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ENFORCEMENT OF ANTI-POLLUTION PROVISIONS IN THE LAW OF THE SEA: OUTLINE OF A PROBLEM[1]

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One of the most serious problems that the international community is facing today is the problem of the growing pollution of the human environment. Since pollution, in a great majority of cases, is transnational in scope, it's reduction or abatement requires international cooperation within the framework of "...a modern system of international law suitable to the needs of an interdependent world community"[2].

Although there is widespred, if not universal, recognition of the dangers inherent in rapid industrial development, the comprehensive solution to the problem of environmental pollution is not near at hand. The main issue here is that such a solution has to recognise and accommodate a number of different, often contradictory, interests, both economic and political in nature. This is especially true in the case of the marine environment since the commercial uses of the seas play an essential part in the development of almost every state. For this reason, any attempt to restrain the scope of such activities has been met with strong opposition, unless the relevant proposals are supplemented by concessions or special rights granted to the most affected or dependent on the uses of the sea. The whole matter is further complicated by the fact that due to the complexity of the sources of pollution and the geo-physical nature of the marine environment it is not always possible to establish the damage or party responsible by "clear and convincing evidence" or to state whether or not such the damage is of "serious consequences"[3].

Despite these obvious difficulties, international efforts aimed at the protection of marine the environment resulted in acceptance of a number of important legal rulings that deal with the most detrimental practices such as oil spills, dumping at sea, or discharges of harmful substances.

Again here, as well as in every other field of states' interaction, one thing for the actors is to agree on the desirability of certain provisions and the other is to secure the proper implementation of these provisions by the parties involved. To restate the obvious, states interpret treaty obligations mainly, if not exclusively, from the point of view of their national interests. Therefore, these provisions, in order to be effective, have to be supplemented by a system of enforcement that in turn should consider "various and at times inconsistent interests and needs"[4], and provide an acceptable level of protection to the community interests. This indeed is the basic dilemma of international law: how to elaborate a working compromise between the interests of the international community as a whole and the interests of individual states or groups of states.

The present article attempts to present some of the issues connected with the enforcement of anti-pollution provisions included in the selected international rulings that deal with the rights and obligations of states with respect to the marine environment. The powers of the coastal states and flag states (state of nationality) will be reviewed. Some consideration will be also given to the proposals justifying the establishment of an universal agency, equipped with powers to enforce its standards and decisions[5].

For the purpose of this article pollution means "...the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which result or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities"[6].

Enforcement by the coastal states

It is a well established principle of international law that a coastal state's sovereignty extends to "a belt of sea adjacent to its coast, described as the territorial sea"[7]. With respect to this area, therefore, the coastal state has an exclusive right to both prescribe and enforce its legislation, including internal rules or decisions that relate to the protection of the environment. It also follows that it is the right of the coastal state to implement any international obligations or standards in this respect in accordance with its own policy. It should be noted, however, that the prerogatives mentioned above or any other rights within territorial waters should be exercised in accordance with the relevant provisions of international law. This law requires the coastal state to observe the right of all the states to innocent passage through its territorial waters and not to hamper such a passage[8].

According to both the Geneva Convention on the Territorial Sea and Contiguous Zone of 1958 and UN Convention on the Law of the Sea of 1982 (later referred to as LOS Convention), a passage is innocent if it does not affect or if it is not "prejudicial to the peace, good order or security of the coastal state". Thus, any violation of rules and regulations accepted and published by the coastal state could be treated as amounting to the violation of the rule mentioned above. It could also be stated that any breach of standards accepted with the view of reducing the pollution would amount to a passage being considered as harmful. This statement finds support in Art. 19 of the LOS Convention which states that "any act of wilful and serious pollution contrary to this Convention" shall be considered as prejudicial to the peace, good order and security of the coastal state. Furthermore, by virtue of Art. 21 of the same Convention, it is the right of the coastal state to adopt laws relating to the "preservation of the environment of the coastal state and the prevention, reduction and control of pollution thereof", and to take necessary steps within its territorial waters to prevent any passage which is not innocent[9].

