COMMENTAIRE DE LA CONVENTION OSPAR

La Convention OSPAR : une tentative de réglementation globalisante

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La signature à Paris, le 22 septembre 1992, de la Convention pour la prévention de la pollution de l'Atlantique du Nord-Est (ci-après Convention OSPAR) marque très certainement un nouvel élan dans la lutte contre les pollutions notamment en Mer du Nord. On considère généralement qu'elle opère une fusion des Conventions de Paris et d'Oslo. Certes, la Convention OSPAR est destinée à remplacer, dès son entrée en vigueur, les Conventions de Paris et d'Oslo (article 31-1). Les décisions et recommandations adoptées en application de ces Conventions "continuent d'être applicables et conservent le même caractère juridique" qu'auparavant (article 31-2). Mais la Convention OSPAR est destinée à être beaucoup plus qu'une fusion. Elaborée pour pallier aux lacunes des Conventions précédemment citées, elle vise à permettre la mise en place d'un "programme progressif et cohérent" (préambule, dixième alinéa) de protection de l'environnement marin, d'une architecture qui n'existait pas auparavant. Car, en effet, "... à la différence de l'approche globale suivie pour protéger la mer Baltique et l'approche cadre utilisée pour développer les Conventions régionales conclues sous l'égide du PNUE, il [restait] de ce survol qu'aucun projet architectural n'[avait] guidé les promoteurs des Conventions européennes relatives à la lutte contre les pollutions du milieu marin" (PRAT (J.-L.) : Le système spécifique de l'Europe du Nord-Est, in S.F.D.E., Droit de l'environnement marin, Développements récents, Coll. Brest, Economica 1993, pp 83-102)

La Convention OSPAR se présente comme une Convention cadre, technique désormais classique du droit de l'environnement. Des obligations générales sont énoncées dans ce qui constitue le "corps" de la Convention. Puis, successivement, la Convention énumère les différentes sources de pollution qu'elle entend contribuer à éliminer : pollutions provenant de sources telluriques (article 3), due aux opérations d'immersion et d'incinération (article 4), de source offshore (article 5), ayant d'autres sources (article 7). Elle établit également un cadre pour la recherche scientifique et technique, qu'elle désire soutenir (article 8) et organise l'accès à l'information (article 9). Une commission est mise en place (OSPARCOM), qui remplace simplement les commissions d'Oslo et de Paris.

Quatre annexes (prévention et suppression de la pollution provenant de sources telluriques, prévention et suppression de la pollution par les opérations d'immersion et d'incinération, prévention et suppression de la pollution provenant de sources offshore et évaluation de la qualité du milieu marin) entérinent les décisions et recommandations adoptées en application des Conventions de Paris et d'Oslo. Il faut noter que la pollution de sources offshore n'est plus comprise dans la définition de la pollution tellurique, mis qu'elle est appréhendée comme pollution à part entière, nécessitant un traitement spécifique.

Dans la lignée de la Convention de Montego Bay, la Convention OSPAR dispose que "les Parties Contractantes prennent toute le mesures possibles afin de prévenir et de supprimer la pollution ainsi que les mesures nécessaires à la protection de la zone maritime contre les effets préjudiciables des activités humaines, de manière à sauvegarder la santé de l'homme et à préserver les écosystèmes marins" (Article 2 de la Convention OSPAR) (Il est intéressant de noter que la convention OSPAR ne reprend pas ici l'expression consacrée par la Convention sur le droit de la mer de "prévenir, réduire et maîtriser". L'ambition est ici, semble-t-il plus grande, puisque l'objectif, est la suppression de la pollution). La Convention OSPAR énonce des obligations générales à la charge des Parties Contractantes, notamment celle de prévenir et supprimer la pollution (article 2-1-a) et celle de mettre en œuvre les mesures qu'elles ont adoptées et de donner plein effet aux dispositions de la Convention et aux décisions et recommandations nécessaires à son application (article 2-4). L'utilisation du principe du pollueur-payeur, "selon lequel les frais résultant des mesures de prévention, de réduction de la pollution et de lutte contre celle-ci doivent être rapportés par le pollueur" (article 2-b) est une mesure importante. Faire supporter les coûts de dépollution et de remise en état aux pollueur est certainement une façon de ne pas aboutir à une distorsion de concurrence absurde et pourtant fréquente : produire en polluant coûte moins cher que produire sans polluer ; dans ces conditions, rares sont les industriels qui font le choix de produire sans polluer, puisque cela leur permet de produire moins cher, donc de se trouver dans une situation concurrentielle extrêmement favorable face à celui qui a choisi de produire sans polluer. Le principe pollueur payeur permet de rétablir l'équilibre. Il faut cependant noter qu'il intervient essentiellement dans un mécanisme de réparation pour les préjudices environnementaux et sociaux que la pollution a entraîné. Il s'agit surtout de réparer un préjudice, (soit en indemnisant les victimes, soit en procédant à la remise en état du site), ce qui n'est pas dans notre propos. L'obligation d'appliquer le principe de précaution (A) et l'utilisation des concepts de meilleurs pratique environnementale et meilleure technologie

disponible (B) se posent, quant à eux, de manière fort intéressante, dans le domaine de la lutte contre les pollutions.

I - L'application du principe de précaution Introduit au niveau ministériel par la seconde conférence internationale sur la protection de la Mer du Nord (1987), le principe de précaution est encore, sur le plan international mondial, un principe doctrinal, qui n'a pas acquis force de coutume international, même si il est "plus qu'un principe non obligatoire" (NOLLKAEMPER (A.) : Agenda 21 and prevention of sea-based marine pollution. A spurious relationship ? Marine Policy 1993, pp. 537-556) ou s'il "émerge comme un principe de droit international coutumier" (NOLLKAEMPER (A.) : Agenda 21 and prevention of sea-based marine pollution. A spurious relationship ? Marine Policy 1993, pp. 537-556).

Le principe de précaution est défini par la Convention OSPAR comme "le principe selon lequel des mesures de prévention doivent être prises lorsqu'il y a des motif raisonnables de s'inquiéter du fait que des substances ou de l'énergie introduites, directement ou indirectement, dans le milieu marin, puissent entraîner des risques pour la santé de l'homme, nuire aux ressources biologiques et aux écosystèmes marins, porter atteinte aux valeurs d'agréments ou entraver d'autres utilisations légitimes de la mer, même s'il n'y a pas de preuves concluantes d'un rapport de causalité entre les apports et les effets" (article 1-2-a).

Cette définition signifie que lorsque ces inquiétudes se font jour, il convient de ne pas prendre le risque de dégrader l'environnement, mais d'attendre tant qu'aucune preuve scientifique ne vient démontrer un rapport de causalité entre une émission et un effet. Le principe de précaution consiste donc en un renversement de la charge de la preuve. Cela signifie que l'absence de certitudes scientifiques concernant le caractère toxique ou nocif d'une substance ne doit pas être utilisé comme une excuse pour rejeter cette substance dan la nature. Bien au contraire, le principe de précaution implique que, pour qu'une substance soit rejetée dans la nature, la preuve soit faite de son innocuité pour l'environnement. Les gouvernement doivent donc ne "pas préjuger des capacités d'assimilation de la nature... afin d'établir des réserves pour les usages futurs incluant ceux des générations futures" (GÜNDLING (L.) : The status in international law of the prinicple of precautionnary action, in FREESTONE (D.), IJLSTRA (T.) eds : The North Sea : Perspectives on Regional Environmental Cooperation, special issue of the IJECL, Graham et Trotman/Martinus Nijhoff, London, 1990, pp. 23-30). Le principe de précaution est très certainement une innovation majeure et un principe essentiel du droit de l'environnement. Il s'agit cependant, également "d'un des développements les plus problématiques du droit de l'environnement" (MACDONALD (J. M.) : Appreciating the precautionnary principle as an ethical evolution in ocean management, (26) ODIL 1995, p. 276). Quel est son contenu spécifique ? Quelles sont ses fonctions ? Requiert-il des instruments spécifiques ou une approche réglementaire et lesquels ? Quelles sont les limitations, conceptuelles ou autres, du principe ? Malgré ces réserves, il apparaît très nettement que le principe de précaution permet une meilleure prise en compte des risques courus par l'environnement et permet, également, de les éviter, en fondant une action sur l'ignorance. Totalement différents sont les concepts de meilleure pratique environnementale et de meilleur technologie disponible qui se fondent, eux sur la connaissance

II - Les concepts de meilleure pratique environnementale et de meilleure technologie disponible Décrits comme "Pandora's box of critical legal and policy issues" (NOLLKAEMPER (A.) : Balancing the protection of marine ecosystems with economic benefits from land-based activities : the quest for international legal barriers, (27) Ocean Development and International Law, 1996, pp. 153-179), les concepts de meilleure pratique environnementale (Ci-après BEP de son intitulé en langue anglaise : Best Environmental Practice) et de meilleure technologie disponible (Ci-après BAT, de son intitulé en langue anglaise : Best Available Technology) constituent aujourd'hui la stratégie dominante de la lutte contre la pollution.

Dans l'appendice 1 relatif aux Critères de définition des pratiques et techniques visées au paragraphe 3-b-1 de l'article 2 de la Convention (OSPAR), il est rappelé que l'application de la BAT vie à l'utilisation de technologies "propres", non productrices de déchets. La BAT est définie par la Convention comme "les tous derniers progrès (état de la technique) dans les procédés, les installations ou les méthodes d'exploitation, permettant de savoir si une mesure donnée de limitation des rejets, des émissions et des déchets et appropriée sur un plan pratique" (Appendice 1, § 2-1).

La meilleure pratique environnementale "désigne la mise en œuvre de la combinaison la mieux adapte de mesures et de stratégies de lutte environnementales" (Appendice 1, § 6-1). Des critères sont délivrés pour déterminer les meilleures techniques disponibles: "...une attention particulière est accordée :
(a) aux procédés, installations ou méthodes d'exploitation comparables, récemment prouvés et ayant donné de bons résultat
(b) aux progrès techniques et à l'évolution des connaissances et de la compréhension scientifiques
(c) à la faisabilité économique de ces techniques
(d) aux date limite de mise en service aussi bien dans les installations nouvelles que dans les installations existantes
(e) à la nature et au volume des rejets et des émission en question"

De même pour les meilleures pratiques environnementales pour la détermination desquelles seront "au moins" examinés le danger pour l'environnement d'un produit et de sa production, son usage et son élimination, sa substitution par un processus ou des substances moins polluants, le bénéfice potentiel pour l'environnement, ... La Convention y ajoute une longue liste de mesures relatives à l'information et à l'éducation du public sur les conséquences environnementales de la production, de l'utilisation et de l'élimination des produits et activités.

Ainsi que le remarque André NOLLKAEMPER "l'obligation d'appliquer les meilleures pratiques environnementales est contextuelle à l'extrême. Ce qui constitue les meilleures pratiques environnementales dépend d'un processus d'équilibrage d'aspects variés, parfois contradictoires, incluant des implications sociales et économiques. Aucune activité n'est a priori incompatible avec l'obligation d'utiliser les meilleures pratiques environnementales et, théoriquement, dans un contexte particulier, l'usage de fertilisants peut être qualifié de la sorte" (NOLLKAEMPER (A.) : Balancing the protection of marine ecosystems with economic benefits from land-based activities : the quest for international legal barriers, (27) Ocean Development and International Law, 1996, pp. 153-179).

