

IMPLEMENTATION OF INTERNATIONAL LAWS ON MARINE POLLUTION: CHALLENGES AND PROSPECTS

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ABSTRACT

International laws are made by sovereign states to regulate their relationship and activities. Marine pollution is an offence perpetrated by sovereign nations, corporate entities and individuals. Marine pollution is not only prohibited under international law, also penalties for such acts are also prescribed. The problem or question to be addressed here is: to what extent has the international law on marine pollution been successfully implemented or applied to relevant cases of marine pollution. The main objective of this work is to examine some of the challenges militating against effective implementation of the international instruments against marine pollution and to recommend more effective measures to promote the prevention of marine pollution. It will be of interest to the members of the international community, especially the less developed countries to know that the implementation of international laws on marine pollution can be more effective and result oriented. This work will examine the causes of marine pollution, the effects of marine pollution, state responsibilities and liabilities for marine pollution under international law, the challenges of implementation of international laws against marine pollution and will provide recommendations for the achievement of better results in the prevention of marine pollution under international law. Primary and secondary sources of data collection will be relied on in this work including international instruments, judicial authorities, textbooks and relevant materials from internet sources. It is hereby recommended that more serious penalties such as economic sanctions should be adopted and enforced in appropriate circumstances against states violating international laws on marine pollution.

Keywords: Marine, Pollution, International, Law, Challenges, Implementation.

INTRODUCTION

The concept of International Law may be defined as the legal system governing the relationships between nations. It is the law of international relations embracing not only nations, but also such participants as international organizations and individuals (Garner, 1999, 835).

International Law comprises of those laws governing the legal relations between nations. They are rules and principles of general application dealing with the conduct of nations and of international organizations and with their relations *inter se*, as well as with some of their relations with persons, whether natural or juridical (Black, 2006). Pollution, on the other hand, may be defined as the contamination of the environment by a variety of sources including but not limited to hazardous substances, organic wastes and toxic chemicals (Black, 2006, 1312). It is derived from the word pollute, which means to corrupt or defile, especially to contaminate the soil, air or water with noxious substances (Garner, 1999, 1197).

To pollute is to introduce dirty or harmful substances to land, air, water etc. So that it is no longer pleasant or safe to use (Hornby, 2010, 1133). The word marine means pertaining to or relating to the sea; native to or formed by the sea, such as marine life, transacted at sea, doing duty or service at sea (Black, 2006, 967). It also describes something that is connected with the sea and the creatures and plants that live there (Hornby, 2010, 907). International Law on marine pollution involves the body of international legal instruments that describes what constitute marine pollution, prohibits acts and activities that constitutes marine pollution, creates and imposes obligations and duties on states to prevent marine pollution and prescribes sanctions on states that perpetrate marine pollution. The main purpose of this work is to examine the problems militating against effective implementation of international laws against marine pollution and to provide appropriate recommendations on how to effectively prevent or control marine pollution and how to effectively enforce the international laws against marine pollution. Thus, while the challenges will be seen from those factors frustrating the effective implementation of international laws on marine pollution, the prospects of its effective implementation will be seen in our recommendations.

THE CONCEPT OF RESPONSIBILITY AND LIABILITY IN INTERNATIONAL LAW

The major actors recognized in International Law are independent sovereign states, although individuals also have rights and liabilities in International law. This is the bases of the concept of legal personality in International Law and the concept of subjects of International Law. The responsibilities and liabilities created by international instruments against marine pollution are generally imposed on states. For this purpose, although activities constituting marine pollution are usually perpetrated by natural persons, however, responsibility is usually attributable to the nationality or state of the individual involved and liability is usually imposed on such state accordingly. The question of whether such activities constituting marine pollution were authorized by the state or not may not arise. State responsibility in international law stipulates that whenever one state commits an internationally unlawful act against another state, international responsibility is established between the two. A breach of an international obligation gives rise to a requirement for reparation (Shaw, 2017, 694).

The basic principle with respect to reparation or the remedying of a breach of an international obligation for which the state concerned is responsible, was laid down in the *Chorzow Factory* case (PCIJ Series A No 9, 1927), where it was held by the Permanent Court of International Justice that “the essential principle contained in the actual notion of an illegal act is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which could in all probability have existed if that act had not been committed”.

