

David Freestone & Ton IJlstra (eds.)

**The North Sea:
Basic Legal Documents
on Regional
Environmental Co-operation**



GRAHAM & TROTMAN / MARTINUS NIJHOFF

THE NORTH SEA:

Basic Legal Documents on Regional Environmental Co-operation

edited by

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Basic Legal Documents on Regional Environmental Cooperation

VOLUME I

The titles published in this series are listed at the end of this volume.

THE NORTH SEA:
BASIC LEGAL DOCUMENTS ON REGIONAL
ENVIRONMENTAL CO-OPERATION

EDITORIAL FOREWORD

This book is the result of regional co-operation across the North Sea. For two years David Freestone of the University of Hull, in England and Ton IJlstra of NILOS, University of Utrecht, The Netherlands collaborated in editing a book of essays entitled *The North Sea: Perspectives on Regional Environmental Co-operation*¹. The original plan for that volume was to have a documentary annex containing the main legal instruments relating specifically to the North Sea. As the book reached completion it was clear that there would be no space available for such an annex, but by that time it was also clear that the sheer volume of relevant legal documentation from such a wide diversity of sources justified a book of its own. There is no existing work containing the most important legal instruments in the field of regional environmental co-operation in the North Sea, and we hope that the selection which we have made for this single volume will itself be an important resource for the growing number of professionals involved in this field.

It is perhaps worth stressing that this volume is only a selection – albeit one that includes what we regard as the most (or the more) important documents. In making the choice of documents we have had to keep a number of practical considerations in mind. The objective of the volume is to provide as wide a spread as practicable of relevant primary documentation. For reasons of space, a number of treaties – such as the Ramsar and Berne Conventions – which are not primarily related to the North Sea – have had to be omitted. Similarly, the technical annexes of framework agreements – which we are aware sometimes constitute the real substance of the agreements – are subject to amendment and modification. In order to maintain the collection within a single volume we have reluctantly had to omit a number of these. There are some relevant spheres of activity such as fisheries where the legislation as well as being subject to continual amendment is very extensive. Here again, after consultation we have only presented what we believe to be the most significant for our collection. We have also been influenced in our choice and editing of European Community documents by the ready availability of the Official Journal. We are most grateful to the experts we have consulted for their advice, but ultimately the choice is personal and we are responsible for it.

In editing the documents we have imposed upon them some uniformity for presentational purposes, but otherwise we have tried to interfere with them as little as possible. From international agreements we have however omitted signatures which occupy a great deal of space and are

1 Graham & Trotman/Martinus Nijhoff, London/Dordrecht, 1990, ISBN 1-85333-413-8.

interesting for historical rather than legal purposes. References for treaties will be found in the Table of Treaties. For non-treaty documents we have provided sources as editors' notes. Where we have omitted Annex we have noted this. We have corrected obvious misprints in the English texts of documents, but otherwise (although in some documents the English is often curious) we have reproduced the documents as they stand in the official versions.

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Faced with such a variety of subjects, instruments and sources we have considered it wise to consult other, more qualified, experts on specific subjects. We would like to express our gratitude particularly to the following for their help: Dr. Robin Churchill (Cardiff), Dr. Erik Franckx (Brussels), Dr. Barbara Kwiatkowska (Utrecht), Mr. Jean-Luc Prat (Brest), Mrs. Claire Nihoul (London) and Mr. Mouke van der Haer (The Hague).

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We would also like to thank the Law School and the Institute of Estuarine and Coastal Studies, University of Hull and the Netherlands Institute for the Law of the Sea (NILOS), University of Utrecht, for their support in the production of this volume.

A special word of thanks goes to Paul Ymkers, former research-assistant at NILOS. Paul helped us tremendously with *The North Sea: Perspectives on Regional Environmental Co-operation* and with this book. We thank him cordially and wish him success with his new career.

NORTH SEA CO-OPERATION - TRENDS AND ISSUES

The level of activity in the North Sea region is such that a single volume could not possibly contain all the relevant documents. In making their selection for this volume, the editors have therefore had to make some painful choices, and they have aimed to ensure that all relevant areas of activity receive at least some coverage. Obviously some exclusively regional instruments select themselves: the Paris Convention on Land Based Pollution, the Oslo Convention on Dumping and their Protocols; the Bonn Agreement for Co-operation in dealing with Pollution of the North Sea by Oil and Other Harmful Substances. In addition, typically North Sea Agreements such as the bilateral Murchison Field Reservoir Agreement and Frigg Field Agreement form part of the central core of North Sea instruments. After that the task is more difficult. In making what is ultimately a personal selection the editors have endeavoured to maintain a balance between what can be seen as the three important dimensions of co-operation in the protection and preservation of the marine environment of the North Sea: the geographical, the functional and the institutional dimensions.

