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## PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT IN THE REPUBLIC OF CROATIA

The international law of protection and preservation of the marine environment is a branch of international law which has only recently begun to be developed systematically. The whole system of modern international maritime law is inspired by marine environment protection and that an autonomous legal discipline designated as marine environment protection law has been established within its field. This paper is a short survey of international regulations governing the prevention of marine pollution and civil liability as an efficient mechanism of compensation for pollution damage. The most important international Conventions relating to pollution by oil, by hazardous and noxious substances and by nuclear materials are described. It is argued that the Republic of Croatia should consistently ratify and apply these Conventions. In its maritime legislation, our country has always to a large extent recognised provisions and principles of different international Conventions and has also followed modern unified solutions in the field of marine pollution.

### I. INTRODUCTION

Since the moment of his coming into existence man has influenced the formation of his natural environment whose original state has been completely transformed in the course of thousands of years. The ecological drama of civilisation, particularly prominent in the marine environment, requires the introduction of concrete ecological standards. Although environmental law is by its nature interdisciplinary, legal regulation fulfils one of the most important tasks in the achievement of this aim.<sup>1</sup> The international law of protection and preservation of the marine environment is a branch of international law which has only recently begun to be developed systematically.<sup>2</sup> The legal regulation of protecting the marine environment from vessels-source pollution (vessels

<sup>1</sup> Jasna Omejec, Uvodna i osnovna pitanja prava okoliša (Introductory and basic questions of environmental law). In Olivera Lončarić-Horvat et al., *Osnove prava okoliša (The Fundamentals of Environmental Law)*. Zagreb 1997, p. 15-20.

<sup>2</sup> Maja Seršić, Okoliš s međunarodnog stajališta (Environment from the viewpoint of international law). In Olivera Lončarić-Horvat et al., *Osnove prava okoliša (The Fundamentals of Environmental Law)*. Zagreb 1997, p. 193 ff.

being the main source of pollution) contains elaborate safety standards of preventive significance as well as a corresponding civil law component. In this field, the international system of regulations is not uniform because it depends on the type of pollution, namely whether it is pollution by the discharge of oil, pollution caused by the maritime carriage of hazardous and noxious substances or pollution damage by nuclear materials.<sup>3</sup>

## II. INTERNATIONAL REGULATIONS RELATING TO MARINE POLLUTION FROM VESSELS

### 1. Pollution by oil

a) *International Convention on Civil Liability for Oil Pollution Damage* (Brussels, 1969). This Convention establishes a system of the shipowner's strict liability for damage by the discharge of oil carried as bulk cargo.<sup>4</sup> The provisions of this Convention were amended by the Protocol of 1976 (which introduced a new Unit of Account - the Special Drawing Right - instead of the gold franc)<sup>5</sup> and the Protocol of 1984 (which expanded the application of the Convention and increased liability amounts).<sup>6</sup> The Protocol of 1992 adopted the entire text of the 1984 Protocol except its term of entering into force.<sup>7</sup>

b) *International Convention on Civil Liability for Oil Pollution Damage* (1992). According to the Protocol 1992, Article 11, the text of this Protocol and the text of the 1969 Convention are to be interpreted as a single instrument under this title.<sup>8</sup>

c) *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage* (Brussels, 1971). This Convention supplements the previous Convention of 1969 in such a way that the injured persons can

<sup>3</sup> Vinko Hlača & Gordan Stanković, *Pravo zaštite morskog okoliša (Law of protection of the marine environment)*. Rijeka 1997, p. 9.

<sup>4</sup> *Službeni list SFRJ - Međunarodni ugovori (Official Gazette of SFRY - International Agreements)*, No. 2/77. The Republic of Croatia ratified this Convention (*Narodne novine - Međunarodni ugovori / Official Gazette of the Republic of Croatia - International Agreements*), No. 1/92, but subsequently called it off, so that it has not been effective since 30 July 1999 (*Narodne novine - Međunarodni ugovori / Official Gazette of the Republic of Croatia - International Agreements*), No. 6/98).

<sup>5</sup> The Republic of Croatia did not ratify this Protocol which came into force in April 1981.

<sup>6</sup> ~~This Protocol did not enter into force.~~

<sup>7</sup> The Protocol of 1992 entered into force on 30 May 1996. As to its significance, see Velimir Filipović, *Hrvatska bi trebala što prije ratificirati nove Protokole 1992. o naknadi štete uzrokovane onečišćenjem naftom (Croatia should as soon as possible ratify the new Protocols of 1992 relating to oil pollution damage)*, *Uporedno pomorsko pravo (Comparative Maritime Law)*, Zagreb No. 1-4, 1993, p. 33-41.

