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Terry L. Leitzell

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TERRY L. LEITZELL*

I. INTRODUCTION

On December 29, 1972, the Convention on the Prevention of Marine Pollution By Dumping of Wastes and Other Matter in the oceans was opened for signature in Washington, Moscow, London and Mexico City.[1] Twenty-seven States signed the convention that day, with indications that many others would do so in the near future, thus bringing over two years of cooperative effort closer to fulfillment. The achievement of an ocean dumping convention is notable and hopefully even "a historic step toward the control of global pollution," as stated by Russell E. Train, Chairman of the Council on Environmental Quality, and the United States Rep-

* Terry L. Leitzell is a Foreign Service Officer and an Attorney-Adviser in the Office of the Assistant Legal Adviser for Ocean Affairs, Department of State; member of the U.S. Delegation to the U.N. Seabed Committee and the U.S. Delegation to the London Conference; J.D., University of Pennsylvania, 1967; A.B., Cornell University, 1964. The views expressed in this article are those of the author alone and do not necessarily reflect those of the Department of State or the United States Government.

1. Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, *signed* at Oslo, Feb. 15, 1972 (adopted Nov. 13, 1972); 11 INT'L LEGAL MATERIALS 1294 (1972) [hereinafter cited as Govern-tion].

resentative at the Conference in London which negotiated the convention.[2] Although the convention deals with a pollution source that accounts for only approximately ten percent of all ocean pollution, it is notable in that it was negotiated and agreed to during a period of evolving attitudes on environmental matters, in which a few states were strongly committed to solving pollution problems, while many others maintained a relatively chauvenistic position. Most of the states involved in the negotiations were strongly concerned as well with avoiding prejudices to their positions in the United Nations Law of the Sea Conference, now scheduled for a two-week organizational session in November/December 1973 and an eight-week substantive session in April/May 1974.[3] The completion of a convention to control marine dumping in this rather unfavorable negotiating atmosphere is noteworthy, and perhaps augurs well for the possibility of effective pollution controls (resulting) from the Law of the Sea Conference and the Conference on Marine Pollution scheduled for October 1973.

II. HISTORY

In a message to Congress dated April 15, 1970, President Richard M. Nixon stated that he was directing the Council on Environmental Quality and several other federal agencies to undertake a complete study of the problems and alternatives to ocean dumping, and to "recommend further actions".[4] On February 8, 1971, the President recommended domestic legislation which would ban unregulated ocean dumping and establish an administrative structure to allow dumping to take place only after the issuance of a permit by the Environmental Protection Agency.[5] At the same time, he instructed the Secretary of State, in coordination with the Chairman of the Council on Environmental Quality, to develop and pursue international initiatives directed toward this same objective on a global basis.[6]

The United States thus tabled the first draft of a convention on ocean dumping in June, 1971, at the first meeting of the Inter-

2. N.Y. Times, Nov. 22, 1972, at 34.
3. G.A. Res. 3029 (XXVII) (1972).
4. COUNCIL ON ENVIRONMENTAL QUALITY, OCEAN DUMPING: A NATIONAL POLICY, *President's Message on Waste Disposal* 43 (1970).
5. 1971 COUNCIL ON ENVIRONMENTAL QUALITY ANN. REP., App. F.
6. *Id.*

governmental Working Group on Marine Pollution (IWGMP), which was preparing for the United Nations Conference on the Human Environment, to be held a year later in Stockholm.[7] The IWGMP considered a second draft at its November, 1971, meeting in Ottawa.[8] Since no further IWGMP sessions could be scheduled, the Government of Iceland invited interested governments to meet in Reykjavik in April, 1972, to further consider the draft convention. Although the twenty-nine nations participating could not agree on a complete text, draft articles were referred to the Stockholm Conference for further consideration and appropriate action.[9] After a short meeting in London in May, 1972, which attempted in vain to resolve the outstanding differences, the Stockholm Conference recommended that governments refer the draft articles to an intergovernmental conference to be convened by the United Kingdom before November, 1972, with the purpose of completing a convention and opening it for signature before the end of 1972.[10] That recommendation also referred the draft articles to the United Nations Committee on the Peaceful Uses of the Seabed Beyond National Jurisdiction (Seabed Committee) for information and comments at its July/August, 1972 meeting, but there were only scattered comments, and no formal communication was sent to the later conference.[11]

The United Kingdom convened the Intergovernmental Conference on the Convention on the Dumping of Wastes at Sea on October 30, 1972, with eighty participating countries, twelve observer nations and nine representatives of international organizations.[12] The negotiations were completed on November 12, and the resultant convention was opened for signature on December 29, 1972.