The essential characteristics of responsibility rests upon certain basic factors; first, the existence of an international legal obligation in force as between two particular states; secondly, that there has occurred an act or omission which violates that obligation and which is imputable to the state responsible, and finally, that loss or damage has resulted from the unlawful act or omission (Udo et al., 2017).

Article 1 of the International Law Commission (ILC), Article on State Responsibility, restates the general rule, which is popularly supported by practice that every internationally wrongful act of a state entails responsibility. Article 2 stipulates that there is an internationally wrongful act of a state when conduct consisting of an action or omission is attributable to the state under International Law and constitutes a breach of an international obligation of the state.

INTERNATIONAL LAW CONCEPT OF MARINE POLLUTION

The protection of the marine environment is a concept comprising two aspects – prevention of marine pollution and protection of marine living resources. In many international instruments, including the 1982 UN Convention on the Law of the Sea (UNCLOS) (Part XII Protection and Preservation of the Marine Environment), protection of the marine environment refers exclusively to its protection from pollution, while conservation of marine living resources is regulated separately (Andreyev & Bischchenko, 1988, 178).

Marine pollution refers to the emptying of chemicals or other particles into the ocean and its harmful effects (Adoga-Ikong et al., 2021). Marine environment is comprehensively defined in Article 1(4) of the 1982 Law of the Sea Convention (UNCLOS), as “The introduction by man, directly or indirectly of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate use of the sea, impairment of quality for use of sea water and reduction of amenities”. This definition was initially proposed by the Joint Group of Experts on the Scientific Aspects of Marine Pollution (GESAMP) in 1969. It was subsequently approved by the Intergovernmental Oceanographic Commission of UNESCO (IOC). The definition was also later adopted by the 1972 Stockholm Conference on the Human Environment, before it was incorporated into several conventions on marine environmental protection and the 1982 UNCLOS (Andreyev & Bischchenko, 1988, 180).

Pollutants are categorized into three groups under the International Convention for Prevention of Pollution from Ships (MARPOL Convention). (1) Annex 1 cites particularly dangerous substances such as chlorine-containing organic compounds, highly radioactive wastes, mercury, etc. (2) Annex II lists the dumping of wastes containing “considerable amounts” of the less harmful substances, such as arsenic, lead, copper, etc. (3) Annex III talks about the dumping of all other wastes and matter (other than those listed in Annexes I and II). In respect of pollutants listed in Annexes I above, the dumping of wastes containing such substances is prohibited in principle. The dumping of wastes listed in Annexes II above requires the prior special permission that can be issued by a competent national authority, while the dumping of wastes and all other matters as contained in Article III (which are wastes and matters other than those listed in Annex I and II requires prior general authorization by a competent national authority (Andreyev & Bischchenko, 1988, 189).

THE CAUSES AND SOURCES OF MARINE POLLUTION

There are basically four sources (causes) of marine pollution. They are; shipping, dumping, sea-bed activities and land activities” (Churchill & Lowe, 1988, 329).

(1) **Shipping:** Shipping is a major source of marine pollution. Ships that are driven by oil-burning diesel engines in most cases may discharge some oil with their bilge water, and the fumes discharged through their funnels into the atmosphere will eventually return to the sea. Some ships other than oil tankers also use their fuel tanks for ballast water and subsequently may discharge this oily ballast water into the sea. The few mean nuclear powered ships (mainly submarines) may also cause some pollution (Churchill & Lowe, 1988, 329). The greatest amount of pollution by ship however, comes from their cargoes. Oil products which is mostly transported by sea, is usually deliberately discharged at sea notably when sea water which had been pumped into an empty oil tanker to clean out the tanks or serve as ballast was later pumped out again. The growing number of ships has increased the risk of accidents by ships. Some quantity of oil, as well as other noxious cargoes likes chemicals, liquid gas and radioactive matter, enters the sea as a result of accidents, such as collisions and explosions (Churchill & Lowe, 1988, 329). For example, pollution of the sea which was occasioned by accidental explosion occurred in the case of *Torrey Canyon* incident (6 ILM 1967, 480) where a Liberian tanker foundered off the Cornish coast, spilling massive quantities of oil and polluting large stretches of the UK and French coastlines. As a last resort to prevent further pollution, British aircraft bombed the tanker and set it ablaze. Other case of marine pollution by ship were the sinking of the Argentine supply and tourism vessel Bahia Paraiso in 1989 and the sinking of the long liner Sudar Havis in June 1998 (Zovko, 2006).