The geographical dimension encompasses not only those activities which take place over the whole North Sea area as defined for example in the North Sea Declarations, but also those relating to a part of that area, such as the Wadden Sea. In other cases North Sea co-operation is only part of a larger co-operative network, as in the case of the Oslo and Paris Conventions (above) which apply not simply to the North Sea, but to the whole North East Atlantic. The European Community also provides a different geographical dimension, in that its legislation applies to the marine as well as riverine waters of the Member States, and while the majority of the North Sea littoral states are EC Members, two (Norway and Sweden) are not. Finally North Sea co-operation does occasionally take place in global fora such as the International Maritime Organization (IMO).

The functional dimension of North Sea co-operation relates to the nature of regulated activities. Many commentators have pointed out that North Sea co-operation is characterised by a fragmentary, piece-meal approach. Pollution sources have been addressed, one after the other, by different mechanisms. In many cases the regulatory response has been prompted by a single incident which mobilises public concern (such as Torrey Canyon, Amoco Cadiz, the Stella Maris, or more recently, the dramatic accident with the Herald of Free Enterprise); in other cases regional responses have been prompted by global conventions. Regional conventions have been adopted for the regulation of Dumping (Oslo, 1972), Pollution from Land-based Sources (Paris, 1974) the combating of Pollution Incidents (Bonn, 1969). The Oslo Convention was mirrored by the conclusion of a global treaty on Dumping (London, 1972), but the regulation of vessel source pollution remains mainly the preserve of a global convention - the MARPOL 1973/78 Convention negotiated and administered in and by IMO.

Similarly, a study of the institutional dimension demonstrates this same plurality. A major institutional role in regional co-operation is assumed by the Oslo and Paris Commissions. These Commissions (OSCOM and PARCOM), established by their respective conventions, provide a framework for co-operation which includes not only the North Sea states but five other states as well¹. The European Community (which also includes a number of non-North Sea states) is also playing an increasingly predominant role in the organisation of the protection and preservation of the North Sea marine environment and the management of its living resources.

Among the most recent institutional structures to emerge are the International North Sea Conferences. The Hague was the venue for the Third Conference for the Protection of the North Sea in March, 1990. For the first time a non-littoral state (Switzerland) participated in the conference and Czechoslovakia and the German Democratic Republic attended as observers. This was an important acknowledgement, particularly by the Eastern European states, that even states without North Sea coasts have a major impact on the quality of the marine environment of the North Sea and that they have a commensurate contribution to make in cleaning it up. The International North Sea Conferences also have what might be called a scientific organ in the shape of the North Sea Task Force, established at the Second Conference in London in November 1987.

The editors believe that the International North Sea Conferences represent a major contribution to the development of regional environmental co-operation and in a number of respects their choice of documents to include in this book has been strongly influenced by the emerging significance of these interministerial Conferences. This of course explains why The Hague Declaration – the longest of the three Ministerial Declarations – has been included in full in this book, as well as the London (1987) and Bremen (1984) Declarations. Although, from a substantive point of view, the Bremen Declaration made few practical impacts, possibly because it was over ambitious, nevertheless from an historical point of view it made a major contribution by setting in motion the dynamics of the present system. It was the Bremen Declaration which highlighted at ministerial level the need to take drastic steps to avoid irreversible damage to the North Sea ecosystem. The drastic steps were proposed at Bremen but not fully implemented at that time. It was the London Declaration which actually accepted a ban on incineration, the phasing out of dumping and the reduction of inputs into rivers of hazardous and noxious substances. One of the main objectives of

1 Finland, Iceland, Ireland, Portugal and Spain are also parties to the Oslo Convention on Dumping. The same States, except Finland, are also party to the Paris Convention on Land-Based Pollution to which the European Community is also a party.

the The Hague Conference was to assess the extent to which participating States had implemented the undertakings agreed at London. However at The Hague new items were also put on the agenda for the first time, including the protection of wildlife and the role of agriculture in pollution of the North Sea.

In addition to the important political momentum which the International North Sea Conferences have themselves generated, there have also been important "spin off" effects in other bodies. On the basis of agreements formulated within the Conferences it has been possible to amend the Paris Convention and to adopt a number of important decisions within PARCOM. Notable are the recommendations on the precautionary principle and the definition of "Best Available Technology". These will have significance not only in the North Sea and the North East Atlantic but also in other international fora, particularly for co-operation in other regional seas in Europe such as the Baltic or the Mediterranean. Furthermore the ban on North Sea dumping of industrial wastes (from 31 December 1989), and the decisions of OSCOM to terminate the dumping of sewage sludge and incineration at sea (by 31 December 1991) show that the North Sea states are setting standards which may be followed in other regions.