III. Structure of the Convention

The basic thrust of the Convention is to require the contracting

7. *Working Paper, Ocean Dumping*, U. N. Doc. A/Conf.48/PC/1WGMP. 1/5 (1972).

8. Draft Report of the Second Session of the Intergovernmental Working Group on Marine Pollution, Ottawa; U. N. Doc. A/Conf.48/1WGMP.11/5 (1971); 11 Int'l Legal Materials 19 (1972).

9. Report of the Intergovernmental Meeting on Ocean Dumping, Reyjavik; U. N. Doc. A/Conf.48/8/Add. 1 (1972).

10. United Nations Conference on the Human Environment, *held* at Stockholm, June 16, 1972; *Recommendation 233.*

11. Summary Records, Subcommittee III, U.N. Committee on the Peaceful Uses of the Seabed Beyond National Jurisdiction, U. N. Doc. A/AC. 138/SC.III/SR.20-31 (1972).

12. Final Act of the Intergovernmental Conference on the Convention on the Dumping of Wastes at Sea, 11 Int'l Legal Materials 1291 (1972).

parties to prohibit all dumping of "wastes or other matter"[13] in the "sea."[14] The definition of "dumping" in Article III of the Convention includes any "deliberate disposal at sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures," as well as the disposal of such "vessel, aircraft, platform or other man made structures" themselves. The Convention goes on to exclude three categories of activities:

(1) disposal of wastes incidental to the normal operations of vessels, aircraft, etc.[15] These activities are exempted since they are covered by other conventions such as the 1954 Convention on the Pollution of the Seas by Oil.[16] The Inter-Governmental Maritime Consultative Organization (IMCO), which administered the 1954 Convention, is presently in the final preparatory stages for the 1973 Conference on Marine Pollution which will hopefully produce stricter standards to essentially eliminate the operational discharge of oil from vessels.

(2) placement of matter for a purpose other than the mere disposal thereof.[17] Various instruments and devices are often placed on the seabed for purposes such as environmental monitoring. Which may not be intended for recovery. It was considered necessary to specify that this type of "disposal" was not to be regulated under the Convention.

(3) "disposal of wastes or other matter directly arising from, or related to, the exploration, exploitation and associated off-shore processing of sea-bed mineral resources."[18] One of the major items for negotiation in the Law of the Sea Conference is a regime for activities relating to seabed minerals, and an integral part of that regime will be an arrangement to provide comprehensive regulations governing pollution from seabed mineral resource activities. Consequently, it was thought unnecessary, and a duplication of effort, to deal with that problem in the dumping convention.

13. "Wastes or other matter" is defined in Article III of the Convention as "material and substance of any kind, form or description".
14. "Sea" is defined in Article III of the Convention as "all marine waters other than the internal waters of States".
15. Convention, Art. III, para. 1(b) (i).
16. International Convention for the Prevention of Pollution of the Sea by Oil, *opened for signatures* May 12, 1954; [1958] 12 U.S.T. 2989; T.I.A.S. No. 4900; 327 U.N.T.S. 3.
17. Convention, Art. III, para. 1(b) (ii).
18. *Id.* art. III, para. 1(c).

Article VII (4) also states that the Convention shall not apply to those vessels and aircraft entitled to sovereign immunity under international law. However, the Article goes on to state that "each Party shall ensure by the adoption of appropriate measures that such vessels and aircraft owned or operated by it act in a manner consistent with the object and purpose of this Convention . . . ." During the earlier negotiations in Reykjavik and London there had been a split of opinion on this question, with some delegations favoring the approach of not applying the Convention to such vessels and aircraft, and others wanting to adopt a sovereign immunity concept. The draft articles resulting from the Reykjavik meeting included both approaches.[19] The sovereign immunity approach would mean that the terms of the Convention would have applied to all vessels, but that vessels entitled to sovereign immunity would not be subject to enforcement action by other than their flag State (except, of course, that they could be expelled from the territorial sea of a foreign State under other concepts of international law). In the final negotiations it was decided to exempt such vessels from the terms of the Convention, as had been done in the 1954 Convention on the Prevention of Pollution of the Sea by Oil.[20]

Although equally difficult in formulation, the substance of the regulatory provisions appears relatively straightforward in final form. While Article IV is written in terms of prohibiting dumping, it in fact prohibits the dumping of only a select group of substances, while requiring either a "special" or "general" permit for the dumping of *all* other substances. After an introductory statement, Article IV says:

"(a) the dumping of wastes or other matter listed in Annex I is prohibited;[21]

(b) the dumping of wastes or other matter listed in Annex II requires a prior special permit;[22]

(c) the dumping of all other wastes or matter requires a prior general permit."