(2) **Dumping**

Dumping by Article 1(5) of UNCLOS is the deliberate disposal at sea of waste or other material from vessels, aircraft, platforms other man-made structures as well as the deliberate disposal of these waste from vessels or platforms themselves. While emergency dumping is usually unplanned due to circumstances beyond control or unexpected situations, accidental dumping on the other hand is caused by collision ground drilling accident. Dumping of waste at sea can also be as a result

of land based activities. As waste disposal is becoming a challenge all over the world, there is an increasing tendency amongst states to simply dump their waste in the sea. Oceanic disposal of nuclear waste has led to environmental disaster (Ehirim et al., 2022).

Some wastes commonly dumped at sea include the following: industrial waste, radioactive waste and plastic packaging. In the 1950s and 1960s dumping at sea became an increasingly popular way of disposing of waste resulting from land-based activities. This was partly because of its relative cheapness and ease and partly as a reaction to the tightening up of pollution controls on land. Other types of wastes usually dumped at sea includes military materials (such as obsolete weapons and explosives), dredged materials (which accounts for about eighty to ninety percent of all dumping, most of which are “clean” and result from dredging to keep ports, rivers and other waterways open), sewage sludge and industrial waste (Churchill & Lowe, 1988).

Although waste is dumped from ships, international conventions treat dumping as a source of pollution separate from shipping. This is partly because dumping, unlike other pollution from ships, is always deliberate and usually the *raison d’etre* of a particular voyage and partly because dumping is an extension of pollution from land (although it has to be considered separately from land-based sources because the areas where dumping takes place are obviously juridically different from land territory) (Churchill & Lowe, 1988).

(3) Sea – bed activities

Some deliberate pollution results from installations for exploring and exploiting sea-bed oil and gas. For example, the disposal into the sea of domestic refuse, industrial debris and relatively small amounts of oily and chemical waste from drilling. Accidental pollution may result from blow-outs, collision between ships and installations or from the breaking of pipelines, either through natural wear and tear or through being fouled by a trawl. Sometimes pollutants may result from the mining of manganese nodules in the international sea-bed area, but until commercial production begins it is difficult to assess what the impact of this will be (Churchill & Lowe, 1988).

(4) Land-based and atmospheric pollution

Sea polluting matters from land includes sewage and industrial wastes discharged into rivers or directly into the sea, chemicals used as fertilizers and pesticides in agriculture running off the land into rivers, warm water from power stations (some of which are nuclear) built on coasts and estuaries and discharged into the atmosphere of vehicle exhaust, fumes and chimneys, (domestic and factory) and sprayed agricultural chemicals, all of which may eventually be precipitated into the sea (Churchill & Lowe, 1988). A major source of atmospheric pollution in Nigeria is natural and associated gas flaring. It leads to the production of acid rain and carbon emissions into the atmosphere which ultimately gets back into the sea. Other toxic substances released into the sea includes: lead, mercury, carbon dioxide, sulphur, and nitrogen oxides etc.