In order to provide the coastal state with more effective means of protection of its interest, international law does allow such a state to

extend its control to areas of the high seas contiguous to its territorial waters[10]. The scope of rights so granted is limited in two ways. First of all, the coastal state may exercise its control and not the exclusive jurisdiction in that area. As Fitzmaurice pointed out, it is "control, not jurisdiction...Although the two ensuing subheads (a) and (b) of the paragraph (Art. 24, para. 1 of the Geneva Convention) envisage punishment as well as prevention, yet taken as a whole, the power is essentially supervisory and preventive"[11]. Secondly, the right mentioned above may only be exercised in order to prevent and/or punish infringements of regulations, including sanitary regulations, if committed within the territory or territorial waters of the coastal state. The relevant provision does not mention, *expressis verbis*, anti-pollution regulations. However, it is the opinion of the present author that such regulations are included, otherwise the subjective scope of the term "sanitary" would be rendered insignificant.

One of the most significant developments in the modern international law is presented probably by the acceptance of a concept of "exclusive economic zone" (EEZ). This concept has its origin in the demands of developing countries for the new and more just, in their opinion, appraisal of their national interest. In the words of one author, the international community could not "remain unaware of the dangers of continuing *laisses*-faire on the seas. It had ceased to serve the interest of international justice. Freedom of the seas could no longer be permitted to impair the even more fundamental principle of national sovereignty and the inherent right of self-preservation"[12]. Whether or not one agrees with the above cited statement, the EEZ is already a generally accepted fact. Generally speaking, the exclusive economic zone, as a legal concept, amounts to the extension of the jurisdiction of coastal states over the activities of an economic nature carried out in areas which previously constituted the high seas. The words used are that of "sovereign rights"[13]. Furthermore, the coastal states enjoy, within the EEZ, the right of jurisdiction with respect to, among others, "the protection and preservation of the marine environment". What should be underlined here, is the fact that the jurisdiction, with respect

to pollution matters, is no longer deducted from more general rules of international law but is clearly included in a relevant provision. The importance of this provision is further indicated by the right of coastal states to "adopt laws and regulations" and to "take such measures, including boarding, inspection, arrest and judicial proceedings as may be necessary to ensure compliance" with adopted rules and regulations [14]. Although the LOS Convention is not yet in force, the tendency with respect to reduction and abatement of pollution of the marine environment is quite clear.

A point of general nature should be borne in mind when reviewing the possibility of effective implementation of any international or national standards for the protection of the environment. The ultimate test of validity of such laws and regulations and the legality of enforcement measures accepted in this respect will be the consistency of such actions with the general obligations of coastal states under international law. A number of provisions of the LOS Convention make it quite clear that enforcement with respect to pollution of the marine environment includes, first of all, the adoption of laws and regulations aimed at implementation of applicable international rules and standards[15]. It is not therefore clear whether or not a coastal state may adopt more stringent rules or standards in this respect. It is the opinion of the present writer that since the EEZ has been established in order to protect the interests of coastal states and these states have sovereign rights with respect to certain activities carried out in this area, such states may adopt higher standards for the protection of the environment as long as these standards do not hamper unreasonably the right of innocent passage or any other lawful uses of the sea. For example, the coastal state may not prescribe rules requiring foreign vessels to observe design, construction, manning or equipment standards other than generally accepted. This matter lies within the exclusive jurisdiction of the flag state (state of nationality).

The tendency to provide coastal states with more precisely defined rights to enforce international or internal regulations relating to the protection of the marine environment is of relatively recent nature. For

example, the London Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter of 1972 (referred to as the London Convention), simply provides that parties shall take, in territories under their jurisdiction "appropriate measures to prevent and punish conduct in contravention of the provisions of this Convention" (Art. Ⅶ, 2). By the virtue of Art. 210 (5) of the LOS Convention, the coastal state has the exclusive right to "permit, regulate and control such dumping" in areas under its jurisdiction, including the EEZ. It is therefore quite clear that the enforcement, with respect to dumping, has been left within the discretion of the parties, the only additional requirement being that the national laws and regulations "shall be not less effective...than the global rules and standards"[16].