L'obligation d'appliquer les meilleures pratiques environnementales et les meilleures technologies disponibles n'exclue pas des considérations de coût, ce qui implique des équilibrages entre la fiabilité économique et la technologie. La Convention OSPAR oblige les Parties Contractantes à exiger individuellement l'usage des meilleures pratiques environnementales et des meilleures technologies disponibles. Par conséquent, chaque gouvernement a la possibilité de déterminer seul l'importance qu'il accorde à l'à-propos pratique ou à la faisabilité économique. Un tel pouvoir discrétionnaire laissé aux Etats risque fort de faire perdre aux concepts de meilleure pratique environnementale et de meilleure technologie disponible toue portée pratique. Il s'agit ici d'une faille dans le système organisé par la Convention OSPAR. Les membres de la Convention se veulent pourtant rassurants, estimant que les Etats en viendront rapidement à une concertation (au sein de l'OSPARCOM) pour déterminer conjointement les meilleures pratiques environnementales et les meilleures technologies disponibles. Le risque est que, même si, effectivement, il est à peu près sur que la commission OSPAR détermine ces pratiques et technologies, il ne s'agisse que de recommandations (NOLLKAEMPER (A.) : Balancing the protection of marine ecosystems with economic benefits from land-based activities : the quest for international legal barriers, (27) Ocean Development and International Law, 1996, pp. 153-179). L'exemple de la pollution opérationnelle des plates-formes d'exploration et d'exploitation en Mer du Nord fournit un exemple de concertation de Etats, exemple qui est loin d'être probant et laisse craindre une certaine stagnation de l'organisation, en Mer du Nord, de la lutte contre les pollutions. Rappelons que la Convention OSPAR n'est toujours pas entree en vigueur.

APPENDIX 1

CRITERIA FOR THE DEFINITION OF PRACTICES AND TECHNIQUES MENTIONED IN PARAGRAPH 3(b)(i) OF ARTICLE 2 OF THE CONVENTION

BEST AVAILABLE TECHNIQUES

1. The use of the best available techniques shall emphasise the use of non waste technology, if available.

2. The term "best available techniques" means the latest stage of development (state of the art) of processes, of facilities or of methods of operation which indicate the practical suitability of a particular measure for limiting discharges, emissions and waste. In determining whether a set of processes, facilities and methods of operation constitute the best available techniques in general or individual cases, special consideration shall be given to:

(a) comparable processes, facilities or methods of operation which have recently been successfully tried out;

(b) technological advances and changes in scientific knowledge and understanding;

(c) the economic feasibility of such techniques;

(d) time limits for installation in both new and existing plants;

(e) the nature and volume of the discharges and emissions concerned.

3. It therefore follows that what is best available techniques for a particular process will change with time in the light of technological advances, economic and social factors, as well as changes in scientific knowledge and understanding.

4. If the reduction of discharges and emissions resulting from the use of best available techniques does not lead to environmentally acceptable results, additional measures have to be applied.

5. Techniques include both the technology used and the way in which the installation is designed, built, maintained, operated and dismantled.

BEST ENVIRONMENTAL PRACTICE

6. The term best environmental practice means the application of the most appropriate combination of environmental control measures and strategies. In making a selection for individual cases, at least the following graduated range of measures should be considered:

(a) the provision of information and education to the public and to users about the environmental consequences of choice of particular activities and choice of products, their use and ultimate disposal;

(b) the development and application of codes of good environmental practice which covers all aspect of the activity in the product's life;

(c) the mandatory application of labels informing users of environmental risks related to a product, its use and ultimate disposal;

(d) saving resources, including energy;

(e) making collection and disposal systems available to the public;

(f) avoiding the use of hazardous substances or products and the generation of hazardous waste;

(g) recycling, recovery and re-use;

(h) the application of economic instruments to activities, products or groups of products;

(i) establishing a system of licensing, involving a range of restrictions or a ban.

7. In determining what combination of measures constitute best environmental practice, in general or individual cases, particular consideration should be given to:

(a) the environmental hazard of the product and its production, use and ultimate disposal;

(b) the substitution by less polluting activities or substances;

(c) the scale of use;

(d) the potential environmental benefit or penalty of substitute materials or activities;

(e) advances and changes in scientific knowledge and understanding;

(f) time limits for implementation;

(g) social and economic implications.

8. It therefore follows that best environmental practice for a particular source will change with time in the light of technological advances, economic and social factors, as well as changes in scientific knowledge and understanding.

9. If the reduction of inputs resulting from the use of best environmental practice does not lead to environmentally acceptable results, additional measures have to be applied and best environmental practice redefined.

PREAMBULE DE LA CONVENTION OSPAR

PREAMBULE

Convention for the Protection of the Marine Environment of the North-East Atlantic, 1992

THE CONTRACTING PARTIES,

RECOGNISING that the marine environment and the fauna and flora which it supports are of vital importance to all nations;

RECOGNISING the inherent worth of the marine environment of the North-East Atlantic and the necessity for providing coordinated protection for it;

RECOGNISING that concerted action at national, regional and global levels is essential to prevent and eliminate marine pollution and to achieve sustainable management of the maritime area, that is the management of human activities in such a manner that the marine ecosystem will continue to sustain the legitimate uses of the sea and will continue to meet the needs of present and future generations;

MINDFUL that the ecological equilibrium and the legitimate uses of the sea are threatened by pollution;

CONSIDERING the recommendations of the United Nations Conference on the Human Environment, held in Stockholm in June 1972;

CONSIDERING also the results of the United Nations Conference on the Environment and Development held in Rio de Janeiro in June 1992;

RECALLING the relevant provisions of customary international law reflected in Part XII of the United Nations Law of the Sea Convention and, in particular, Article 197 on global and regional cooperation for the protection and preservation of the marine environment;

CONSIDERING that the common interests of States concerned with the same marine area should induce them to cooperate at regional or sub regional levels;

RECALLING the positive results obtained within the context of the Convention for the prevention of marine pollution by dumping from ships and aircraft signed in Oslo on 15th February 1972, as amended by the protocols of 2nd March 1983 and 5th December 1989, and the Convention for the prevention of marine pollution from land-based sources signed in Paris on 4th June 1974, as amended by the protocol of 26th March 1986;

CONVINCED that further international action to prevent and eliminate pollution of the sea should be taken without delay, as part of progressive and coherent measures to protect the marine environment;

RECOGNISING that it may be desirable to adopt, on the regional level, more stringent measures with respect to the prevention and elimination of pollution of the marine environment or with respect to the protection of the marine environment against the adverse effects of human activities than are provided for in international conventions or agreements with a global scope;

RECOGNISING that questions relating to the management of fisheries are appropriately regulated under international and regional agreements dealing specifically with such questions;

CONSIDERING that the present Oslo and Paris Conventions do not adequately control some of the many sources of pollution, and that it is therefore justifiable to replace them with the present Convention, which addresses all sources of pollution of the marine environment and the adverse effects of human activities upon it, takes into account the precautionary principle and strengthens regional cooperation;

HAVE AGREED as follows:

CONVENTION SUR LA PROTECTION DE L'ENVIRONNEMENT MARIN DE L'ATLANTIQUE DU NORD-EST (1)

ARTICLE 1
DEFINITIONS

For the purposes of the Convention:

(a) MARITIME AREA means the internal waters and the territorial seas of the Contracting Parties, the sea beyond and adjacent to the territorial sea under the jurisdiction of the coastal state to the extent recognised by international law, and the high seas, including the bed of all those waters and its sub-soil, situated within the following limits:

(i) those parts of the Atlantic and Arctic Oceans and their dependent seas which lie north of 36° north latitude and between 42° west longitude and 51° east longitude, but excluding:

(1) the Baltic Sea and the Belts lying to the south and east of lines drawn from Hasenore Head to Gniben Point, from Korshage to Spodsbjerg and from Gilbjerg Head to Kullen,

(2) the Mediterranean Sea and its dependent seas as far as the point of intersection of the parallel of 36° north latitude and the meridian of 5° 36' west longitude;

(ii) that part of the Atlantic Ocean north of 59° north latitude and between 44° west longitude and 42° west longitude.

(b) INTERNAL WATERS means the waters on the landward side of the baselines from which the breadth of the territorial sea is measured, extending in the case of watercourses up to the freshwater limit.

(c) FRESH WATER LIMIT means the place in a watercourse where, at low tide and in a period of low freshwater flow, there is an appreciable increase in salinity due to the presence of seawater.

(d) POLLUTION means the introduction by man, directly or indirectly, of substances or energy into the maritime area which results, or is likely to result, in hazards to human health, harm to living resources and marine ecosystems, damage to amenities or interference with other legitimate uses of the sea.

(e) LAND BASED-SOURCES means point and diffuse sources on land from which substances or energy reach the maritime area by water, through the air, or directly from the coast. It includes sources associated with any deliberate disposal under the sea-bed made accessible from land by tunnel, pipeline or other means and sources associated with man-made structures placed, in the maritime area under the jurisdiction of a Contracting Party, other than for the purpose of offshore activities.

(f) DUMPING means:

(i) any deliberate disposal in the maritime area of wastes or other matter

(1) from vessels or aircraft;

(2) from offshore installations;

(ii) any deliberate disposal in the maritime area of

(1) vessels or aircraft;

(2) offshore installations and offshore pipelines.

(g) Dumping does not include:

(i) the disposal in accordance with the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, or other applicable international law, of wastes or other matter incidental to, or derived from, the normal operations of vessels or aircraft or offshore installations other than wastes or other matter transported by or to vessels or aircraft or offshore installations for the purpose of disposal of such wastes or other matter or derived from the treatment of such wastes or other matter on such vessels or aircraft or offshore installations;

(ii) placement of matter for a purpose other than the mere disposal thereof, provided that, if the placement is for a purpose other than that for which the matter was originally designed or constructed, it is in accordance with the relevant provisions of the Convention; and

(iii) for the purposes of Annex III, the leaving wholly or partly in place of a disused offshore installation or disused offshore pipeline, provided that any such operation takes place in accordance with any relevant provision of the Convention and with other relevant international law.

(h) INCINERATION means any deliberate combustion of wastes or other matter in the maritime area for the purpose of their thermal destruction.

(i) Incineration does not include the thermal destruction of wastes or other matter in accordance with applicable international law incidental to, or derived from the normal operation of vessels or aircraft, or offshore installations other than the thermal destruction of wastes or other matter on vessels or aircraft or offshore installations operating for the purpose of such thermal destruction.

(j) OFFSHORE ACTIVITIES means activities carried out in the maritime area for the purposes of the exploration, appraisal or exploitation of liquid and gaseous hydrocarbons.

(k) OFFSHORE SOURCES means offshore installations and offshore pipelines from which substances or energy reach the maritime area.

(l) OFFSHORE INSTALLATION means any man-made structure, plant or vessel or parts thereof, whether floating of fixed to the seabed, placed within the maritime area for the purpose of offshore activities.