EFFECTS OF MARINE POLLUTION ON THE MARINE ENVIRONMENT AND LIVING RESOURCES OF THE SEA

It is obvious that most of the effects of pollution on the sea are adverse effects. For example, pollution poses grave danger to phytoplankton, which is crucial to marine life and which produces most of the planet's oxygen. Also, in the process of decomposition, some pollutants consume great amounts of oxygen in the sea which is essential to marine life. Some pollutants enable certain organisms to thrive at the expense of others, while some pollutants are accumulated in food chain, which is poisonous to the marine life (Andreyev & Bischchenko, 1988, 180). Oil can cause great danger such as killing of sea birds, fish and other marine life. Even if they are not killed by the oil, fish can suffer damage in other ways such as: skin cancer or dis-equilibrium. Also, the shell of the fish can be rendered inedible (Churchill & Lowe, 1988). Furthermore, chlorinated hydrocarbons and heavy metals such as lead, mercury, cadmium and radioactive wastes are absorbed by marine organisms often become concentrated as they move up to food chain, which affects the growth, reproduction and mortality of marine life. In some cases, it is unsafe for humans to consume fish containing these substances. For example, in the 1950s in Minamata Bay in Japan, forty-three people died and many suffered blindness, muscular weakness and brain damage after eating mercury contaminated fish (Churchill & Lowe, 1988).

When large amounts of nutrients, such as nitrates and phosphates contained mainly in agricultural run-off and sewage are broken down by the sea, it leads to over-fertilization followed by decomposition and de-oxygenation of the water. This effect is particularly recorded in enclosed seas such as the Baltic (Churchill & Lowe, 1988). When water is de-oxygenated, the eggs of fish will not hatch. Fish larvae are unable to develop and adult fish move to more richly oxygenated waters. Sewage may also cause tides of toxic phytoplankton which may kill or damage marine life and contaminate sea water used for swimming and other recreational activities, with micro-organisms dangerous to man (Churchill & Lowe, 1988, 331-332). Finally, the disposal of plastic from land and ships results in the littering of beaches and may seriously damage marine wildlife especially marine mammals, birds and reptiles, which may ingest fragments of plastic or become trapped in plastic packaging and fishing gear (Churchill & Lowe, 1988, 332).

SOME INTERNATIONAL INSTRUMENTS CREATING RESPONSIBILITY (OBLIGATIONS) FOR MARINE POLLUTION

The word “Responsibility” here refers to the duties and obligations towards the sea as created by the relevant international instruments which shall be examined below:

1) The Convention on the Dumping of Wastes at Sea

The Convention was amended in 1978 and the amendment came into effect on March 11, 1979, dealing with incineration of waste at sea. The 1993 amendment of the convention which came into effect on February, 20th, 1994 banned proscribed dumping of low-level radioactive wastes into the seas (Udo et al., 2017). Article 3 of the 1996 amendment provides that: “The polluter should, in principle, bear the cost of pollution”. Article 4 prohibits the contracting parties from dumping wastes or any other matter. Exceptions are contained in Article 8 which allows dumping in cases of “*force majeure*” by stress or weather or in any case which constitutes danger to human life or a real threat to vessels...”. Article 5 prohibits incineration of wastes at sea. Article 6 states that: “contracting parties shall not allow the export of waste or other matters to other countries for dumping or incineration at sea”. Article 9 calls upon the parties to designate an appropriate authority to issue permits in accordance with the protocol. The

IMO is responsible for the secretariat duties with respect to the protocol (Udo et al., 2017).

2) **The Basel Convention on the Control of Trans-boundary Movements of the Hazardous Wastes and their Disposal, of 1989:**

Although this is not primarily concerned with marine pollution, it is however, of some relevance. Article 4(2) of the convention requires state parties to ensure that the trans-boundary movement (which includes carriage by sea) of hazardous and other wastes is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement. Article 4(7) requires that such wastes be packaged, labeled and transported in conformity with relevant generally accepted and recognized rules and standards (Churchill & Lowe, 1988, 342).

3) **The Mediterranean Convention of 1976 (as amended).**

Article 6 provides that: Parties “shall take all measures in conformity with international law to prevent, abate, combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area caused by discharges from ships and to ensure the effective implementation in that Area of the rules which are generally recognized at the international level relating to the control of this type of pollution”. Article 10 provides that its parties are to prevent pollution caused by trans-boundary movement and the disposal of hazardous waste. Article 5(3) and 6(5) of a separate protocol on the subject adopted in 1996, requires its parties, *inter alia*, to reduce to minimum the trans-boundary movement of hazardous wastes (including therefore, the transport of waste by sea). Where such movement does take place it must be consistent with international safety standard (Churchill & Lowe, 1988, 343).