On the other hand, the scope of rights of coastal states with respect to the pollution resulting from discharges from ships is more precisely determined. It should be noted here that the term "discharge" relates to all harmful substances (including oil) and it covers "any escape, disposal, spilling, leaking, pumping, emitting or emptying" but does not include "dumping" within the meaning of the London Convention of 1972[17]. Under the International Convention for the Prevention of Pollution of the Sea by Oil of 1954 (amended in 1962 and 1969) every ship to which this legal ruling applies is required to carry an Oil Record Book. This book may be inspected by any contracting party but only while a ship is within a port in the territory of that state[18]. The respective powers of coastal states have been extended by the International Convention of the Prevention of Pollution from Ships of 1973[19]. Under this Convention, a party may, while a foreign ship is in its port or an off-shore facility, inspect a certificate that such a ship is required to carry. Such an inspection is limited, however, to verification of a document in question unless there are "clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of that certificate". In the above mentioned case a party is required to take such steps that will ensure that the ship shall not sail until it can proceed to sea without presenting unreasonable threat of harm to the marine environment

(Art. 5, 2). Furthermore, a party can deny the foreign ship a right of entry to its port or an off-shore facility on the grounds that such ship does not comply with the provisions of the above mentioned Convention (Art. 5, 3).

The LOS Convention qualifies the scope of permissable measures in relation to a place where a violation has occurred and to a degree of threat presented by such occurrence to the marine environment (Art. 220). If a coastal state has clear grounds for believing that a violation of its laws or regulations had occurred within its territorial sea, such a state may undertake physical inspection and institute other proceedings including detention. Had such a violation taken place within the state's EEZ, such a state has a right to undertake inspection (if a ship refuses to give relevant information and there are clear grounds for believing that there exists a significant threat to the marine environment) and to institute other proceedings, including detention, but only if major damage had resulted. Furthermore, such an action may only be taken on the basis of "clear objective evidence". It is therefore quite obvious that the assessment of elements mentioned above is left to the coastal state. This state, however, is liable for any damage that may result to the other party, shall it be proven that the action was taken without a reasonable cause or was in excess of what was needed to avert the threat. For it is an accepted rule of international law that responsibility is "the necessary corollary of a right. All rights of an international character involve international responsibility. If the obligation in question is not met, responsibility entails the duty to make reparation"[20].

In some cases international law does allow the states to take measures of exceptional nature outside the areas of their jurisdiction. The pollution of seas or coastlines by oil spills is one of such recognized cases. The International Convention Relating to the Intervention on the High Seas in Cases of Oil Pollution of 1969[21] allows parties to take such measures on the high seas "as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests, from pollution or threat of pollution of the sea by oil" (Art. I/1). At the same time it is an obligation of the coastal state to

consult with other interested parties (e.g. the state of nationality of a ship involved in a maritime casualty) before such exceptional measures are taken. Such consultations are not necessary in cases of "extreme urgency requiring measures to be taken immediately" (Art. Ⅲ, c). At the same time, the Convention in question upholds the test of "reasonableness" by providing that measures taken can not go beyond what is necessary to avert the threat and by stating that any party is under an obligation to compensate the damage caused by measures which exceed those "reasonably necessary" (Art. Ⅵ).

Very similar rules apply when measures of extraordinary nature are taken on the high seas to counter the pollution of the marine environment caused by substances other than oil[22]. What should be underlined here is the fact that the ruling in question relates to all substances, even to those not listed as harmful by the Marine Environment Protection Committee of the IMCO[23]. In the latter case, however, the intervening party is under the obligation to prove that the substance "could reasonably pose a grave and imminent danger" to the marine environment or other legally protected interests of that party (Art. Ⅰ, 3). Following this trend, the LOS Convention recognizes the right of states to protect their interests from pollution or threat of pollution following a maritime casualty (e.g. collision of vessels) which "may reasonably be expected to result in major harmful consequences" (Art. 221, 1). It seems obvious therefore, that a tendency to connect a right of enforcement not with the specific pollutant but with general effects such a pollutant may have upon the marine environment, is quite evident in the present day international law. In other words, international law recognises the need to provide states with means of protecting their valid interests against pollution as such, shall such pollution be actual or only potential.

In order to present a comprehensive picture of attempts made to counter the pollution, notice should be taken of an unique national Legislation accepted by Canada in order to protect its marine environment. Due to the fact that at that time international law was not able to secure effective means of protecting Canada's economic and

ecological interests[24], this country adopted the Arctic Water Pollution Prevention Act[25]. This legislation is interesting, first of all, because Canada recognises its responsibility to preserve a peculiar ecological balance that existed in the land and water areas of the Canadian Arctic up to a distance of 100 nautical miles. Secondly, the powers granted under this Act to a governmental agency (the Governor in Council) with respect to foreign vessels or activities amounted to those which are usually left, under international law, to the state of registry. For example, the Governor in Council was empowered by Art. 12 of this Act to accept regulations prohibiting any ship from navigating within so-called "safety zones", unless such ship complied with standards prescribed with respect to: hull and fuel tank construction, the nature and construction of propelling system, manning of the ship, and quantities of fuel, water and other supplies. Furthermore, upon a reasonable suspicion that any provision of this Act had been violated by a ship, such ship could be seized anywhere in the Arctic waters (Art. 23, 1).