<sup>8</sup> The Republic of Croatia ratified the Protocol of 1992 on 12 January 1998 (*Narodne novine - Međunarodni ugovori / Official Gazette of the Republic of Croatia - International Agreements*), No. 2/97. It became effective on 12 January 1999 (*Narodne novine - Međunarodni ugovori / Official Gazette of the Republic of Croatia - International Agreements*), No. 3/99. For the text of the Convention in both English and Croatian, see *Glasnik*, Zagreb No. 2, 1999, p. 7-37.

obtain full damages where this was not possible according to the text of 1969, and that shipowners as perpetrators of damage are released from the additional financial burden imposed under the 1969 Convention.<sup>9</sup> Later on, the provisions of this Convention were also modified by the Protocols of 1976,<sup>10</sup> 1984,<sup>11</sup> and 1992.<sup>12</sup>

d) *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage* (1992). According to Article 27 of the 1992 Protocol to amend the Convention of 1971, both texts are to be interpreted together as a unique instrument under the title *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage* (1992).<sup>13</sup>

e) *International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties* (Brussels, 1969). This Convention entitles signatory States to undertake necessary measures on the high seas in order to prevent, control and reduce serious or unavoidable hazards to their coast or coast-related interests in cases of oil pollution caused by maritime casualties or by activities connected with such accidents. Since the Convention refers only to oil (crude oil, fuel oil, diesel oil and lubricating oil), the Protocol of 1973 extends State powers to cases of marine pollution by substances other than oil that are noxious to human health and life on the sea.<sup>14</sup>

f) *International Convention for the Prevention of Pollution from Ships*, 1973, as amended by the Protocol of 1978 (*MARPOL Convention 1973/1978*). The Protocol of 1978 contains the provisions of the Convention of 1973 with amendments so that the coming into force of the Protocol in 1983 meant the coming into force of an amended Convention. As a single unified international instrument, it is so far the most thorough international treaty on the prevention of marine pollution by oil. Its aim is to prevent any (intentional or accidental) pollution of the marine environment from ships by any substances harmful to people and to the living and mineral resources of the sea. Therefore, the pollution from vessels includes dumping, discharge, emptying, spilling and leakage.<sup>15</sup>

<sup>9</sup> See note 4.

<sup>10</sup> The Republic of Croatia did not ratify this Protocol which came into force in November 1994.

<sup>11</sup> See note 6.

<sup>12</sup> See note 7.

<sup>13</sup> As to its becoming effective in the Republic of Croatia, see note 8.

<sup>14</sup> *Službeni list SFRJ - Međunarodni ugovori* (Official Gazette of SFRY - International Agreements), No. 2/77. The Republic of Croatia adopted this Convention (*Narodne novine - Međunarodni ugovori* /Official Gazette of the Republic of Croatia - International Agreements/, No. 1/92).

<sup>15</sup> *Službeni list SFRJ - Međunarodni ugovori* (Official Gazette of SFRY - International Agreements), No. 2/85. The Republic of Croatia adopted this Convention (*Narodne novine - Međunarodni ugovori* /Official Gazette of the Republic of Croatia - International Agreements/, No. 1/92) - see Drago Pavić, *Onečišćenje morskog okoliša uljem kao pomorska nezgoda* (Marine environment oil pollution as maritime casualty), *Zbornik radova* (Collected Papers), Maritime Faculty of Split No. 1, 2000, p. 15 - 17.

g) *Convention on the Protection of the Mediterranean Sea from Pollution* (Barcelona, 1976). This Convention provides that it is a general obligation of all States, parties to the Convention, to undertake all appropriate measures to prevent and control pollution in the area of the Mediterranean Sea, namely pollution by the dumping of waste and other substances or by discharge from vessels, pollution caused by activities in the submarine areas (sea-bed and subsoil), and pollution from land-based sources. The 1976 Protocol to the Convention further specifies the agreed-upon measures, procedures and standards to ensure the proper application of the Convention.<sup>16</sup>

h) *UN Convention on the Law of the Sea* (Montego Bay, 1982). This Convention is a unified system of regulations relating to the prevention, reduction and control of pollution and other hazards to the marine environment, including the coastline. An important novelty is the right of States, pursuant to international law, both customary and conventional, to take and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their interests from pollution following upon a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequences.<sup>17</sup>