(m) OFFSHORE PIPELINES means any pipeline which has been placed in the maritime area for the purpose of• offshore activities.

(n)VESSELS OR AIRCRAFTS means waterborne or airborne craft of any type whatsoever, their parts and other fittings. This expression includes air-cushion craft, floating craft whether self-propelled or not, and other man-made structures in the maritime area and their equipment, but excludes offshore installations and offshore pipelines.

(o) WASTES OR OTHER MATTER does not include:

(i) human remains;

(ii) offshore installations;

(iii) offshore pipelines;

(iv) unprocessed fish and fish offal discarded from fishing vessels.

(p) CONVENTION means, unless the text otherwise indicates, the Convention for the Protection of the Marine Environment of the North-East Atlantic, its Annexes and Appendices.

(q) OSLO CONVENTION means the Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft signed in Oslo on 15th February 1972, as amended by the protocols of 2nd March 1983 and 5th December 1989.

(r) PARIS CONVENTION means the Convention for the Prevention of Marine Pollution from Land-based Sources, signed in Paris on 4th June 1974, as amended by the protocol of 26th March 1986.

(s) REGIONAL ECONOMIC INTERGRATION ORGANISATION means an organisation constituted by sovereign States of a given region which has competence in respect of matters governed by the Convention and has been duly authorised, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to the Convention.

ARTICLE 2

GENERAL OBLIGATIONS

1.

(a) The Contracting Parties shall, in accordance with the provisions of the Convention, take all possible steps to prevent and eliminate pollution and shall take the necessary measures to protect the maritime area against the adverse effects of human activities so as to safeguard human health and to conserve marine ecosystems and, when practicable, restore marine areas which have been adversely affected.
(b) To this end Contracting Parties shall, individually and jointly, adopt programmes and measures and shall harmonise their policies and strategies.
2. The Contracting Parties shall apply:
(a) the precautionary principle, by virtue of which preventive measures are to be taken when there are reasonable grounds for concern that substances or energy introduced, directly or indirectly, into the marine environment may bring about hazards to human health, harm living resources and marine ecosystems, damage amenities or interfere with other legitimate uses of the sea, even when there is no conclusive evidence of a causal relationship between the inputs and the effects;
(b) the polluter pays principle, by virtue of which the costs of pollution prevention, control and reduction measures are to be borne by the polluter.

3.
(a) In implementing the Convention, Contracting Parties shall adopt programmes and measures which contain, where appropriate, time-limits for their completion and which take full account of the use of the latest technological developments and practices designed to prevent and eliminate pollution fully.
(b) To this end they shall:
(i) taking into account the criteria set forth in Appendix 1, define with respect to programmes and measures the application of, inter alia,
- best available techniques
- best environmental practice including, where appropriate, clean technology;
(ii) in carrying out such programmes and measures, ensure the application of best available techniques and best environmental practice as so defined, including, where appropriate, clean technology.

4. The Contracting Parties shall apply the measures they adopt in such a way as to prevent an increase in pollution of the sea outside the maritime area or in other parts of the environment.
5. No provision of the Convention shall be interpreted as preventing the Contracting Parties from taking, individually or jointly, more stringent measures with respect to the prevention and elimination of pollution of the maritime area or with respect to the protection of the maritime area against the adverse effects of human activities.

ARTICLE 3

POLLUTION FROM LAND BASED SOURCES

The Contracting Parties shall take, individually and jointly, all possible steps to prevent and eliminate pollution from land-based sources in accordance with the provisions of the Convention, in particular as provided for in Annex I.

ARTICLE 4

POLLUTION BY DUMPING OR INCINERATION

The Contracting Parties shall take, individually and jointly, all possible steps to prevent and eliminate pollution by dumping or incineration of wastes or other matter in accordance with the provisions of the Convention, in particular as provided for in Annex II.

ARTICLE 5

POLLUTION FROM OFFSHORE SOURCES

The Contracting Parties shall take, individually and jointly, all possible steps to prevent and eliminate pollution from offshore sources in accordance with the provisions of the Convention, in particular as provided for in Annex III.

ARTICLE 6

ASSESSMENT OF THE QUALITY OF THE MARINE ENVIRONMENT
The Contracting Parties shall, in accordance with the provisions of the Convention, in particular as provided for in Annex IV:

(a) undertake and publish at regular intervals joint assessments of the quality status of the marine environment and of its development, for the maritime area or for regions or sub-regions thereof;
(b) include in such assessments both an evaluation of the effectiveness of the measures taken and planned for the protection of the marine environment and the identification of priorities for action.

ARTICLE 7

POLLUTION FROM OTHER SOURCES

The Contracting Parties shall cooperate with a view to adopting Annexes, in addition to the Annexes mentioned in Articles 3, 4, 5 and 6 above, prescribing measures, procedures and standards to protect the maritime area against pollution from other sources, to the extent that such pollution is no already the subject of effective measures agreed by other international organisations or prescribed by other international conventions.

ARTICLE 8

SCIENTIFIC AND TECHNICAL RESEARCH

1. To further the aims of the Convention, the Contracting Parties shall establish complementary or joint programmes of scientific or technical research and, in accordance with a standard procedure, to transmit to the Commission:
(a) the results of such complementary, joint or other relevant research;
(b) details of other relevant programmes of scientific and technical research.

2. In so doing, the Contracting Parties shall have regard to the work carried out, in these fields, by the appropriate international organisations and agencies.

ARTICLE 9

ACCESS TO INFORMATION

1. The Contracting Parties shall ensure that their competent authorities are required to make available the information described in paragraph 2 of this Article to any natural or legal person, in response to any reasonable request, without that person's having to prove an interest, without unreasonable charges, as soon as possible and at the latest within two months.

2. The information referred to in paragraph 1 of this Article is any available information in written, visual, aural or data base form on the state of the maritime area, on activities or measures adversely affecting or likely to affect it and on activities or measures introduced in accordance with the Convention.

3. The provisions of this Article shall not affect the right of Contracting Parties, in accordance with their national legal systems and applicable international regulations, to provide for a request for such information to be refused where it affects:
(a) the confidentiality of the proceedings of public authorities, international relations and national defence;
(b) public security;
(c) matters which are, or have been, sub judice, or under enquiry (including disciplinary enquiries), or which are the subject of preliminary investigation proceedings;

(d) commercial and industrial confidentiality, including intellectual property;
(e) the confidentiality of personal data and/or files;
(f) material supplied by a third party without that party being under a legal obligation to do so;
(g) material, the disclosure of which would make it more likely that the environment to which such material related would be damaged.

4. The reasons for a refusal to provide the information requested must be given.

ARTICLE 10

COMMISSION

1. A Commission, made up of representatives of each of the Contracting Parties, is hereby established. The Commission shall meet at regular intervals and at any time when, due to special circumstances, it is so decided in accordance with the Rules of Procedure.

2. It shall be the duty of the Commission:
(a) to supervise the implementation of the Convention;
(b) generally to review the condition of the maritime area, the effectiveness of the measures being adopted, the priorities and the need for any additional or different measures;
(c) to draw up, in accordance with the General Obligations of the Convention, programmes and measures for the prevention and elimination of pollution and for the control of activities which may, directly or indirectly, adversely affect the maritime area; such programmes and measure may, when appropriate, include economic instruments;
(d) to establish at regular intervals its programme of work;
(e) to set up such subsidiary bodies as it considers necessary and to define their terms of reference;
(f) to consider and, where appropriate, adopt proposals for the amendment of the Convention in accordance with Articles 15, 16, 17, 18, 19 and 27;
(g) to discharge the functions conferred by Articles 21 and 23 and such other functions as may be appropriate under the terms of the Convention;

3. To these ends the Commission may, inter alia, adopt decisions and recommendations in accordance with Article 13.

4. The Commission shall draw up its Rules of Procedure which shall be adopted by unanimous vote of the Contracting Parties.

5. The Commission shall draw up its Financial Regulations which shall be adopted by unanimous vote of the Contracting Parties.

ARTICLE 11

OBSERVERS

1. The Commission may, by unanimous vote of the Contracting Parties, decide to admit as an observer:
(a) any State which is not a Contracting Party to the Convention;
(b) any international governmental or any non-governmental organisation the activities of which are related to the Convention.

2. Such observers may participate in meetings of the Commission but without the right to vote and may present to the Commission any information or reports relevant to the objectives of the Convention.

3. The conditions for the admission and the participation of observers shall be set in the Rules of Procedure of the Commission.

ARTICLE 12

SECRETARIAT

1. A permanent Secretariat is hereby established.

2. The Commission shall appoint an Executive Secretary and determine the duties of that post and the terms and conditions upon which it is to be held.

3. The Executive Secretary shall perform the functions that are necessary for the administration of the Convention and for the work of the Commission as well as the other tasks entrusted to the Executive Secretary by the Commission in accordance with its Rules of Procedure and its Financial Regulations.

ARTICLE 13

DECISIONS AND RECOMMENDATIONS

1. Decisions and recommendations shall be adopted by unanimous vote of the Contracting Parties. Should unanimity not be attainable, and unless otherwise provided in the Convention, the Commission may nonetheless adopt decisions or recommendations by a three-quarters majority vote of the Contracting Parties.

2. A decision shall be binding on the expiry of a period of two hundred days after its adoption for those Contracting Parties that voted for it and have not within that period notified the Executive Secretary in writing that they are unable to accept the decision, provided that at the expiry of that period three-quarters of the Contracting Parties have either voted for the decision and not withdrawn their acceptance or notified the Executive Secretary in writing that they are able to accept the decision. Such a decision shall become binding on any other Contracting Party which has notified the Executive Secretary in writing that it is able to accept the decision from the moment of that notification or after the expiry of a period of two hundred days after the adoption of the decision, whichever is later.

3. A notification under paragraph 2 of this Article to the Executive Secretary may indicate that a Contracting Party is unable to accept a decision insofar as it relates to one or more of its dependent or autonomous territories to which the Convention applies.

4. All decisions adopted by the Commission shall, where appropriate, contain provisions specifying the timetable by which the decision shall be implemented.

5. Recommendations shall have no binding force.

6. Decisions concerning any Annex or Appendix shall be taken only by the Contracting Parties bound by the Annex or Appendix concerned.

ARTICLE 14

STATUS OF ANNEXES AND APPENDICES

1. The Annexes and Appendices form an integral part of the Convention.

2. The Appendices shall be of a scientific, technical or administrative nature.

ARTICLE 15

AMENDMENT OF THE CONVENTION

1. Without prejudice to the provisions of paragraph 2 of Article 27 and to specific provisions applicable to the adoption or amendment of Annexes or Appendices, an amendment to the Convention shall be governed by the present Article.

2. Any Contracting Party may propose an amendment to the Convention. The text of the proposed amendment shall be communicated to the Contracting Parties by the Executive Secretary of the Commission at least six months before the meeting of the Commission at which it is proposed for adoption. The Executive Secretary shall also communicate the proposed amendment to the signatories to the Convention for information.