19. Summary Records, *Supra* note 11, at art. IX.

20. *Id.* art. II.

21. Annex I of the Convention lists organohalogen compounds, mercury and mercury compounds, cadmium and cadmium compounds, persistent plastics and other persistent synthetics, various petroleum substances, high-level radioactive wastes, and materials produced for biological and chemical warfare.

22. Annex II of the Convention lists "significant amounts" of arsenic, lead, copper, zinc, organohalogen compounds, cyanides, fluorides and pesticides and their by-products not covered in Annex I; acids and alkalis containing any of the preceding substances or beryllium, chromium, nickel, vanadium and their compounds; scrap metal and bulky wastes; and, radioactive wastes not covered by Annex I.

The basic difference between the two types of permits is that "special permit" means a specific permission for a certain dumping or series of dumpings, while a "general permit" means a permission granted for dumping certain materials over a period of time under less specific conditions than would be required for an Annex II substance.[23]

Having laid out the application of a permit system in Article IV, the Convention then requires, in Article VI, that each contracting party establish an appropriate authority or authorities to issue the required permits, keep records of the nature and quantity of all matter permitted to be dumped, and to monitor, either individually or in cooperation with other Parties or organizations, the condition of the seas.[24] The authority is required to issue permits to all vessels and aircraft loading matter in its territory for dumping, and to all flag vessels and aircraft loading matter in the territory of a non-Party State.[25]

The regulatory structure of the Convention illustrates the recognition by the countries involved in the negotiation that, to be acceptable, the result of the Conference must depend heavily on national administrators. The negotiations at Oslo in late 1971 and early 1972, which resulted in the first convention dealing with ocean dumping,[26] produced structure almost identical to that later negotiated in London. There is a general requirement in Article 7 of that Convention of obtaining approval before any dumping takes place; a requirement in Article 6 for special permits for the dumping of certain substances; and a prohibition in Article 5 on the dumping of substances listed in an Annex. With the exception of the listing of certain substances in two annexes, the Oslo Convention depends generally on national administrations to carry out the terms of the Convention. It seems likely that the nations taking part in the Oslo and London negotiations fully understood that it would not be possible to provide a major role in either convention for an international organization, but that the conventions

23. Convention, art. III, para. 5, 6.
24. *Id.* art. IV, para. 1(a), (b), (c), and (d).
25. *Id.* art. VI, para. 2.
26. Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft, *done* at Oslo, Feb. 15, 1972; 11 INT'L. LEGAL MATERIALS 262 (1972).

would be necessarily dependent on agencies and authorities set up domestically by each contracting party.

The regulatory structure is almost entirely compatible with the domestic legislation enacted by the United States in October, 1972,[27] (a few minor amendments will be proposed in the near future). That legislation provides that no person shall transport any material from the United States for the purpose of dumping unless a permit has been issued by the Environmental Protection Agency,[28] or, in the case of dredged materials, by the Army Corps of Engineers.[29] The U.S. domestic legislation has no annexes analagous to those in the Convention, although it does specifically prohibit the dumping of radiological, chemical and biological warfare agents and high-level radioactive wastes.[30] However, the United States can carry out its international obligations to prohibit the dumping of Annex I substances, and to give special attention to Annex II substances, through the power of the domestic administrator. He may, under the domestic legislation, establish a system of special permits for Annex II materials[31] and, under his general authority to issue regulations,[32] may simply prohibit the issuance of permits for Annex I substances (and any other substance). If the Convention is amended in the future to add to Annexes I and II, the domestic administrator could, of course, utilize this same authority to bring U.S. domestic practice into conformity.

IV. Institutional Arrangements

When the Stockholm Conference on the Human Environment concluded in June, 1972, without establishing any new international organization to deal directly with environmental problems, it was hoped that the negotiation of the ocean dumping convention might provide either a new organization or, at least, some guidance as to which existing organization was willing and able to assume new responsibility. (The Stockholm Conference and the United Nations General Assembly did, of course, create a new secretariat unit to coordinate international actions concerning the environment). However, the Conference on ocean dumping avoided what was assumed to be an extremely contentious issue, due to a desire to conclude the convention. Thus, Article XIV of the Convention pro-

27. Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. No. 92-532, 86 Stat. 1052 (1972).
28. *Id.* §§ 101-02.
29. *Id.* §§ 101, 103.
30. *Id.* § 101.
31. *Id.* § 102.
32. *Id.* § 108.

vides that the depositary government, the United Kingdom, shall convene a meeting of the Contracting Parties within three months after the entry into force of the Convention (the Convention comes into force on the thirtieth day following the deposit of the fifteenth ratification.[33] At that meeting, the Parties are required to designate a competent organization *existing at the time of that meeting* to be responsible for secretariat duties under the Convention.[34] Thus, while there was agreement not to *create* a new organization, the choices were expanded to include the possibility of designating an organization which could come into existance between the end of the negotiations and the entry into force of the Convention. (The difficult question of dispute settlement procedures was also postponed until the first consultative meeting of the Parties).[35]

More importantly, however, it was decided to give the organization only relatively routine administrative functions, and to reserve the more substantive items for regular consultative meetings of the Parties. The consultative meetings, to be held at least every two years, would review and adopt amendments, receive and consider reports from Parties, and cooperate and collaborate with scientific bodies and regional organizations.[36] Both the designated organization and the consultative meetings would consider the question of required consultations on the disposal of Annex I materials under emergency circumstances (the Convention allows dumping of Annex I substances in very limited emergency circumstances after consultations with the designated organization and the other Parties as appropriate).[37]

V. JURISDICTION

The most conentious issues of the negotiations involved jurisdiction and enforcement of the standards set out in the Convention, issues which threatened to break up the London Conference without agreement. The controversy in London was presaged by events during the Reykjavik meeting. It was generally agreed by all countries that the flag State should be required to enforce the

33. Convention, art. XIX.
34. *Id.* art. XIV.
35. *Id.* art. XI.
36. *Id.* art. XIV.
37. *Id.* arts. IV, XIV.

Convention against all vessels and aircraft registered in its territory, and that each State should be required to apply measures to all vessels and aircraft of any flag loading matter in its territory to be dumped.[38] The problem arose in trying to decide the extent of jurisdiction, under the convention, which a coastal state could exercise over aircraft and vessels off its shores. It was argued by many countries, including the United Kingdom, the United States and some Scandanavian countries, that the formulation of the Oslo Convention should be used since it stated the present maximum jurisdiction recognized by international law—that is, complete enforcement rights for the coastal State in its territoral sea.[39] (This does not really state the maximum, of course, since the Convention on the Territorial Sea and the Contiguous Zone allows jurisdiction to a maximum of 12 miles over activities such as dumping to the extent that the territorial sea itself is affected.[40] Also, the U.S. domestic legislation applies both to the three-mile territorial sea and to the nine-mile contiguous zone.[41]) It can be argued that this would not provide consistent application since there is a dispute over the breadth of the territorial sea. However, the United States and others favored this approach since there is no dispute over the rights of a State within its territorial sea; and the question of its outer boundary will hopefully be settled at the 1973 Law of the Sea Conference.

Several countries argued at Reykjavik that to limit this Convention to the territorial sea was overly conservative, and that it would be best to allow for the possibility of special coastal State jurisdiction for pollution control beyond the territorial sea, whether unilaterally claimed or internationally agreed. The result was vague language in the third part of the article on jurisdiction, which said that each Party shall apply the Convention to all ". . . (iii) vessels and aircraft and fixed or floating platforms under its jurisdiction believed to be engaged in dumping." This set the stage for the confrontation in London seven months later.

The negotiation of the article on jurisdiction at the London Conference consumed several days of discussion in working groups of various sizes, in corridors, over tea, and in the plenary session. The question was entirely one of differing positions on law of

38. Draft Convention, *supra.* note 9, art. IX.
39. Ship and Aircraft Dumping Convention, *supra* note 26, art. XV.
40. Convention on the Territorial Sea and the Contiguous Zone, *done* at Geneva, April 29, 1958; [1964] 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205.
41. Marine Protection, Research and Sanctuaries Act of 1972, Pub. L. No. 92-532, 86 Stat. 1052, § 101.

the sea matters, and was certainly not nearly as important in the context of controlling dumping as the time and difficulty of negotiation would indicate. In fact, most countries agree that the real force of the Convention is in controlling vessels and aircraft in the ports of Contracting Parties when they are loading materials for dumping.[42] But issues of principle are always more difficult to negotiate than those of practical application.