Although it is quite clear that together with the recognition of the concept of the exclusive economic zone the unilateral measures of such exceptional character became somehow obsolete, the fact remains that unless the international community is prepared to take effective and coordinated action to protect the marine environment, such action may be taken unilaterally, not always in accordance with valid interests of other parties involved and thus become a potential source of conflicts.

The remarks presented so far support a conclusion that international law does recognise the fact that coastal states may have special interests in protection of the marine environment. This recognition resulted in granting to these states certain regulatory powers which allow for unilateral action to be taken with respect to foreign vessels or activities. Such action is usually confined to areas under the jurisdiction of the coastal states and it may therefore be argued that as a result such states are not in a position to protect their environment from pollution originating from other areas (e.g. the high seas). It should be remembered here, however, that the present regulation represents a

compromise between individual and community interests. Further extensions of unilateral rights could render the traditional freedoms of the sea, especially the freedom of navigation, difficult to maintain and, without elaboration of universally accepted standards, could create a number of conflicting jurisdictional claims. Furthermore, it seems that at present, the international community is not ready to accept an obligatory system of settlement of disputes, such system being probably the only way to secure the proper implementation of any general system of enforcement.

Enforcement by the flag state

The high seas, as well as other international areas, enjoy special legal status under international law. This status is based upon two principles: the principle of non-appropriation and the principle of freedom of access and use. For this reason the concept of territorial sovereignty can no longer serve as a legal basis for granting certain prerogatives to members of the international community. Interests of all states are granted in these areas an equal legal protection. Therefore, in order to accommodate national interests with the interest of the international community, the principle of nationality is used to provide a legal link between a state and its activities carried out in international areas. By virtue of this principle a state is authorised to exercise its jurisdiction with respect to its ships and activities on the high seas and, at the same time, this right is balanced by responsibility of that state to secure proper, that is in accordance with its international obligations, exercise of freedoms granted under international law. To secure this goal, international law requires states to maintain "a genuine link" with ships flying their flag (that is possessing their nationality) and in particular it is an obligation of such entities to exercise effectively their "jurisdiction and control in administrative, technical and social matters"[26]. Since ships on the high seas are subject to the exclusive jurisdiction of flag states—save for cases expressively provided for by the international treaties—it is the state of nationality that in under an obligation to enforce accepted standards of

the protection of the marine environment.

Accordingly, the flag state should ensure that ships flying its flag comply with applicable international rules concerning the prevention of pollution[27] and should such a vessel operate in contravention of these rules, the said state is to investigate the matter and institute proceedings "irrespectively of where the violation occurred or where the pollution caused by such violation has occurred or has been spotted"[28]. International law requires the penalties imposed for such violations to be severe enough to discourage any conduct in contravention of accepted obligations[29].

Generally speaking, in conclusion to the above remarks one may point to the most obvious fact that international law leaves the enforcement of the anti-pollution measures to individual states whether coastal or flag states. This tendency is understandable, for the rights provided by international law are usually balanced with corresponding obligations to implement an accepted course of legal action. Despite many weaknesses, e.g. the common reluctance to enforce strict anti-pollution standards due to economic considerations, such a system of enforcement is probably the only feasible one at the moment. On one hand, such a system provides individual states with legal means to protect their interests and, on the other, it secures the minimum protection for the general interest of the international community and that is the interest in maintaining the basic freedoms of the high seas.

Universal and regional approaches to enforcement

It is often argued, and with some merit, that since pollution is a global problem, the only effective solution can be achieved through a global or universal approach. In other words, the establishment of an universal organisation which would coordinate international efforts in this field is proposed. The proposition in question requires a short commentary, for despite its attractiveness it has a number of substantial weaknesses. First of all, in order to be effective, such an organisation would have to be equipped with powers to determine binding standards and rules of behaviour and, consequently, with

powers to give effect to such standards or rules. Otherwise, such an organisation would become yet another forum, however, important, of political discussion. Secondly, such an organisation would have to accommodate a variety of different interests and for this reason the elaboration of an effective common policy would be difficult if not impossible. Thirdly, the financial burden of running such an organisation would have to be carried by a limited number of developed states and such a situation may result in granting to these powers special privileges which, in turn, could cause opposition from other members. There is still another problem, namely that states are reluctant to surrender some of their prerogatives to an organisation over which they do not posses controlling powers. It seems therefore, that at present, the establishment of such an organisation would create more problems for the international community than it would solve.