3. The Commission shall adopt the amendment by unanimous vote of the Contracting Parties.

4. The adopted amendment shall be submitted by the Depositary Government to the Contracting Parties for ratification, acceptance or approval. Ratification, acceptance or approval of the amendment shall be notified to the Depositary Government in writing.

5. The amendment shall enter into force for those Contracting Parties which have ratified, accepted or approved it on the thirtieth day after receipt by the Depositary Government of notification of its ratification, acceptance or approval by at least seven Contracting Parties. Thereafter the amendment shall enter into force for any other Contracting Party on the thirtieth day after that Contracting Party has deposited its instrument of ratification, acceptance or approval of the amendment.

ARTICLE 16

ADOPTION OF ANNEXES

The provisions of Article 15 relating to the amendment of the Convention shall also apply to the proposal, adoption and entry into force of an Annex to the Convention, except that the Commission shall adopt any Annex referred to in Article 7 by a three-quarters majority vote of the Contracting Parties.

ARTICLE 17

AMENDMENT OF ANNEXES

1. The provisions of Article 15 relating to the amendment of the Convention shall also apply to an amendment to an Annex to the Convention, except that the Commission shall adopt amendments to any Annex referred to in Articles 3, 4, 5, 6 or 7 by a three-quarters majority vote of the Contracting Parties bound by that Annex.

2. If the amendment of an Annex is related to an amendment to the Convention, the amendment of the Annex shall be governed by the same provisions as apply to the amendment to the Convention.

ARTICLE 18

ADOPTION OF APPENDICES

1. If a proposed Appendix is related to an amendment to the Convention or an Annex, proposed for adoption in accordance with Article 15 or Article 17, the proposal, adoption and entry into force of that Appendix shall be governed by the same provisions as apply to the proposal, adoption and entry into force of that amendment.

2. If a proposed Appendix is related to an Annex to the Convention, proposed for adoption in accordance with Article 16, the proposal, adoption and entry into force of that Appendix shall be governed by the same provisions as apply to the proposal, adoption and entry into force of that Annex.

ARTICLE 19

AMENDMENT OF APPENDICES

1. Any Contracting Party bound by an Appendix may propose an amendment to that Appendix. The text of the proposed amendment shall be communicated to all Contracting Parties to the Convention by the Executive Secretary of the Commission as provided for in paragraph 2 of Article 15.

2. The Commission shall adopt the amendment to an Appendix by a three-quarters majority vote of the Contracting Parties bound by that Appendix.

3. An amendment to an Appendix shall enter into force on the expiry of a period of two hundred days after its adoption for those Contracting Parties which are bound by that Appendix and have not within that period notified the Depositary Government in writing that they are unable to accept that amendment, provided that at the expiry of that period three-quarters of the Contracting Parties bound by that Appendix have either voted for the amendment and not withdrawn their acceptance or have notified the Depositary Government in writing that they are able to accept the amendment.

4. A notification under paragraph 3 of this Article to the Depositary Government may indicate that a Contracting Party is unable to accept the amendment insofar as it relates to one or more of its dependent or autonomous territories to which the Convention applies.

5. An amendment to an Appendix shall become binding on any other Contracting Party bound by the Appendix which has notified the Depositary Government in writing that it is able to accept the amendment from the moment of that notification or after the expiry of a period of two hundred days after the adoption of the amendment, whichever is later.

6. The Depositary Government shall without delay notify all Contracting Parties of any such notification received.

7. If the amendment of an Appendix is related to an amendment to the Convention or an Annex, the amendment of the Appendix shall be governed by the same provisions as apply to the amendment to the Convention or that Annex.

ARTICLE 20

RIGHT TO VOTE

1. Each Contracting Party shall have one vote in the Commission.

2. Notwithstanding the provisions of paragraph 1 of this Article, the European Economic Community and other regional economic integration organisations, within the areas of their competence, are entitled to a number of votes equal to the number of their Member States which are Contracting Parties to the Convention. Those organisations shall not exercise their right to vote in cases where their Member States exercise theirs and conversely.

ARTICLE 21

TRANSBOUNDARY POLLUTION

1. When pollution originating from a Contracting Party is likely to prejudice the interests of one or more of the other Contracting Parties to the Convention, the Contracting Parties concerned shall enter into consultation, at the request of any one of them, with a view to negotiating a cooperation agreement.

2. At the request of any Contracting Party concerned, the Commission shall consider the question and may make recommendations with a view to reaching a satisfactory solution.

3. An agreement referred to in paragraph 1 of this Article may, inter alia, define the areas to which it shall apply, the quality objectives to be achieved and the methods for achieving these objectives, including methods for the application of appropriate standards and the scientific and technical information to be collected.

4. The Contracting Parties signatory to such an agreement shall, through the medium of the Commission, inform the other Contracting Parties of its purport and of the progress made in putting it into effect.

ARTICLE 22

REPORTING TO THE COMMISSION

The Contracting Parties shall report to the Commission at regular intervals on:

(a) the legal, regulatory, or other measures taken by them for the implementation of the provisions of the Convention and of decisions and recommendations adopted thereunder, including in particular measures taken to prevent and punish conduct in contravention of those provisions;

(b) the effectiveness of the measures referred to in subparagraph (a) of this Article;

(c) problems encountered in the implementation of the provisions referred to in subparagraph

(a) of this Article.

ARTICLE 23

COMPLIANCE

The Commission shall:

(a) on the basis of the periodical reports referred to in Article 22 and any other report submitted by the Contracting Parties, assess their compliance with the Convention and the decisions and• recommendations adopted thereunder;

(b) when appropriate, decide upon and call for steps to bring about full compliance with the Convention, and decisions adopted thereunder, and promote the implementation of recommendations, including measures to assist a Contracting Party to carry out its obligations.

ARTICLE 24

REGIONALISATION

The Commission may decide that any decision or recommendation adopted by it shall apply to all, or a specified part, of the maritime area and may provide for different timetables to be applied, having regard to the differences between ecological and economic conditions in the various regions and sub- regions covered by the Convention.

ARTICLE 25

SIGNATURE

The Convention shall be open for signature at Paris from 22nd September 1992 to 30th June 1993 by:

(a) the Contracting Parties to the Oslo Convention or the Paris Convention;

(b) any other coastal State bordering the maritime area;

(c) any State located upstream on watercourses reaching the maritime area;

(d) any regional economic integration organisation having as a member at least one State to which any of the subparagraphs (a) to (c) of this Article applies.

ARTICLE 26

RATIFICATION, ACCEPTANCE OR APPROVAL

The Convention shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Government of the French Republic.

ARTICLE 27

ACCESSIONS

1. After 30th June 1993, the Convention shall be open for accession by the States and regional economic integration organisations referred to in Article 25.

2. The Contracting Parties may unanimously invite States or regional economic integration organisations not referred to in Article 25 to accede to the Convention. In the case of such an accession, the definition of the maritime area shall, if necessary, be amended by a decision of the Commission adopted by unanimous vote of the Contracting Parties. Any such amendment shall enter into force after unanimous approval of all the Contracting Parties on the thirtieth day after the receipt of the last notification by the Depositary Government.

3. Any such accession shall relate to the Convention including any Annex and any Appendix that have been adopted at the date of such accession, except when the instrument of accession contains an express declaration of non-acceptance of one or several Annexes other than Annexes I, II, III and IV.

4. The instruments of accession shall be deposited with the Government of the French Republic.

ARTICLE 28

RESERVATIONS

No reservation to the Convention may be made.

ARTICLE 29

ENTRY INTO FORCE

1. The Convention shall enter into force on the thirtieth day following the date on which all Contracting Parties to the Oslo Convention and all Contracting Parties to the Paris Convention have deposited their instrument of ratification, acceptance, approval or accession.

2. For any State or regional economic integration organisation not referred to in paragraph 1 of this Article, the Convention shall enter into force in accordance with paragraph 1 of this Article, or on the thirtieth day following the date of the deposit of the instrument of ratification, acceptance, approval or accession by that State or regional economic integration organisations, whichever is later.

ARTICLE 30

WITHDRAWAL

1. At any time after the expiry of two years from the date of entry into force of the Convention for a Contracting Party, that Contracting Party may withdraw from the Convention by notification in writing to the Depositary Government.

2. Except as may be otherwise provided in an Annex other than Annexes I to IV to the Convention, any Contracting Party may at any time after the expiry of two years from the date of entry into force of such Annex for that Contracting Party withdraw from such Annex by notification in writing to the Depositary Government.

3. Any withdrawal referred to in paragraphs 1 and 2 of this Article shall take effect one year after the date on which the notification of that withdrawal is received by the Depositary Government.

ARTICLE 31

REPLACEMENT OF THE OSLO AND PARIS CONVENTIONS

1. Upon its entry into force, the Convention shall replace the Oslo and Paris Conventions as between the Contracting Parties.

2. Notwithstanding paragraph 1 of this Article, decisions, recommendations and all other agreements adopted under the Oslo Convention or the Paris Convention shall continue to be applicable, unaltered in their legal nature, to the extent that they are compatible with, or not explicitly terminated by, the Convention, any decisions or, in the case of existing recommendations, any recommendations adopted thereunder.

ARTICLE 32

SETTLEMENT OF DISPUTES

1. Any disputes between Contracting Parties relating to the interpretation or application of the Convention, which cannot be settled otherwise by the Contracting Parties concerned, for instance by means of inquiry or conciliation within the Commission, shall at the request of any of those Contracting Parties, be submitted to arbitration under the conditions laid down in this Article.

2. Unless the parties to the dispute decide otherwise, the procedure of the arbitration referred to in paragraph 1 of this Article shall be in accordance with paragraphs 3 to 10 of this Article.

3.
(a) At the request addressed by one Contracting Party to another Contracting Party in accordance with paragraph 1 of this Article, an arbitral tribunal shall be constituted. The request for arbitration shall state the subject matter of the application including in particular the Articles of the Convention, the interpretation or application of which is in dispute.

(b) The applicant party shall inform the Commission that it has requested the setting up of an arbitral tribunal, stating the name of the other party to the dispute and the Articles of the Convention the interpretation or application of which, in its opinion, is in dispute. The Commission shall forward the information thus received to all Contracting Parties to the Convention.

4. The arbitral tribunal shall consist of three members: each of the parties to the dispute shall appoint an arbitrator; the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the chairman of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

5.
(a) If the chairman of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the President of the International Court of Justice shall, at the request of either party, designate him within a further two months' period.

(b) If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the President of the International Court of Justice who shall designate the chairman of the arbitral tribunal within a further two months' period. Upon designation, the chairman of the arbitral tribunal shall request the party which has not appointed an arbitrator to do so within two months. After such period, he shall inform the President of the International Court of Justice who shall make this appointment within a further two months' period.

6.
(a) The arbitral tribunal shall decide according to the rules of international law and, in particular, those of the Convention.

(b) Any arbitral tribunal constituted under the provisions of this Article shall draw up its own rules of procedure.

(c) In the event of a dispute as to whether the arbitral tribunal has jurisdiction, the matter shall be decided by the decision of the arbitral tribunal.

7.
(a) The decisions of the arbitral tribunal, both on procedure and on substance, shall be taken by majority voting of its members.