4) **The Convention relating to Intervention on the High Seas in cases of Oil Pollution Casualties**

Signed in 1969 and came into force in June 1975, it provides that “parties to the convention may take such measures on the high seas as maybe necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea by oil, following upon a maritime casualty or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences (Shaw, 2017, 553).

5) **The Declaration on the Human Environment**

Adopted by the UN Stockholm Conference in 1972, it stipulates that: “states have, in accordance with the Charter of the United Nations and the Principles of the International Law ... the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or to areas beyond the limits of national jurisdiction” (Andreyev & Bischchenko, 1988, 181). This is contained in Principle 21.

6) **The 1954 International Convention for the Prevention of Pollution of the Sea by Oil and the 1973 International Convention for the Prevention of Pollution from Ships**

The Convention was amended by the protocol of 1978 and it prohibits or restricts the dumping of pollutants resulting from normal exploitation. The amended Protocol also limits accidental pollution by establishing appropriate standards for the design, construction and equipment of ships (Andreyev & Bischchenko, 1988, 185).

7) **The 1973 International Convention for the Prevention of Pollution from Ships as amended by the Protocol of 1978 (the MARPOL 73/78 Convention):**

This instrument did not only supersede the 1954 International Convention for the Prevention of Pollution of the Sea by Oil (as amended), but also provides for substantial additional measures to prevent marine pollution from ships (Andreyev & Bischchenko, 1988, 187). MARPOL is one of the major international instruments proscribing marine pollution spurred by the major oil pollution incidents such as the Torrey Canyon disaster, off the South-West coast of the U. K. in 1967, after which the IMO embarked on an ambitious programme of work on marine pollution prevention and response and on liability and compensation. A key outcome was the adoption of the International Convention for the Prevention of Pollution from Ships, universally known as MARPOL in 1973 (Lim, 2016).

MARPOL addresses not only pollution by oil from ships (covered in Annex 1), but also noxious liquid substances such as chemicals, carried in bulk (Annex II), harmful substances carried in packaged form (Annex III), sewage discharge into the sea (Annex iv) and the disposal at sea of ship generated garbage (Annex v; Lim, 2016). The aim of the regulation set out in Annex III is to minimize the damage to the marine environment should these substances be introduced into the sea as a result of an accident (the

substances referred to are set out in the addendum to Annex II) Annex IV and V set allowable limits for the dumping of sewage and garbage from ships, restricting it by several conditions – distance from the shore, speed of the ship, etc (Andreyev & Bischchenko, 1988, 188). Under Annex V, a general prohibition applies to discharging all garbage from ships while discharging plastics is subject to a total globally applicable ban. In 1997, MARPOL added a new Annex IV, which deals with atmospheric pollution from ships (Lim, 2016).

- 8) **The United Nations Convention on the law of the Sea (UNCLOS) 1982.** This is another major international instrument for the prevention of marine pollution. Several provisions of UNCLOS provides for the prevention of marine pollution. For example, Article 56(b)(iii) preserves the jurisdiction of the coastal states to protect and preserve the marine environment. By Article 79, the rights of the states to lay and maintain submarine cables and pipelines is subject to the duty to take reasonable measures for the exploration of the continental shelf, the exploitation of its natural resources and the prevention, reduction and control of pollution from pipelines. Article 192 imposes an obligation on states to protect and preserve the sea.

By Article 193, states particularly developing countries are enjoined to desist from activities that might adversely affect the sea. Article 194 requires that states adopt measures necessary to prevent, reduce and control pollution using the best practicable measures at their disposal and in accordance with their capabilities. Under Article 195, a duty is imposed on states to avoid the transfer of pollution from one area to another. Article 198 imposes a duty on states to immediately notify other states deemed likely to be affected by any form of imminent pollution whether it emanates from activities or areas under the jurisdiction of the notifying state. By Article 202, states are required to cooperate in scientific research and information exchange and to jointly conduct the research necessary to establish appropriate scientific criteria for the formulation of rules to protect the seas.