The range of alternatives was broad, ranging from application to the territorial sea to the establishment of a wide coastal State pollution control zone. The two opposing groups were, first, those nations favoring a narrow territorial sea with coastal pollution controls in the area beyond limited to emergency circumstances, such as those utilized in the 1969 Convention on intervention;[43] and, second, those States desiring coastal State controls in broad areas such as the Canadian Arctic Pollution Control Zone.[44] While all participating nations agreed that these were issues within the competence of the Law of the Sea Conference, there was vigorous disagreement as to the best method for settling the issue while preserving the positions of all nations.

The proposal for a pollution control zone was, in reality, only a negotiating threat and was quickly withdrawn. The group favoring broad coastal controls argued that the insertion of "territorial seas" prejudiced their position that coastal States had broader rights. While they did not directly argue that present international law recognized their position, they did state that law in favor of coastal rights was emerging, and that failure to include such rights here would effectively halt that trend. When it was proposed, as an intended compromise, to simply eliminate the third basis of jurisdiction in the Convention, the same group responded that such action would be even more detrimental to their postion and was equally unacceptable.

Finally, the Conference returned to the Reykjavik language and began to negotiate possible changes to it. The broad rights

42. Convention, art. VII, para. 1 (b).
43. The International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, *signed* at Brussels, Nov. 29, 1969; (Not yet in force) 9 INT'L. LEGAL MATERIALS 25 (1970), Cmnd. 4403.
44. An Act to Prevent Pollution of Areas of the Arctic Waters Adjacent to the Mainland and Islands of the Canadian Arctic, C-202 (1970).

group proposed adding two words, so that the language would read "vessels and aircraft and fixed or floating platforms *in areas* under its jurisdiction . . ." (emphasis added). This was objected to, however, as indicated too strongly zones of pollution control, or control in the waters above the continental shelf.

Finally, since the remaining articles had been essentially agreed to and since everyone was anxious to complete an effective Convention, it was decided to retain the Reykjavik language without change, and add a new Article XIII, which was a saving clause to protect the law of the sea positions of all Parties. Article XIII reads as follows:

> "Nothing in this Convention shall prejudice the codification and development of the law of the sea by the United Nations Conference on the Law of the Sea convened pursuant to Resolution 2750C (XXV) of the General Assembly of the United Nations nor the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction. The Contracting Parties agree to consult at a meeting to be convened by the Organization after the Law of the Sea Conference, and in any case not later than 1976, with a view to defining the nature and extent of the right and the responsibility of a coastal State to apply the Convention in a zone adjacent to its coast."

While the first sentence is important in protecting positions and in making the Convention acceptable to countries with widely differing views on the law of the sea, the second sentence is worthy of note as well, since it again indicates the intent of the negotiating nations to reach compromises now, while providing the ability to eliminate the vagueness that made compromise possible.

VI. Amendment Procedures

The procedures for amending the body of the Convention are relatively standard, requiring approval first by two-thirds of the countries present at a consultative meeting, followed by formal acceptance by two-thirds of the Parties. Amendments come into force only for those Parties accepting them.[45] However, amendments to the Annexes can be made more easily. Amendments to the Annexes, which are to be based on scientific or technical considerations, may be approved by two-thirds of those countries present at a consultative meeting. They then enter into force for each Party immediately upon formal notification to the organization of its acceptance, and for *all* Parties within 100 days of approval at the meeting, except for those Parties making a declaration within the 100 days that they could not accept the amendment.

45. Convention, art. XV, para. 1(a).

Some countries favored an easier procedure which would have required only approval at a consultative meeting, but it was felt that the procedure adopted would be useful, in that it requires a positive act of refusal, theoretically made more difficult by publicity and peer pressure to accept the proposed amendment.

VII. CONCLUSION

The Convention was critized by many, both during and after its negotiation, on the grounds that it did not fulfill the hopes and desires of those who feel that new international organizations are necessary if global environmental problems are to be solved, and if proper scientific input is to be available. Although that point of view is understandable, and many agree that greatly increased international cooperation is needed in the environmental area, it is the will of nations to solve the problems that is the key to the matter. Conventions and organizations are worth only what nations make them worth, and the best legal draftsmanship available cannot change the political structure of the international community. But the negotiation of an ocean dumping convention does provide hope, since the countries involved overcame a wide divergence of opinion on issues such as jurisdiction of coastal States, and the structure of the organization. In addition, the Parties assumed general obligations to promote the control of all sources of pollution, and to take all practicable steps to prevent the pollution of the sea by dumping.[46] The history of the negotiation and the structure of the Convention clearly represent the strength of the will of the nations concerned, and provide the hope that this will indeed be the first step in a series of conventions and arrangements to protect the marine environment.

46. *Id.* art. I.