection of the marine environment in Europe: the *Bonn Agreement for Cooperation in Dealing with the Pollution of the North Sea by Oil*; the *Oslo Convention for the Prevention of Pollution by Dumping from Ship and Aircraft*; the *Paris Convention for the Prevention of Marine Pollution from Land-based Sources*; and the *Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area*. Only the latter two are of significance to land-based pollution. The key insights offered in the article include an analysis of the different approaches between the so-called 'continental' and 'Anglo-Saxon' approaches to pollution control and the way in which this difference both shaped the regimes and were reconciled in them. It also discusses the role of another, different type of regional organization in relation to marine pollution: the EEC. In particular the

relationship of the EEC with each of these regimes, its overlapping jurisdiction with the conventions and the role it plays in developing relevant legal rules and standards is discussed. In addition, the failure of national governments to provide information regarding the uses and discharges of harmful substances at the national levels for the purpose of pollution assessment and standard-setting is highlighted.

3. Like Christianson's article, the article titled '***The 1992 Paris Convention for the Protection of the Marine Environment of the North-East Atlantic: A Critical Analysis***' by **E. Hey, T. IJlstra, and A. Nollkeamper** focuses on the north-east Atlantic and covers a range of sources of pollution including land-based sources as well as touching upon the role of the EEC. The main focus of the article is on some significant developments in the law in the early 1990s. The article focuses on the revised *Convention for the Protection and Preservation of the North-East Atlantic*. The Convention's fundamental obligations are briefly outlined, followed by a discussion of the incorporation of new environmental principles. These include the concept of sustainable development, the precautionary, and polluter-pay principles. The definition of land-based pollution is also discussed as is the change from using black/grey lists to using a list based on uniform criteria as set out in Appendix 2. The article also reviews new regulatory techniques included in the convention, explaining how Best Available Technology and Best Environmental Practice are to be understood. The authors conclude that the introduction of these principles and techniques represent an improvement from the original *Paris Convention*.

4. 1992 saw significant developments in the law of marine pollution from land-based activities in the European region generally and the article titled '**The Helsinki Convention, 1992 Improving the Baltic Sea Environment**' by **P. Ehlers** addresses another set of developments. This time the focus is on the revised *1992 Helsinki Convention* and developments in the protection of the Baltic Sea. In keeping with the developments in the north-east Atlantic reviewed in the preceding article, this article reviews the introduction of the precautionary and polluter pays principles and of Best Available Technology and Best Environmental Practice. It also addresses the revised definition of the term 'pollution' and an interesting extension of the coverage of the Convention to include internal waters, a potentially significant incursion into State sovereignty. The article draws out the move to stricter obligations in the new Convention. Where previously Parties were asked to 'control and minimize' pollution now they are asked to 'prevent and eliminate' it.

Once again the article also discusses developments in relation to other sources of pollution such as pollution from ships, waste disposal at sea, offshore activities, as well as developments in nature and biodiversity conservation. Procedural requirements and

institutional setting are also discussed in this article such as the function of the Helsinki Commission, reporting and exchange of information.

5. While the preceding articles point to links between the regimes of the north-east Atlantic and the Baltic, in their article titled '*Harmonisation in the Baltic Sea Region*' **E.A. Kirk** and **H.M. Silfverberg** explore some aspects of these links a little more fully. **Kirk** and **Silfverberg** address the overlapping jurisdiction of *OSPAR* (north-east Atlantic), the EU (the successor to the EEC and EC), and the Baltic. One of the key issues, which can be gleaned from the preceding articles is that these three organisations have overlapping competences. As some States are members of all three these overlapping competences could create compliance problems particularly where each regime sets a separate standard in relation to the same issue. The paper focuses on a project which was designed to harmonise particular provisions in an attempt to simplify compliance for those States members of all three regimes.

Kirk and **Silfverberg** identify a number of factors which can have a positive or negative impact on the harmonization of laws - pragmatism, variations in geography, variations in economic development and need, and politics – and illustrate how these have been addressed in the harmonization project.

6. In **P.Ehlers's** article the extension of a pollution control regime into internal waters was discussed. In this article, titled '*Marine Pollution via Tranboundary Watercourse – An Interface of the 'Shoreline' and 'River-Basin' Regimes in the Wider Black Sea Region*' **S.Vinogradov** examines a further and very significant extension of a regime to address land-based pollution. The article illustrates how the coastal environment interacts with river basins. **Vinogradov** points out legal limitations found in traditional regimes for addressing land-based pollution. He then goes on to examine the relationship between the Bucharest regime for the Black Sea with regime for the Danube river and demonstrates how this cooperation may lead to better and more comprehensive protection of the marine environment of the Black Sea.