(b) The arbitral tribunal may take all appropriate measures in order to establish the facts. It may, at the request of one of the parties, recommend essential interim measures of protection.

(c) If two or more arbitral tribunals constituted under the provisions of this Article are seized of requests with identical or similar subjects, they may inform themselves of the procedures for establishing the facts and take them into account as far as possible.

(d) The parties to the dispute shall provide all facilities necessary for the effective conduct of the proceedings.•

(e) The absence or default of a party to the dispute shall not constitute an impediment to the proceedings.

8. Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its expenses, and shall furnish a final statement thereof to the parties.

9. Any Contracting Party that has an interest of a legal nature in the subject matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

10.
(a) The award of the arbitral tribunal shall be accompanied by a statement of reasons. It shall be final and binding upon the parties to the dispute.

(b) Any dispute which may arise between the parties concerning the interpretation or execution of the award may be submitted by either party to the arbitral tribunal which made the award or, if the latter cannot be seized thereof, to another arbitral tribunal constituted for this purpose in the same manner as the first.

ARTICLE 33

DUTIES OF THE DEPOSITARY GOVERNMENT

The Depositary Government shall inform the Contracting Parties and the signatories to the Convention:

(a) of the deposit of instruments of ratification, acceptance, approval or accession, of declarations of non-acceptance and of notifications of withdrawal in accordance with Articles 26, 27 and 30;

(b) of the date on which the Convention comes into force in accordance with Article 29;

(c) of the receipt of notifications of acceptance, of the deposit of instruments of ratification, acceptance, approval or accession and of the entry into force of amendments to the Convention and of the adoption and amendment of Annexes or Appendices, in accordance with Articles 15, 16, 17, 18 and 19.

ARTICLE 34

ORIGINAL TEXT

The original of the Convention, of which the French and English texts shall be equally authentic, shall be deposited with the Government of the French Republic which shall send certified copies thereof to the Contracting Parties and the signatories to the Convention and shall deposit a certified copy with the Secretary General of the United Nations for registration and publication in accordance with Article 102 of the United Nations Charter.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Convention.

DONE at Paris, on the twenty-second day of September 1992

ANNEX I

ON THE PREVENTION AND ELIMINATION OF POLLUTION FROM LAND BASED SOURCES

ARTICLE 1

1. When adopting programmes and measures for the purpose of this Annex, the Contracting Parties shall require, either individually or jointly, the use of

- best available techniques for point sources
- best environmental practice for point and diffuse sources including, where appropriate, clean technology.

2. When setting priorities and in assessing the nature and extent of the programmes and measures and their time scales, the Contracting Parties shall use the criteria given in Appendix 2.

3. The Contracting Parties shall take preventive measures to minimise the risk of pollution caused by accidents.

4. When adopting programmes and measures in relation to radioactive substances, including waste, the Contracting Parties shall also take account of:

(a) the recommendations of the other appropriate international organisations and agencies;

(b) the monitoring procedures recommended by these international organisations and agencies.

ARTICLE 2

1. Point source discharges to the maritime area, and releases into water or air which reach and may affect the maritime area, shall be strictly subject to authorisation or regulation by the competent authorities of the Contracting Parties. Such authorisation or regulation shall, in particular, implement relevant decisions of the Commission which bind the relevant Contracting Party.

2. The Contracting Parties shall provide for a system of regular monitoring and inspection by their competent authorities to assess compliance with authorisations and regulations of releases into water or air.

ARTICLE 3 For the purposes of this Annex, it shall, inter alia, be the duty of the Commission to draw up:

(a) plans for the reduction and phasing out of substances that are toxic, persistent and liable to bioaccumulate arising from land-based sources;
(b) when appropriate, programmes and measures for the reduction of inputs of nutrients from urban, municipal, industrial, agricultural and other sources.

ANNEX II

ON THE PREVENTION AND ELIMINATION OF POLLUTION BY DUMPING OR INCINERATION

ARTICLE 1
This Annex shall not apply to any deliberate disposal in the maritime area of:
(a) wastes or other matter from offshore installations;
(b) offshore installations and offshore pipelines.

ARTICLE 2
Incineration is prohibited.

ARTICLE 3
1. The dumping of all wastes or other matter is prohibited, except for those wastes or other matter listed in paragraphs 2 and 3 of this Article.
2. The list referred to in paragraph 1 of this Article is as follows:
(a) dredged material;
(b) inert materials of natural origin, that is solid, chemically unprocessed geological material the chemical constituents of which are unlikely to be released into the marine environment;
(c) sewage sludge until 31st December 1998;
(d) fish waste from industrial fish processing operations;
(e) vessels or aircraft until, at the latest, 31st December 2004.

3.
(a) The dumping of low and intermediate level radioactive substances, including wastes, is prohibited.
(b) As an exception to subparagraph 3(a) of this Article, those Contracting Parties, the United Kingdom and France, who wish to retain the option of an exception to subparagraph 3(a) in any case not before the expiry of a period of 15 years from 1st January 1993, shall report to the meeting of the Commission at Ministerial level in 1997 on the steps taken to explore alternative land-based options.
(c) Unless, at or before the expiry of this period of 15 years, the Commission decides by a unanimous vote not to continue the exception provided in subparagraph 3(b), it shall take a decision pursuant to Article 13 of the Convention on the prolongation for a period of• 10 years after 1st January 2008 of the prohibition, after which another meeting of the Commission at Ministerial level shall be held. Those Contracting Parties mentioned in subparagraph 3(b) of this Article still wishing to retain the option mentioned in subparagraph 3(b) shall report to the Commission meetings to be held at Ministerial level at two yearly intervals from 1999 onwards about the progress in establishing alternative land-based options and on the results of scientific studies which show that any potential dumping operations would not result in hazards to human health, harm to living resources or marine ecosystems, damage to amenities or interference with other legitimate uses of the sea.

ARTICLE 4
1. The Contracting Parties shall ensure that:
(a) no wastes or other matter listed in paragraph 2 of Article 3 of this Annex shall be dumped without authorisation by their competent authorities, or regulation;
(b) such authorisation or regulation is in accordance with the relevant applicable criteria, guidelines and procedures adopted by the Commission in accordance with Article 6 of this Annex;
(c) with the aim of avoiding situations in which the same dumping operation is authorised or regulated by more than one Contracting Party, their competent authorities shall, as appropriate, consult before granting an authorisation or applying regulation.
2. Any authorisation or regulation under paragraph 1 of this Article shall not permit the dumping of vessels or aircraft containing substances which result or are likely to result in hazards to human health, harm to living resources and marine ecosystems, damage to amenities or interference with other legitimate uses of the sea.
3. Each Contracting Party shall keep, and report to the Commission records of the nature and the quantities of wastes or other matter dumped in accordance with paragraph 1 of this Article, and of the dates, places and methods of dumping.

ARTICLE 5
No placement of matter in the maritime area for a purpose other than that for which it was originally designed or constructed shall take place without authorisation or regulation by the competent authority of the relevant Contracting Party. Such authorisation or regulation shall be in accordance with the relevant applicable criteria, guidelines and procedures adopted by the Commission in accordance with Article 6 of this Annex. This provision shall not be taken to permit the dumping of wastes or other matter otherwise prohibited under this Annex.

ARTICLE 6
For the purposes of this Annex, it shall, inter alia, be the duty of the Commission to draw up and adopt criteria, guidelines and procedures relating to the dumping of wastes or other matter listed in paragraph 2 of Article 3, and to the placement of matter referred to in Article 5, of this Annex, with a view to preventing and eliminating pollution.

ARTICLE 7
The provisions of this Annex concerning dumping shall not apply in case of force majeure, due to stress of weather or any other cause, when the safety of human life or of a vessel or aircraft is threatened. Such dumping shall be so conducted as to minimise the likelihood of damage to human or marine life and shall immediately be reported to the Commission, together with full details of the circumstances and of the nature and quantities of the wastes or other matter dumped.

ARTICLE 8
The Contracting Parties shall take appropriate measures, both individually and within relevant international organisations, to prevent and eliminate pollution resulting from the abandonment of vessels or aircraft in the maritime area caused by accidents. In the absence of relevant guidance from such international organisations, the measures taken by individual Contracting Parties should be based on such guidelines as the Commission may adopt.

ARTICLE 9
In an emergency, if a Contracting Party considers that wastes or other matter the dumping of which is prohibited under this Annex cannot be disposed of on land without unacceptable danger or damage, it shall forthwith consult other Contracting Parties with a view to finding the most satisfactory methods of storage or the most satisfactory means of destruction or disposal under the prevailing circumstances. The Contracting Party shall inform the Commission of the steps adopted following this consultation. The Contracting Parties pledge themselves to assist one another in such situations.

ARTICLE 10
1. Each Contracting Party shall ensure compliance with the provisions of this Annex:
(a) by vessels or aircraft registered in its territory;
(b) by vessels or aircraft loading in its territory the wastes or other matter which are to be dumped or incinerated;
(c) by vessels or aircraft believed to be engaged in dumping or incineration within its internal waters or within its territorial sea or within that part of the sea beyond and adjacent to the territorial sea under the jurisdiction of the coastal state to the extent recognised by international law.
2. Each Contracting Party shall issue instructions to its maritime inspection vessels and aircraft and to other appropriate services to report to its authorities any incidents or conditions in the maritime area which give rise to suspicions that dumping in contravention of the provisions of the present Annex has occurred or is about to occur. Any Contracting Party whose authorities receive such a report shall, if it considers it appropriate, accordingly inform any other Contracting Party concerned.
3. Nothing in this Annex shall abridge the sovereign immunity to which certain vessels are entitled under international law.

ANNEX III

ON THE PREVENTION AND ELIMINATION OF POLLUTION FROM OFFSHORE SOURCES

ARTICLE 1

This Annex shall not apply to any deliberate disposal in the maritime area of:

(a) wastes or other matter from vessels or aircraft;
(b) vessels or aircraft.

ARTICLE 2

1. When adopting programmes and measures for the purpose of this Annex, the Contracting Parties shall require, either individually or jointly, the use of:

(a) best available techniques
(b) best environmental practice including, where appropriate, clean technology.

2. When setting priorities and in assessing the nature and extent of the programmes and measures and their time scales, the Contracting Parties shall use the criteria given in Appendix 2.

ARTICLE 3

1. Any dumping of wastes or other matter from offshore installations is prohibited.

2. This prohibition does not relate to discharges or emissions from offshore sources.

ARTICLE 4

1. The use on, or the discharge or emission from, offshore sources of substances which may reach and affect the maritime area shall be strictly subject to authorisation or regulation by the competent authorities of the Contracting Parties. Such authorisation or regulation shall, in particular, implement the relevant applicable decisions, recommendations and all other agreements adopted under the Convention.

2. The competent authorities of the Contracting Parties shall provide for a system of monitoring and inspection to assess compliance with authorisation or regulation as provided for in paragraph 1 of Article 4 of this Annex.

ARTICLE 5•

1. No disused offshore installation or disused offshore pipeline shall be dumped and no disused offshore installation shall be left wholly or partly in place in the maritime area without a permit issued by the competent authority of the relevant Contracting Party on a case-by-case basis. The Contracting Parties shall ensure that their authorities, when granting such permits, shall implement the relevant applicable decisions, recommendations and all other agreements adopted under the Convention.