i) *International Convention on Salvage* (London, 1989). Better ecological protection of the sea and greater stimulation of salvors are the main features of this Convention. The duty of care in preventing or reducing damage to the environment pertains to both the salvor and the salvaged. The criteria for determining salvage remuneration include a new element (the salvor's skill and efforts at preventing or reducing damage to the environment), while the basic stimulus is a special award for protecting the environment.<sup>18</sup>

j) *International Convention on Alertness, Action and Collaboration in Cases of Marine Pollution by Oil* (London, 1990). The Convention mentioned under g) obligated the Republic of Croatia to ratify the Convention of 1996. It is specific in nature and its object is to prevent and control marine pollution.<sup>19</sup>

<sup>16</sup> *Službeni list SFRJ - Međunarodni ugovori* (Official Gazette of SFRY - International Agreements), No. 12/77. The Republic of Croatia adopted this Convention (*Narodne novine - Međunarodni ugovori* /Official Gazette of the Republic of Croatia - International Agreements/, No. 12/93).

<sup>17</sup> The Republic of Croatia ratified this Convention (*Narodne novine - Međunarodni ugovori* /Official Gazette of the Republic of Croatia - International Agreements/, No. 1/92).

<sup>18</sup> This Convention (which came into force on 14 July 1996) was ratified by the Republic of Croatia (*Narodne novine - Međunarodni ugovori* /Official Gazette of the Republic of Croatia - International Agreements/, No. 9/98). For its novelties see Ivo Grabovac, *Zaštita morskog okoliša i odredbe nove Konvencije o spašavanju* (Protection of the marine environment and provisions of the new *Convention on Salvage*), *Uporedno pomorsko pravo* (Comparative Maritime Law). Zagreb No. 1-2, 1990, p.13-22.

<sup>19</sup> The Republic of Croatia ratified this Convention (*Narodne novine - Međunarodni ugovori* /Official Gazette of the Republic of Croatia - International Agreements/, No. 2/97).



## 2. Pollution by hazardous and noxious substances

a) *International Convention for the Safety of Life at Sea - SOLAS Convention* (London, 1974). The eight provisions of Chapter VII are the basic regulation relating to the carriage of dangerous and harmful substances (classification, packing, marking, stowage). Since its enforcement the Convention has been amended several times (1978, 1981, 1983, 1986).<sup>20</sup>

b) *Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matter* (London, 1972). This is the first general international treaty on the prevention of dumping of waste in the sea. It forbids the dumping of waste that is defined as pollutant. Waste is categorised and listed, and a specific treatment is provided for each list. Moreover, the dumping of any waste is to be under strict control.<sup>21</sup>

c) *MARPOL Convention 1973/1978* is the basic instrument for controlling pollution by hazardous and noxious substances which are classified into liquid substances in bulk, harmful substances in packages, faecal discharge and waste from ships (cf. *supra* II 1 f).

d) *International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea* (London, 1996) introduces the shipowner's causal liability for loss of life or bodily injuries inflicted by hazardous and noxious substances on board or off board a ship carrying these substances, and for any loss of or damage to property not on board a ship carrying substances that have caused the loss or damage in question.<sup>22</sup>

e) In cases of this type of pollution, *mutatis mutandis*, the international Conventions mentioned *supra*, II 1 g, h, i, and j, are applicable.

## 3. Pollution by nuclear substances

a) *Convention on the Liability of Operators of Nuclear Ships* (Brussels, 1962). The operator of a nuclear ship has strict liability for nuclear damage to people or things (i.e. peculiar damage brought about under the circumstances of typical hazards involving processes of fission or ionisation of radioactive matter).<sup>23</sup>

b) *Convention on Third Party Liability in the Field of Nuclear Energy* (Paris, 1960). Under this Convention the operator of nuclear installations is exclusively liable

<sup>20</sup> *Službeni list SFRJ - Međunarodni ugovori* (Official Gazette of SFRY - International Agreements), No. 2/81. The Republic of Croatia adopted this Convention (*Narodne novine - Međunarodni ugovori* / Official Gazette of the Republic of Croatia - International Agreements/, No. 1/92).