On the other hand, the regional approach to the problem of pollution does provide a much more realistic solution, based upon recognition of common interests. States sharing the same geographical region are somehow directly related to each other; any action or activity taken in a given region has a direct effect on interests of other actors. Therefore, there exists a clear base for cooperation and coordination of activities aimed at improvement of the environment. Such cooperation, in many cases, resulted in acceptance of multilateral agreements dealing with the issue in question. Generally speaking, such legal rulings recognise the common responsibilities of parties for the environment of their region and determine the general framework for common action. For example, parties to the Convention on the Protection of the Marine Environment of the Baltic Sea Area of 1974[30] agreed to take "individually or jointly...all appropriate legislative, administrative or other relevant measures in order to prevent and abate pollution...of the Baltic Sea Areas" (Art. 3, 1). Coordination of common efforts is usually vested in an organ (commission) which every such instrument establishes. Among duties usually reserved for such an organ, are: the review of the implementation by parties of relevant provisions, the powers to propose recommendations, data collecting and dissemination of relevant

information and authority to cooperate with other international organisations.

International cooperation with respect to the marine environment is hampered, in many cases, by the same kind of problems as encountered by states' interaction in any other field of international cooperation. It is always a question of finding and maintaining a proper balance between what is required and what is feasible. In this sense, it is a problem of elaborating a compromise between different national interests and one may say that what has already been achieved, through the years of negotiations, is probably the best that could be achieved in the present situation. To restate the obvious, the growing concern over the condition of the human environment may, and probably will, lead in the future to much more decisive action. Such action will probably result in the recognition of the natural environment as a legally protected common interest. This, in turn, may significantly alter the existing balance between the rights and obligations of states and will provide legal grounds for more effective action whether taken by individual states or an international organisation.

Notes

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(2) Barros and Johnston: The International Law of Pollution, London, 1974, p.XV.

(3) The Trail Smelter Arbitration, USA, vs. Canada, final decision, March 11th, 1941.

(4) Burke and others, National and International Law Enforcement in the Ocean, 1975, p.67.

(5) See e.g. Okidi, Regional Control of Ocean Pollution—— Legal and Institutional Problems and Prospects, 1978, p.149/150.

(6) United Nations Convention on the Law of the Sea, 1982, Art. 1, para 1 (4)—— U.N. DOC. A/CONF. 62/122. See also a very general difinition of the term "pollution" as contained in the Helsinki Rules on Pollution of International Waters, where it is stated that "the term 'pollution' refers to any detrimental change resulting from human conduct in the natural composition, content or quality of (waters)", Report of 52nd Conference of the International Law

Association, p. 494.

(7) Art. 1 (1) of the Geneva Convention on the Territorial Sea and the Contiguous Zone, 1958. Brownlie uses a somehow different and probably more accurate description, namely that states "have rights amounting to sovereignty over the territorial sea"—in Principles of Public International Law, 1979, p. 184. See also Art. 2 of the LOS Convention.

(8) Articles 14 and 15 of the Territorial Sea Convention and Art. 17 of the LOS Convention.

(9) Art. 16 (1) of the Geneva Convention of 1958, ibidem, and Art. 25 (1) of the LOS Convention.

(10) Ibidem, Articles 24 and 33 respectively.

(11) Some results of the Geneva Conference on the Law of the Sea, 8 International and Comparative Law Quarterly, 1959.

(12) Anand, Winds of Changes in the Law of the Sea, in Anand (ed.), Law of the Sea——Carracas and Beyond, 1980, p. 46.

(13) See Articles 56-75 of the LOS Convention. See also Art. 86, ibidem, which defines "high seas" as "all parts of the sea that are not included in the exclusive economic zone...".

(14) Art. 73 ibidem.

(15) See e.g. Articles 211, 213 and others, ibidem.

(16) Art. 210 (6), ibidem.

(17) Art. 2 of the International Convention for the Prevention of Pollution from Ships of 1973, International Legal Materials, Nov. 1973, p. 1320.

(18) See Brown, The Legal Regime of Hydrospace, 1971, p. 134.