2. No such permit shall be issued if the disused offshore installation or disused offshore pipeline contains substances which result or are likely to result in hazards to human health, harm to living resources and marine ecosystems, damage to amenities or interference with other legitimate uses of the sea.

3. Any Contracting Party which intends to take the decision to issue a permit for the dumping of a disused offshore installation or a disused offshore pipeline placed in the maritime area after 1st January 1998 shall, through the medium of the Commission, inform the other Contracting Parties of its reasons for accepting such dumping, in order to make consultation possible.

4. Each Contracting Party shall keep, and report to the Commission, records of the disused offshore installations and disused offshore pipelines dumped and of the disused offshore installations left in place in accordance with the provisions of this Article, and of the dates, places and methods of dumping.

ARTICLE 6

Articles 3 and 5 of this Annex shall not apply in case of force majeure, due to stress of weather or any other cause, when the safety of human life or of an offshore installation is threatened. Such dumping shall be so conducted as to minimise the likelihood of damage to human or marine life and shall immediately be reported to the Commission, together with full details of the circumstances and of the nature and quantities of the matter dumped.

ARTICLE 7

The Contracting Parties shall take appropriate measures, both individually and within relevant international organisations, to prevent and eliminate pollution resulting from the abandonment of offshore installations in the maritime area caused by accidents. In the absence of relevant guidance from such international organisations, the measures taken by individual Contracting Parties should be based on such guidelines as the Commission may adopt.

ARTICLE 8

No placement of a disused offshore installation or a disused offshore pipeline in the maritime area for a purpose other than that for which it was originally designed or constructed shall take place without authorisation or regulation by the competent authority of the relevant Contracting Party. Such authorisation or regulation shall be in accordance with the relevant applicable criteria, guidelines and procedures adopted by the Commission in accordance with subparagraph (d) of Article 10 of this Annex. This provision shall not be taken to permit the dumping of disused offshore installations or disused offshore pipelines in contravention of the provisions of this Annex.

ARTICLE 9

1. Each Contracting Party shall issue instructions to its maritime inspection vessels and aircraft and to other appropriate services to report to its authorities any incidents or conditions in the maritime area which give rise to suspicions that a contravention of the provisions of the present Annex has occurred or is about to occur. Any Contracting Party whose authorities receive such a report shall, if it considers it appropriate, accordingly inform any other Contracting Party concerned.

2. Nothing in this Annex shall abridge the sovereign immunity to which certain vessels are entitled under international law.

ARTICLE 10

For the purposes of this Annex, it shall, inter alia, be the duty of the Commission:

(a) to collect information about substances which are used in offshore activities and, on the basis of that information, to agree lists of substances for the purposes of paragraph 1 of Article 4 of this Annex;

(b) to list substances which are toxic, persistent and liable to bioaccumulate and to draw up plans for the reduction and phasing out of their use on, or discharge from, offshore sources;

(c) to draw up criteria, guidelines and procedures for the prevention of pollution from dumping of disused offshore installations and of disused offshore pipelines, and the leaving in place of offshore installations, in the maritime area;

(d) to draw up criteria, guidelines and procedures relating to the placement of disused offshore installations and disused offshore pipelines referred to in Article 8 of this Annex, with a view to preventing and eliminating pollution.

ANNEX IV

ON THE ASSESSMENT OF THE QUALITY OF THE MARINE ENVIRONMENT

ARTICLE 1

1. For the purposes of this Annex "monitoring" means the repeated measurement of:

(a) the quality of the marine environment and each of its compartments, that is, water, sediments and biota;

(b) activities or natural and anthropogenic inputs which may affect the quality of the marine environment;

(c) the effects of such activities and inputs.

2. Monitoring may be undertaken either for the purposes of ensuring compliance with the Convention, with the objective of identifying patterns and trends or for research purposes.

ARTICLE 2

For the purposes of this Annex, the Contracting Parties shall:

(a) cooperate in carrying out monitoring programmes and submit the resulting data to the Commission;

(b) comply with quality assurance prescriptions and participate in intercalibration exercises;

(c) use and develop, individually or preferably jointly, other duly validated scientific assessment tools, such as modelling, remote sensing and progressive risk assessment strategies;

(d) carry out, individually or preferably jointly, research which is considered necessary to assess the quality of the marine environment, and to increase knowledge and scientific understanding of the marine environment and, in particular, of the relationship between inputs, concentration and effects;

(e) take into account scientific progress which is considered to be useful for such assessment purposes and which has been made elsewhere either on the initiative of individual researchers and research institutions, or through other national and international research programmes or under the auspices of the European Economic Community or other regional economic integration organisations.

ARTICLE 3

For the purposes of this Annex, it shall, inter alia, be the duty of the Commission:

(a) to define and implement programmes of collaborative monitoring and assessment-related research, to draw up codes of practice for the guidance of participants in carrying out these monitoring programmes and to approve the presentation and interpretation of their results;

(b) to carry out assessments taking into account the results of relevant monitoring and research and the data relating to inputs of substances or energy into the maritime area which are provided by virtue of other Annexes to the Convention, as well as other relevant information;

(c) to seek, where appropriate, the advice or services of competent regional organisations and other competent international organisations and competent bodies with a view to incorporating the latest results of scientific research;

(d) to cooperate with competent regional organisations and other competent international organisations in carrying out quality status assessments.

La Convention OSPAR : une tentative de réglementation globalisante

La signature à Paris, le 22 septembre 1992, de la Convention pour la prévention de la pollution de l'Atlantique du Nord-Est (ci-après Convention OSPAR) marque très certainement un nouvel élan dans la lutte contre les pollutions notamment en Mer du Nord. On considère généralement qu'elle opère une fusion des Conventions de Paris et d'Oslo. Certes, la Convention OSPAR est destinée à remplacer, dès son entrée en vigueur, les Conventions de Paris et d'Oslo (article 31-1). Les décisions et recommandations adoptées en application de ces Conventions "continuent d'être applicables et conservent le même caractère juridique" qu'auparvant (article 31-2).

Mais la Convention OSPAR est destinée à être beaucoup plus qu'une fusion. Elaborée pour pallier aux lacunes des Conventions précédemment citées, elle vise à permettre la mise en place d'un "programme progressif et cohérent" (préambule, dixième alinéa) de protection de l'environnement marin, d'une architecture qui n'existait pas auparavant. Car, en effet, "... à la différence de l'approche globale suivie pour protéger la mer Baltique et l'approche cadre utilisée pour développer les Conventions régionales conclues sous l'égide du PNUE, il [restait] de ce survol qu'aucun projet architectural n'[avait] guidé les promoteurs des Conventions européennes relatives à la lutte contre les pollutions du milieu marin" (PRAT (J.-L.) : Le système spécifique de l'Europe du Nord-Est, in S.F.D.E., Droit de l'environnement marin, Développements récents, Coll. Brest, Economica 1993, pp 83-102)

La Convention OSPAR se présente comme une Convention cadre, technique désormais classique du droit de l'environnement. Des obligations générales sont énoncées dans ce qui constitue le "corps" de la Convention. Puis, successivement, la Convention énumère les différentes sources de pollution qu'elle entend contribuer à éliminer : pollutions provenant de sources telluriques (article 3), due aux opérations d'immersion et d'incinération (article 4), de source offshore (article 5), ayant d'autres sources (article 7). Elle établit également un cadre pour la recherche scientifique et technique, qu'elle désire soutenir (article 8) et organise l'accès à l'information (article 9). Une commission est mise en place (OSPARCOM), qui remplace simplement les commissions d'Oslo et de Paris.

Quatre annexes (prévention et suppression de la pollution provenant de sources telluriques, prévention et suppression de la pollution par les opérations d'immersion et d'incinération, prévention et suppression de la pollution provenant de sources offshore et évaluation de la qualité du milieu marin) entérinent les décisions et recommandations adoptées en application des Conventions de Paris et d'Oslo. Il faut noter que la pollution de sources offshore n'est plus comprise dans la définition de la pollution tellurique, mis qu'elle est appréhendée comme pollution à part entière, nécessitant un traitement spécifique.

Dans la lignée de la Convention de Montego Bay, la Convention OSPAR dispose que "les Parties Contractantes prennent toute le mesures possibles afin de prévenir et de supprimer la pollution ainsi que les mesures nécessaires à la protection de la zone maritime contre les effets préjudiciables des activités humaines, de manière à sauvegarder la santé de l'homme et à préserver les écosystèmes marins" (Article 2 de la Convention OSPAR) (Il est intéressant de noter que la convention ospar ne reprend pas ici l'expression consacrée par la Convention sur le droit de la mer de "prévenir, réduire et maîtriser". L'ambition est ici, semble-t-il plus grande, puisque l'objectif, est la suppression de la pollution).

La Convention OSPAR énonce des obligations générales à la charge des Parties Contractantes, notamment celle de prévenir et supprimer la pollution (article 2-1-a) et celle de mettre en oeuvre les mesures qu'elles ont adoptées et de donner plein effet aux dispositions de la Convention et aux décisions et recommandations nécessaires à son application (article 2-4).

L'utilisation du principe du pollueur-payeur, "selon lequel les frais résultant des mesures de prévention, de réduction de la pollution et de lutte contre celle-ci doivent être rapportés par le pollueur" (article 2-b) est une mesure importante. Faire supporter les coûts de dépollution et de remise en état aux pollueur est certainement une façon de ne pas aboutir à une distorsion de concurrence absurde et pourtant fréquente : produire en polluant coûte moins cher que produire sans polluer ; dans ces conditions, rares sont les industriels qui font le choix de produire sans polluer, puisque cela leur permet de produire moins cher, donc de se trouver dans une situation concurrentielle extrêmement favorable face à celui qui a choisi de produire sans polluer. Le principe pollueur payeur permet de rétablir l'équilibre. Il faut cependant noter qu'il intervient essentiellement dans un mécanisme de réparation pour les préjudices environnementaux et sociaux que la pollution a entraîné. Il s'agit surtout de réparer un préjudice, (soit en indemnisant les victimes, soit en procédant à la remise en état du site), ce qui n'est pas dans notre propos. L'obligation d'appliquer le principe de précaution (A) et l'utilisation des concepts de meilleurs pratique environnementale et meilleure technologie disponible (B) se posent, quant à eux, de manière fort intéressante, dans le domaine de la lutte contre les pollutions.

I - L'application du principe de précaution

Introduit au niveau ministériel par la seconde conférence internationale sur la protection de la Mer du Nord (1987), le principe de précaution est encore, sur le plan international mondial, un principe doctrinal, qui n'a pas acquis force de coutume international, même si il est "plus qu'un principe non obligatoire" (NOLLKAEMPER (A.) : Agenda 21 and prevention of sea-based marine pollution. A spurious relationship ? Marine Policy 1993, pp. 537-556) ou s'il "émerge comme un principe de droit international coutumier" (NOLLKAEMPER (A.) : Agenda 21 and prevention of sea-based marine pollution. A spurious relationship ? Marine Policy 1993, pp. 537-556).