<sup>21</sup> *Službeni list SFRJ - Međunarodni ugovori* (Official Gazette of SFRY - International Agreements), No. 13/77. The Republic of Croatia adopted this Convention (*Narodne novine - Međunarodni ugovori* / Official Gazette of the Republic of Croatia - International Agreements/, No. 3/95). See Ivo Grabovac & Dragan Bolanča, *Zaštita morskog okoliša u teritorijalnom moru uz obalu otoka Palagruže u slučaju pomorske nezgode* (Protection of the marine environment in the territorial sea along the Island of Palagruža in cases of incidents of navigation, *Zbornik radova "Palagruža - jadranski dragulj"* (Collected Papers - "Palagruža - an Adriatic Jewel"). Split - Kaštela 1996, p. 160.

<sup>22</sup> This Convention has not entered into force yet, so the Republic of Croatia has not ratified it.

<sup>23</sup> The Republic of Croatia has not ratified this Convention.

for any damage on the basis of stricter causal liability provisions, but under certain conditions liability can be transferred to the specialised carrier (thus to the ship operator as well).<sup>24</sup>

c) *Convention on Civil Liability for Nuclear Damage* (Vienna, 1963) contains the basic principles of the Convention mentioned under II 3 b.<sup>25</sup>

d) *International Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Materials* (Brussels, 1971). According to this Convention, where ship operators are liable for nuclear pollution damage under international or domestic law, they may be exempted from such liability if the operator of nuclear installations is liable for that damage under the Paris or Vienna Conventions (*supra* II 3 b and c) or under national legislation that has adopted the provisions of these Conventions.<sup>26</sup>

### III. CROATIAN REGULATIONS RELATING TO MARINE POLLUTION FROM VESSELS

#### 1. *Constitution of the Republic of Croatia*<sup>27</sup>

The Constitution of the Republic of Croatia is the basic source of environmental law since it deals with this matter in a number of its provisions and lends special ecological significance to the sea (Art. 52).<sup>28</sup>

#### 2. *Conservation of the Environment Act*<sup>29</sup>

As the basic Act in the field of protection and preservation of the environment, this law formalises constitutional principles. *Inter alia*, it defines the environment as the natural environment which includes the sea (Art. 5, par. 1, 1), introduces the principle of paying expenses incurred by pollution (Art. 16) and regulates the question of civil liability for pollution damage (Art. 50). Namely, under the general rules of the Croatian law of obligations (which covers both contract and tort law), the responsible person (the one that caused pollution or, by some unlawful or incorrect action, allowed it to take place) is liable for pollution damage.<sup>30</sup>

<sup>24</sup> The Republic of Croatia has not ratified this Convention.

<sup>25</sup> *Službeni list SFRJ - Međunarodni ugovori* (Official Gazette of SFRY - International Agreements), No. 5/77. The Republic of Croatia adopted this Convention (*Narodne novine - Međunarodni ugovori* / Official Gazette of the Republic of Croatia - International Agreements/, No. 12/93).

<sup>26</sup> The Republic of Croatia has not ratified this Convention.

<sup>27</sup> *Narodne novine* (Official Gazette of the Republic of Croatia), No. 56/90.

<sup>28</sup> Omejec, op. cit., p. 45-53.

<sup>29</sup> *Narodne novine* (Official Gazette of the Republic of Croatia), No. 82/94.

<sup>30</sup> Petar Klarić, Građanskopravna zaštita okoliša prema hrvatskom pravu (Conservation of the environment under Croatian civil law), *Zbornik radova 'Pravne možnosti varovanja skupinskih interesa za zdravo okoliše' (Legal Protection of Collective Interests Relating to the Healthy Environment - Collected Papers)*. University of Maribor, Faculty of Law, 1996, p. 74-76; Igor Gliha & Tatjana Josipović, Zaštita okoliša s građanskopravnog stajališta (Conservation of the environment from the civil law viewpoint), in Olivera Lončarić-Horvat et al., *Osnove prava okoliša (Fundamentals of Environmental Law)*, Zagreb 1997, p. 15-20.

### 3. *Maritime Code*<sup>31</sup>

With respect to marine pollution, this Code, as a modern codified law, is based on the relevant international conventional solutions. With respect to pollution by oil that is carried as cargo (Part IX, Ch. V 4, Art. 839-849), it adopts the text of the Convention of 1969 and the Protocols 1976 and 1984 (*supra* II 1 a and c). However, since January 1999, the Republic of Croatia has become involved in a new, modernised regime of liability (*supra* II 1 b and d).<sup>32</sup> Part IX, Ch. VI, Articles 850-866 adopt the *International Convention on the Liability of Operators of Nuclear Ships* (*supra* II 3 a). The *Maritime Code* (Part IX, Ch. II, Art. 774-800) also follows new solutions in the field of salvage (*supra* II 1 i). It also adopts many solutions from the *Convention on the Law of the Sea*, 1982 (*supra* II 1 f).