(19) See note 17.

(20) Judge Huber in the "Spanish Zone in Morocco Claims" as cited by Brown, op. cit., p.433. See also "Chorzów Factory Case" (Jurisdiction) where it was stated that "reparation...is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself", Permanent Court of International Justice, Ser. A., No. 9, p. 21.

(21) Text in Barros and Johnston, op.cit., p. 213-222. This Convention resulted from the so-called "Canyon Torrey" accident. In 1967 a Liberian tanker was bombed by Great Britain on the high seas to prevent further oil spill and to minimize the damage already caused to the coast of Britain and France.

(22) Protocol on Intervention on the High Seas in Cases of Marine Pollution by Substances other than oil, London, 1973, International Legal Materials, vol. XIII, 1974.

(23) See International Legal Materials, vol. XIII, 1974, p. 470.

(24) See Green as cited by Okidi in Regional Control of Ocean Pollution..., op.cit., p.

122.

㉕ Text in Barros and Johnston, op.cit., p. 262-276.

㉖ Art. 5 (1) of the Geneva Convention on the High Seas, 1958.

㉗ See e.g. Art. 5 (3) of the Convention on Conditions for Registration of Ships, 1986, text in International Legal Materials, vol. XXVI, 1987.

㉘ Art. 217 (4) of the LOS Convention.

㉙ Art. 217 (8), ibidem. See also Art. IV (4) of the International Convention for the Prevention of Pollution from Ships, 1973.

㉚ International Legal Materials, vol. XIII, 1974.

海洋法における汚染防止条項の強化：問題点の概略から

〈要　約〉

リシャルト・ハラ

本稿は、海洋法における汚染防止条項の有効性を評価することを目的とする。この問題が重要なのは，多国間の取極めにおいて，一定範囲の相互の義務が合意されても，そうした義務の履行は往々にして困難であるか，あるいは極めて不完全にしかなされないものだからである。

そしてこのことは，締約国の負う義務が，直接的・間接的を問わず，経済的な利害に影響を及ぼすような状況に関しては，とりわけ現実的な問題となるのである。通常，汚染を除去するためには，締約国の経済活動にかなりの制限が要求される。そのため，しばしば工業の発展か，それとも環境の保護かの二者拓一が迫られることになる。そしてこの問題は，海洋環境――これに対してはあらゆる国家が一方ならぬ経済的重要性を感ずる領域なのであるが――に関連する場合には，さらにその重要性を増すのである。

本稿では、海洋環境の保護に関する国際法によって承認され，付与される諸権限を，以下の３つのカテゴリーに則して検討する。

・沿岸国

・船籍国（旗国）

・普遍的または地域的国際機構

一般に，国際法によって受け入れられている解決法は，汚染を防止する手段の執行を個々の国家に任せてしまうやり方である。この傾向は，とり

わけ1982年の国連海洋法条約でも見られたように、海洋の自由の一般原則によって制限されない限り，他の締約国の活動（船舶）に対して，沿岸国の一方的な権限を強化するものにほかならなかった。こうした展開が示される理由としては，これらの沿岸国が通常，原油の流失のような環境汚染によってもっとも被害を被りやすいことがまず挙げられる。こうした事故による危険性を認め、国際法では個々の国家が自己の経済的な利益を擁護するために，公海においてさえ一方的な行動を取ることを許容しているのである（1989年の原油汚染の際の公海における干渉に関する国際条約）。従って，海洋法における汚染防止条項の執行は，もっとも被害を被る国家に委ねられるのである。

本稿はまた，汚染防止手段を規定し執行する権限を有する普遍的な組織を創設する可能性についても検討する。しかし，この考えは理論上では大変魅力的ではあるが，まだ実現可能な段階には達していない。関係各国の多様で潜在的な利害の対立をより明確にしていかなければ，そのような協力体制の具体化は不可能であろう。しかし，汚染の除去は国際的に注目されつつある問題であり，その解決は国際協力の枠組みの中においてのみ見出しうるものと言えよう。一定の領域内（例えばバルト海）の汚染に対処する際に，地域的協力が大きな成果をあげてきたのはまさにこのことのためなのである。

本稿は，より効果的な環境保護策を推進するためには，さらに断固とした行動を取ることの必要性を示唆するものであり，そのためには国際的な場での諸国家の権利と責務の既存のバランスを犠牲にすることも止むを得ないと考えるものである。