Le principe de précaution est défini par la Convention OSPAR comme "le principe selon lequel des mesures de prévention doivent être prises lorsqu'il y a des motif raisonnables de s'inquiéter du fait que des substances ou de l'énergie introduites, directement ou indirectement, dans le milieu marin, puissent entraîner des risques pour la santé de l'homme, nuire aux ressources biologiques et aux écosystèmes marins, porter atteinte aux valeurs d'agréments ou entraver d'autres utilisations légitimes de la mer, même s'il n'y a pas de preuves concluantes d'un rapport de causalité entre les apports et les effets" (article 1-2-a).

Cette définition signifie que lorsque ces inquiétudes se font jour, il convient de ne pas prendre le risque de dégrader l'environnement, mais d'attendre tant qu'aucune preuve scientifique ne vient démontrer un rapport de causalité entre une émission et un effet. Le principe de précaution consiste donc en un renversement de la charge de la preuve. Cela signifie que l'absence de certitudes scientifiques concernant le caractère toxique ou nocif d'une substance ne doit pas être utilisé comme une excuse pour rejeter cette substance dan la nature. Bien au contraire, le principe de précaution implique que, pour qu'une substance soit rejetée dans la nature, la preuve soit faite de son innocuité pour l'environnement. Les gouvernement doivent donc ne "pas préjuger des capacités d'assimilation de la nature... afin d'établir des réserves pour les usages futurs incluant ceux des générations futures" (GÜNDLING (L.) : The status in international law of the prinicple of precautionnary action, in FREESTONE (D.), IJLSTRA (T.) eds : The North Sea : Perspectives on Regional Environmental Cooperation, special issue of the IJECL, Graham et Trotman/Martinus Nijhoff, London, 1990, pp. 23-30).

Le principe de précaution est très certainement une innovation majeure et un principe essentiel du droit de l'environnement. Il s'agit cependant, également "d'un des développements les plus problématiques du droit de l'environnement" (MACDONALD (J. M.) : Appreciating the precautionnary principle as an ethical evolution in ocean management, (26) ODIL 1995, p. 276). Quel est son contenu spécifique ? Quelles sont ses fonctions ? Requiert-il des instruments spécifiques ou une approche réglementaire et lesquels ? Quelles sont les limitations, conceptuelles ou autres, du principe ?

Malgré ces réserves, il apparaît très nettement que le principe de précaution permet une meilleure prise en compte des risques courus par l'environnement et permet, également, de les éviter, en fondant une action sur l'ignorance.

Totalement différants sont les concepts de meilleure pratique environnementale et de meilleur technologie disponible qui se fondent, eux sur la connaissance

II - Les concepts de meilleure pratique environnementale et de meilleure technologie disponible

Décrits comme "Pandora's box of critical legal and policy issues" (NOLLKAEMPER (A.) : Balancing the protection of marine ecosystems with economic benefits from land-based activities : the quest for international legal barriers, (27) Ocean Development and International Law, 1996, pp. 153-179), les concepts de meilleure pratique environnementale (Ci-après BEP de son intitulé en langue anglaise : Best Environmental Practice) et de meilleure technologie disponible (Ci-après BAT, de son intitulé en langue anglaise : Best Available Technology) constituent aujourd'hui la stratégie dominante de la lutte contre la pollution.

Dans l'appendice 1 relatif aux Critères de définition des pratiques et techniques visées au paragraphe 3-b-1 de l'article 2 de la Convention (OSPAR), il est rappelé que l'application de la BAT vie à l'utilisation de technologies "propres", non productrices de déchets. La BAT est définie par la Convention comme "les tous derniers progrès (état de la technique) dans les procédés, les installations ou les méthodes d'exploitation, permettant de savoir si une mesure donnée de limitation des rejets, des émissions et des déchets et appropriée sur un plan pratique" (Appendice 1, § 2-1). La meilleure pratique environnementale "désigne la mise en oeuvre de la combinaison la mieux adapte de mesures et de stratégies de lutte environnementales" (Appendice 1, § 6-1).

Des critères sont délivrés pour déterminer les meilleures techniques disponibles: "...une attention particulière est accordée :

(a) aux procédés, installations ou méthodes d'exploitation comparables, récemment prouvés et ayant donné de bons résultat

(b) aux progrès techniques et à l'évolution des connaissances et de la compréhension scientifiques

(c) à la faisabilité économique de ces techniques

(d) aux date limite de mise en service aussi bien dans les installations nouvelles que dans les installations existantes

(e) à la nature et au volume des rejets et des émission en question"

De même pour les meilleures pratiques environnementales pour la détermination desquelles seront "au moins" examinés le danger pour l'environnement d'un produit et de sa production, son usage et son élimination, sa substitution par un processus ou des substances moins polluants, le bénéfice potentiel pour l'environnement, ... La Convention y ajoute une longue liste de mesures relatives à l'information et à l'éducation du public sur les conséquences environnementales de la production, de l'utilisation et de l'élimination des produits et activités.

Ainsi que le remarque André NOLLKAEMPER "l'obligation d'appliquer les meilleures pratiques environnementales est contextuelle à l'extrême. Ce qui constitue les meilleures pratiques environnementales dépend d'un processus d'équilibrage d'aspects variés, parfois contradictoires, incluant des implications sociales et économiques. Aucune activité n'est a priori incompatible avec l'obligation d'utiliser les meilleures pratiques environnementales et, théoriquement, dans un contexte particulier, l'usage de fertilisants peut être qualifié de la sorte" (NOLLKAEMPER (A.) : Balancing the protection of marine ecosystems with economic benefits from land-based activities : the quest for international legal barriers, (27) Ocean Development and International Law, 1996, pp. 153-179).

L'obligation d'appliquer les meilleures pratiques environnementales et les meilleures technologies disponibles n'exclue pas des considérations de coût, ce qui implique des équilibrages entre la fiabilité économique et la technologie. La Convention OSPAR oblige les Parties Contractantes à exiger individuellement l'usage des meilleures pratiques environnementales et des meilleures technologies disponibles. Par conséquent, chaque gouvernement a la possibilité de déterminer seul l'importance qu'il accorde à l'à-propos pratique ou à la faisabilité économique. Un tel pouvoir discrétionnaire laissé aux Etats risque fort de faire perdre aux concepts de meilleure pratique environnementale et de meilleure technologie disponible toue portée pratique. Il s'agit ici d'une faille dans le système organisé par la Convention OSPAR. Les membres de la Convention se veulent pourtant rassurants, estimant que les Etats en viendront rapidement à une concertation (au sein de l'OSPARCOM) pour déterminer conjointement les meilleures pratiques environnementales et les meilleures technologies disponibles. Le risque est que, même si, effectivement, il est à peu près sur que la commission OSPAR détermine ces pratiques et technologies, il ne s'agisse que de recommandations (NOLLKAEMPER (A.) : Balancing the protection of marine ecosystems with economic benefits from land-based activities : the quest for international legal barriers, (27) Ocean Development and International Law, 1996, pp. 153-179). L'exemple de la pollution opérationnelle des plates-formes d'exploration et d'exploitation en Mer du Nord fournit un exemple de concertation de Etats, exemple qui est loin d'être probant et laisse craindre une certaine stagnation de l'organisation, en Mer du Nord, de la lutte contre les pollutions. Rappelons que la Convention OSPAR n'est toujours pas entree en vigueur.

PRÉAMBULE
TEXTE DE LA CONVENTION (1)
TEXTE DE LA CONVENTION (2)

DECLARATIONS ACCOMPANYING THE SIGNATURES OF DENMARK AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND TO THE CONVENTION FOR THE PROTECTION OF THE MARINE ENVIRONMENT OF THE NORTH-EAST ATLANTIC

Denmark's signature to the Convention for the Protection of the Marine Environment of the North-East Atlantic was accompanied by the following declaration: The present Convention is subject to ratification and with reservation for application to the Faroe Islands and Greenland

The United Kingdom's signature to the Convention for the Protection of the Marine Environment of the North-East Atlantic was accompanied by the following declaration:

The Government of the United Kingdom of Great Britain and Northern Ireland declares its understanding of the effect of the paragraph 3 of Article 3 of Annex II to the Convention to be amongst other things that, where the Commission takes a decision pursuant to Article 13 of the Convention, on the prolongation of the prohibition set out in subparagraph (3)(a), those Contracting Parties who wish to retain the option of the exception to that prohibition as provided for in subparagraph (3)(b) may retain that option, provided that they are not bound, under paragraph 2 of Article 13, by that decision

APPENDICE2

DECISIONS ET RECOMMANDATIONS COMMENTAIRE

DECISIONS AND RECOMMANDATIONS OF THE OSLO AND PARIS COMMISSIONS

OSCOM Code of Practice for the Dumping of Acid Wastes from the TiO2 Industry at Sea
1977 Paris

OSCOM Recommendation on the Disposal of Pipes, Metal Shavings and Other Material Resulting from Offshore Hydrocarbon Exploration and Exploitation Operations
1977 Paris

OSCOM Code of Practice on the Incineration of Wastes at Sea
1977 Paris

OSCOM Provisional Prior Consultation Procedure for the Incineration of Wastes at Sea
1978 The Hague

PARCOM Recommendation on the Phasing out of Aldrin, Dieldrin and Endrin
1978 The Hague

PARCOM Decision upon a Line of Action for a Dual Approach to Reducing Mercury Discharges (EQO and UES Approaches) (Valid for a period of 5 years)
1978 The Hague

PARCOM Recommendation that No New Waste Brine Plants be Built
1978 The Hague

Acceptance of the Provisional Target Standard of 40ppm for Discharges from Offshore Oil Installations
1978 The Hague

OSCOM Recommendation to Take all Possible Steps to Reduce at Source the Contamination of Sewage Sludge with Heavy Metals
1980 Stockholm

Methods of Monitoring Dumping Grounds for Sewage Sludge and Dredged Material
1980 Stockholm

Methods of Monitoring Sea Areas where Titanium Dioxide Wastes are Dumped
1980 Stockholm

Designation of a common incineration site
1980 Stockholm

PARCOM Recommendation on Synthetic,Persistent and Floating Materials
1980 Stockholm

PARCOM Recommendation on Discharges from Platforms Resulting from Exploration Activities
1980 Stockholm

PARCOM Agreement on Monitoring in the Vicinity of Platforms
1980 Stockholm

PARCOM Decision on Limit Values for Mercury Emissions in Water from Existing and New Brine Recirculation Chloralkali Plants (exit of the purification plant)

1980 Stockholm

PARCOM Decision on Environmental Quality Standard for Mercury in Organisms
1980 Stockholm

Adoption of a "standstill principle" for mercury concentrations in water
1980 Stockholm

PARCOM Binding Guidelines for Discharges from New Refineries
1980 Stockholm

OSCOM Decision to Ask Norway to Convene a Diplomatic Conference for the Purpose of Amending the Convention by including Rules of Incineration at Sea as a new Annex IV
1981 Brussels

PARCOM Recommendations on the Production, Collection, Regeneration and Disposal of Waste Oils
1981 Brussels