### 4. *Seaports Act*<sup>33</sup>

This Act regulates a specific case of liability for damage to the environment. Namely, it provides that the port authority or the company that has a concession for using a port for specific purposes is liable for marine pollution in the port or for dumping waste that settles on the sea bottom in the port (Art. 51, par. 1).

### 5. *Carriage of Dangerous Substances Act*<sup>34</sup>

This Act does not deal directly with the question of civil liability for damage caused by the carriage of hazardous substances, but prescribes compulsory third-party insurance against damage incurred by such carriage (Art. 9).

### 6. *Liability for Nuclear Damage Act*<sup>35</sup>

This Act is in accordance with the Vienna Convention of 1963 (*supra* II 3 c). It provides stricter rules on the absolute liability of the user (the person that has obtained a permission from a competent state body to build or use nuclear installations), while in some cases liability can be transferred to specialised ship operators (Art. 2, 5 and 7).<sup>36</sup>

<sup>31</sup> *Narodne novine* (Official Gazette of the Republic of Croatia), No. 17/94, 74/94, and 43/96.

<sup>32</sup> Dorotea Ćorić, Međunarodni sustav odgovornosti za štetu zbog onečišćenja uljem iz 1992. (International system of liability for oil pollution damage), *Uporedno pomorsko pravo* (Comparative Maritime Law), Zagreb No. 1-2, 1997, p. 53-55.

<sup>33</sup> *Narodne novine* (Official Gazette of the Republic of Croatia), No. 108/95.

<sup>34</sup> *Narodne novine* (Official Gazette of the Republic of Croatia), No. 97/93.

<sup>35</sup> *Narodne novine* (Official Gazette of the Republic of Croatia), No. 143/98.

<sup>36</sup> As to the essential features of this Act, see Ivo Grabovac, Odgovornost za nuklearnu štetu u Republici Hrvatskoj (Liability for nuclear damage in the Republic of Croatia), *Zbornik radova* (Collected Papers), Law Faculty of Mostar No. XII, 1999, p. 11-17.

#### IV. Conclusion

This paper is a short survey of international regulations governing the prevention of marine pollution and civil liability as an efficient mechanism of compensation for pollution damage. The most important international Conventions relating to pollution by oil, by hazardous and noxious substances and by nuclear materials are described. It is argued that the Republic of Croatia should consistently ratify and apply these Conventions. In its maritime legislation, our country has always to a large extent recognised provisions and principles of different international Conventions and has also followed modern unified solutions in the field of marine pollution. Croatian legislation contains special laws for some types of pollution (*Maritime Code, Carriage of Dangerous Substances Act, Liability for Nuclear Damage Act*). However, where there are no specific regulations, in questions of civil liability for marine pollution, general regulations (such as the *Conservation of the Environment Act*) are applicable. In the future, the Republic of Croatia should continue to apply the existing positive law, ratify new international Conventions relating to the protection of the marine environment from pollution (e.g., *London Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea*, 1996), and make an effort to harmonise domestic regulations with relevant legal solutions from international sources.

#### Sažetak

#### ZAŠTITA I OČUVANJE MORSKOG OKOLIŠA U REPUBLICI HRVATSKOJ

Međunarodno pravo zaštite i očuvanja okoliša dio je međunarodnog prava koji se sustavno razvija tek u novije vrijeme. Čitav sustav suvremenog međunarodnog pomorskog prava inspiriran je zaštitom morskog okoliša, te se u sklopu toga prava formirala posebna pravna disciplina koju označavamo pojmom - pravo zaštite morskog okoliša. U ovom se radu daje sažet prikaz međunarodnih propisa o sprečavanju onečišćenja mora i građanskoj odgovornosti kao učinkovitim mehanizmu naknađivanja tako prouzročene štete. Izlažu se najvažniji međunarodni propisi u vezi onečišćenja naftom, onečišćenja opasnim i štetnim tvarima i onečišćenja nuklearnim tvarima. Argumentira se potreba njihove dosljedne ratifikacije i primjene u Republici Hrvatskoj. Naša je država u svom pomorskom zakonodavstvu oduvijek obilato uvažavala odredbe i načela raznih međunarodnih konvencija, pa je i na području onečišćenja morskog okoliša slijedila suvremena unificirana rješenja.