This leads to another interesting and important development which can be witnessed in North Sea co-operation. Two important "legislative layers" can be distinguished in the region. First there is the purely regional layer of international legislation from which this book stems, but secondly in this region as in others the regional regime is paralleled and supplemented by, the second "legislative layer" - the global rules which apply to the North Sea. Thus, there is no specific regional instrument dealing with air pollution, nor is there one for navigation. However a close look at the North Sea Declarations shows that the North Sea States are utilising these global rules in their own way to meet their own regional management goals. We term this phenomenon *derived regionalism* in that it represents regional initiatives derived from global rules and treaties. This phenomenon will have an important part to play in future North Sea co-operation and demonstrates that global instruments can have their own regional taste. An obvious example of this phenomenon of *derived regionalism* can be seen in the Paris MOU on Port State Control, under which an attempt is made to utilise the concept of port state control to enforce global norms (from SOLAS, MARPOL 73/78, ILO 147 and COLREG etc) on a regional basis. Similarly, the designation of the North Sea as a "special area" under Annex V of the MARPOL 73/78 Convention also demonstrates the use of global regulations for regional objectives. A further example can be found in the recent amendment to the 1983 Bonn Agreement - here again the North Sea coastal states have used a regional instrument to ensure the effective regional implementation of global instruments like MARPOL and COLREG.

For more than twenty-five years the North Sea has been the scene for

a flourishing oil and gas exploration and exploitation industry. It is surprising however that in a region which contains some of the world's richest offshore deposits of oil and gas (most of which benefit the UK, Norway and the Netherlands) there have been no regional treaties on the environmental implications of exploration and exploitation. PARCOM has some, albeit limited, competence to regulate discharges from off-shore installations, but apart from that, the only intergovernmental instrument relating to offshore activities in the North Sea is the 1977 Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration for and Exploitation of Seabed Mineral Resources, which has yet to receive a single ratification and which will probably never come into force. There is of course a successful "private" agreement - the Offshore Oil Pollution Liability Agreement (OPOL Ltd). Both these instruments relate to liability issues and the question should be asked whether now is not an appropriate time to negotiate another regional instrument on pollution from offshore installations. In the context of the North Sea Conferences, the Hague Declaration seems to suggest that although there is no existing formal regional convention in this sector, regional co-operation may well be fruitful. Of course the advantage of the "Declaration approach" is the flexibility which it offers in such cases. Co-operation in other sectors demonstrates that it is possible to fix strict norms and then tighten them within a relatively short time-frame. However this does not mean that there is no room for improvement in the regulation of the offshore industry and the adoption of a formal regional instrument (albeit not between or not simply between governments) may well be considered.

Two further areas still require comment: fisheries and wildlife. The legal regulation of fisheries is already well covered elsewhere, the editors decided at an early stage not to duplicate this effort but to include only those fishery regulations, or parts thereof which are specifically pertinent to the North Sea. Although the main approach of EC regulations is conservation and management there is an increasing acceptance that fisheries should also be approached from an environmental perspective. This was accepted officially for the first time in the Hague Declaration, but much still remains to be done to implement such a policy. As the EC will be the main actor in this field it should be recalled that Article 130R of the Rome Treaty requires that environmental considerations be a part of other Community policies.

The Hague Declaration also identifies the first germs of a regional wildlife policy. That is not to say however that protection of wildlife is not already taking place at a regional level. The 1979 Berne Convention on the Conservation of European Wildlife and Natural Habitats, which is not included in this present volume, applies to the coastal regions of the North Sea, as does the 1971 Ramsar Convention on Wetlands of International Importance. The Wadden Sea States are currently in the process of adopting a seals agreement which will be the first regional agreement under the 1979 Bonn Convention on the Conservation of

Migratory Species of Wild Animals. Furthermore At The Hague an MOU on the protection of cetaceans was adopted. This expresses the intention of riparian states to adopt a regional convention on small cetaceans in the near future, and in the meantime adopt important interim measures.

This short introductory review will have demonstrated the wide variety of regulatory frameworks which exist in the North Sea and the dynamism with which regional policies are increasingly being pursued. In this respect, the North Sea region provides an important model for other regional seas in the world. Regional programmes for environmental co-operation have been adopted in a number of other regions - especially through UNEP's Regional Seas Programme. The North Sea experience, represented by the different models of co-operation which can be found in the documents in this book, may, we hope, be of considerable relevance to readers from other regions as well as to those already interested or involved in North Sea affairs.

David Freestone and Ton IJlstra
Hull and Utrecht
13 October 1990.

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