PARCOM Decision on the Notification of Chemicals Used Offshore
1981 Brussels

PARCOM Decision on Limit Values for Existing Waste Brine Chlor-Alkali Plants
1981 Brussels

PARCOM Decision on Limit Values for Existing Brine Recirculation Chlor-Alkali Plants (exit of the factory site)
1981 Brussels

PARCOM Recommendation on Other Land-Based Sources of Mercury Pollution (Thermometers, Batteries, Dental Filters)
1981 Brussels

OSCOM Code of Practice for the Incineration of Wastes at Sea Including a Revised Prior Consultation Procedure for Incineration
1982 Copenhagen

PARCOM Decision on New Chlor-Alkali Plants Using Mercury Cells
1982 Copenhagen

PARCOM Recommendation on Other Land-Based Sources of Mercury Pollution
1982 Copenhagen

Revised Prior Consultation Procedure for the Dumping of Wastes at Sea
1983, Berlin

Principles for Controlling Repairs to Incineration Vessels
1983 Berlin

PARCOM Recommendation on the Phasing Out of PCBs and PCTs
1983 Berlin

PARCOM Recommendation on Reduction Programmes for Discharges from Existing Refineries
1983 Berlin

Prior Notification Procedure for Specific Permits

1984 Oslo

PARCOM Recommendation on Pollution by Titanium Dioxide Wastes
1984 Oslo

PARCOM Recommendations for Reducing Cadmium Pollution
1984 Oslo

PARCOM Decision on the Use of Oil Based Muds
1984 Oslo

PARCOM Declaration of Intent on Phasing Out PCBs and PCTs in New Equipment
1984 Oslo

PARCOM Recommendation on Radioactive Discharges from Nuclear Reprocessing Plants
1984 Oslo

PARCOM Decision to ask France to convene a Diplomatic Conference for the purpose of amending the Convention by extending its scope to include pollution of the maritime area through the atmosphere
1985 Brussels

PARCOM Decision to Phase Out the Use of Aldrin, Dieldrin and Endrin
1985 Brussels

PARCOM Recommendation on Limit Values for Mercury Emissions in Water from Existing Brine Recirculation Chlor-Aalkali Plants (exit of factory site)
1985 Brussels

PARCOM Recommendation on Radioactive Discharges from all Nuclear Industries into the Marine Environment
1985 Brussels

PARCOM Decision 85/1: Programmes and Measures of 31 December 1985 on Limit Values and Quality Objectives for Mercury Discharges by Sectors other than the Chlor-alkali Industry
1985 Brussels

PARCOM Decision 85/2: Programmes and Measures on Limit Values and Quality Objectives for Cadmium Discharges

1985 Brussels

OSCOM Decision 85/1 Concerning Annexes I and II to the Convention
1985 Mariehamn

OSCOM Decision 85/2 on the Control of Cleaning Operations Carried out on Board Marine Incineration Facilities at Sea
1985 Mariehamn

Confirmation of common incineration site
1985 Mariehamn

OSCOM Recommendation 86/1 concerning the Control of the Execution of Dumping Operations at Sea
1986 Madrid

Simplified procedure for the adoption of the EEC Directive on HCH
1986 Madrid

PARCOM Agreement on "grey list" substances for priority action
1986 Madrid

PARCOM Decision 86/1 on Discharges Resulting from Exploration Activities
1986 Madrid

PARCOM Decision 86/2 on the Use of Oil Based Muds
1986 Madrid

PARCOM Recommendation of a 40 mg/l Emission Standard for Platforms
1986 Madrid

PARCOM Recommendation 87/1 on the Use of Tributyl-Tin Compounds
1987 Cardiff

PARCOM Recommendation 87/2 on Discharges from Reception Facilities and Oil Terminals
1987 Cardiff

PARCOM Recommendation 87/3 on the Construction of New Nuclear Reprocessing Plants
1987 Cardiff

PARCOM Recommendation 87/4 on Radioactive Discharges
1987 Cardiff

OSCOM Decision that the Riparian States of the North Sea will Apply the Principles on the Reduction and Cessation of Dumping of Polluting Materials as Set Out in the North Sea Conference Declaration
1988 Lisbon,

OSCOM Decision 88/1 on the Termination of Incineration at Sea
1988 Lisbon

OSCOM Recommendation 88/1 of 24 June 1988 concerning the Export of Wastes for Disposal at Sea
1988 Lisbon

PARCOM Agreement to Strictly Control Discharges of Mothproofing Agents
1988 Lisbon

PARCOM Recommendation 88/1 on Measures to Reduce Organotin Compounds Reaching the Aquatic Environment through Docking Activities
1988 Lisbon

PARCOM Decision 88/1 on the Use of Oil Based Muds
1988 Lisbon

PARCOM Recommendation 88/2 on the Reduction in Inputs of Nutrients to the Paris Convention Area
1988 Lisbon

PARCOM Recommendation 88/3 as a First Approach to the Use of Best Available Technology
1988 Lisbon

PARCOM Recommendation 88/4 on Nuclear Reprocessing Plants
1988 Lisbon

PARCOM Recommendation 88/5 on Radioactive Discharges
1988 Lisbon

Decision to ask Norway to convene a Diplomatic Conference for the purpose of amending the Convention by including dumping in internal waters
1989 Dublin

OSCOM Decision 89/1 on the Reduction and Cessation of Dumping Industrial Wastes at Sea
1989 Dublin

Prior Justification Procedure for the Dumping of Industrial Wastes
1989 Dublin

PARCOM Recommendation 89/1 on the Principle of Precautionary Action
1989 Dublin

PARCOM Recommendation 89/2 on the Use of Best Available Technology
1989 Dublin

PARCOM Recommendation 89/3 on Programmes and Measures for Reducing Mercury Discharges from Various Sources
1989 Dublin

PARCOM Recommendation 89/4 on a Coordinated Programme for the Reduction of Nutrients
1989 Dublin

PARCOM Recommendation 89/5 Concerning Refineries
1989 Dublin

OSCOM Decision 90/1 on the Cessation of Dumping of Sewage Sludge at Sea 1990 Reykjavik

Methods of Monitoring Dumping Grounds for Sewage Sludge
1990 Reykjavik

OSCOM Decision 90/2 on the Termination of Incineration at Sea
1990 Reykjavik

PARCOM Recommendation 90/1 on the Definition of the Best Available Technology for Secondary Iron and Steel Plants
1990 Reykjavik

PARCOM Decision 90/1 on the Reduction of Discharges of Chlorinated Organic Substances from the Production of Bleached Kraft Pulp and Sulphite Pulp
1990 Reykjavik

PARCOM Decision 90/2 on Programmes and Measures for Mercury and Cadmium Containing Batteries
1990 Reykjavik

PARCOM Decision 90/3 on Reducing Atmospheric Emissions from Existing Chlor-Alkali Plants
1990 Reykjavik

PARCOM Decision 90/4 on Phasing Out of PCBs
1990 Reykjavik

PARCOM Recommendation 90/2 on Information and Consultation
1990 Reykjavik

PARCOM Recommendation 90/3 on Reporting on Progress in Applying the Best Available Technology on Radioactive Discharges from All Nuclear Industries
1990 Reykjavik

OSCOM Recommendation 91/1 on the Management of Dredged Material
1991 The Hague

PARCOM Recommendation 91/1 on the Definition of Best Environmental Practice
1991 The Hague

PARCOM Recommendation 91/2 on the Definition of Best Available Technology in the Primary Iron and Steel Industry
1991 The Hague

PARCOM Recommendation 91/3 on Measures to be Carried out in order to Reduce Pollution from Secondary Iron and Steel Production
1991 The Hague

PARCOM Recommendation 91/4 on Radioactive Discharges
1991 The Hague

PARCOM Recommendation 91/5 on the Disposal of Radioactive Wastes into Sub-Seabed Repositories Accessed from Land
1991 The Hague

PARCOM Decision 92/1 on the Reduction of Discharges of Chlorinated Organic Substances from the Production of Bleached Kraft and Sulphite Pulp
1992 Paris

PARCOM Decision 92/2 on the Use of Oil-Based Muds
1992 Paris

PARCOM Decision 92/3 on the Phasing Out of PCBs and Hazardous PCB Substitutes
1992 Paris

PARCOM Decision 92/4 on the Phasing Out of the Use of Hexachlorethane (HCE) in the Secondary Aluminium Industry and in the Primary Aluminium Industry with Integrated Foundries
1992 Paris

PARCOM Recommendation 92/1 on Best Available Technology for Plants Producing Anodes and for New Electrolysis Installations in the Primary Aluminium Industry
1992 Paris

PARCOM Recommendation 92/2 Concerning Limitation of Pollution from New Primary Iron and Steel Production Installations
1992 Paris

PARCOM Recommendation 92/3 Concerning Limitation of Pollution from New Secondary Steel Production and Rolling Mills
1992 Paris

PARCOM Recommendation 92/4 on the Reduction of Emissions from the Electroplating Industry
1992 Paris

PARCOM Recommendation 92/5 Concerning Best Available Technology in the Pharmaceutical Industry
1992 Paris

PARCOM Recommendation 92/6 on Best Available Technology for Produced Water Management on Offshore Gas and Oil Installations
1992 Paris

PARCOM Recommendation 92/7 on the Reduction of Nutrient Inputs into Areas Where these Inputs are Likely, Directly or Indirectly, to Cause Pollution
1992 Paris

PARCOM Recommendation 92/8 on Nonylphenol-Ethoxylates
1992 Paris

PARCOM Recommendation 93/1 on the Limitation of Pollution from Existing Primary Iron and Steel Production Installations
1993, Berlin

PARCOM Decision 93/1 on the Phasing Out of the Use of Hexachloroethane (HCE) in the non-Ferrous Metal Industry
1993, Berlin

PARCOM Recommendation 93/2 on Further Restrictions on the Discharge of Mercury from Dentistry
1993, Berlin

PARCOM Recommendation 93/3 on the Elaboration of National Action Plans and Best Environmental Practice for the Reduction of Inputs to the Environment of Pesticides from Agricultural Use
1993, Berlin

PARCOM Recommendation 93/4 on the Phasing Out of Cationic Detergents DTDMAC, DSDMAC and DHTDMAC in Fabric Softeners
1993, Berlin

PARCOM Recommendation 93/5 on Increases in Radioactive Discharges from Nuclear Reprocessing Plants
1993, Berlin

PARCOM Recommendation 94/1 on Best Available Techniques for New Aluminium Electrolysis Plants
1994, Karlskrona

PARCOM Recommendation 94/2 on Best Available Techniques and Best Environmental Practice for the Integrated and Non-Integrated Sulphite Paper Pulp Industry

1994, Karlskrona

PARCOM Recommendation 94/3 on Best Available Techniques and Best Environmental Practice for the Integrated and Non-Integrated Kraft Pulp Industry
1994, Karlskrona

PARCOM Recommendation 94/4 on Best Available Techniques for the Organic Chemical Industry
1994, Karlskrona

PARCOM Recommendation 94/5 Concerning Best Available Techniques and Best Environmental Practice for Wet Processes in the Textile Processing Industry
1994, Karlskrona

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