Article 203 creates an obligation on states to provide scientific and technical assistance to developing states to enhance their capacity to protect the marine environment, specifically including the preparation of environmental assessment and assistance in minimizing the effect of major pollution incidents. By virtue of Article 206, states are required to assess the potential effects of activities which they have reasonable grounds

to believe may cause substantial pollution or significant harmful changes to the marine environment and to communicate such reports to the competent international organization.

LIABILITIES IMPOSED BY INTERNATIONAL LAW AGAINST MARINE POLLUTION

Liabilities for marine pollution created by International Law will be examined in the light of the consequences for violating the duties and obligations created to protect marine environment, and which takes various forms including: penalties, fines, compensation, arrest and prosecution etc. These will be examined as provided for in the various International Law.

a. The Convention on Civil Liabilities for Oil Pollution Damage

This Convention, which was signed in 1969 but which came into effect in June 1975 stipulates that the owners of ships causing oil pollution damage were to be liable to pay compensation (Shaw, 2017, 554). The provision was supplemented by the International Convention on the Establishment of International Fund for Compensation for Oil Pollution Damage in 1971, as an addendum to the 1969 Convention. The main purpose of the fund that was created by contributions from the recipients or owners of oil transported by sea is to ensure the fullest possible compensation for pollution damage to its victims and to mitigate the financial obligation and burden imposed on the ship owners under the 1969 Convention on Civil Liabilities (Andreyev & Bischchenko, 1988, 190). The Convention can be otherwise referred to as the (Fund Convention).

The ship owners liability however, is unlimited if the pollution is the result of the actual fault or privity of the ship owner. This is pursuant to Article V(2) of the Convention (Churchill & Lowe, 1988, 339). Furthermore, by Article VII(1) of the Convention, the owner of a ship registered in a state party to the Civil Liability Convention and carrying more than 2,000 tons of oil as cargo must maintain insurance or other financial security sufficient to cover the maximum liability for pollution damage caused under the convention (Churchill & Lowe, 1988, 360). Under Article IX (1) of the Convention, the victim of oil pollution damage may bring an action for compensation only in the courts of the contracting state in whose territory the damage occurred. By Article V(4) and

IX(3) of the Convention, the fund is to be distributed by the court among the claimants in proportion to the amounts of their established claims. Also by Article X, the judgment of the court in which the action is brought is to be recognized and enforceable in all states parties to the Civil Liability Convention (Churchill & Lowe, 1988, 360).

b. **The International Convention Relating to Intervention on the High Seas in cases of Oil Pollution Casualties** (otherwise called “the International Convention”).

By Article V of the Convention, excessive measures causing damage require the payment of compensation to the flag state (Churchill & Lowe, 1988, 354).

c. **The Paris Convention on Third Party Liability in the Field of Nuclear Energy of 1960 and the Vienna Convention on Civil Liability for Nuclear Damage of 1963**

Each of these conventions provides that the operator of a nuclear installation is the person exclusively liable for damage caused by a nuclear incident occurring in the course of the maritime carriage of nuclear materials (Churchill & Lowe, 1988, 362).

d. **The Territorial Sea Convention**

Article 19 of this Convention permits a coastal state to enforce violations of its pollution legislation committed in its territorial sea by foreign ships by arresting suspected vessels and instituting legal proceedings against them. This provision is consistent with customary International Law (Churchill & Lowe, 1988, 345).

e. **The MARPOL Convention**

By Article 4(1) and 6(4) of the convention, a flag state is under obligation to institute criminal proceedings against any of its vessels suspected of having violated the convention. Also, by Article 4(2) and 6(3) and (4) of the Convention, a coastal state party to the convention is under obligation to either take legal proceedings itself against a ship which has violated the convention’s provisions in its territorial sea or to forward to the authorities of the flag state such information and evidence as it has that a violation has occurred; and where they have sufficient evidence, the flag state authorities must bring legal proceedings against the vessel concerned as soon as possible (Churchill & Lowe, 1988, 345).

By Article 5(2), 6 and 7 of the Convention, where the inspection indicates a violation of the MARPOL Convention, the authorities of the flag state are to be informed and must take legal proceedings if there is sufficient evidence. Furthermore, under the convention, the port authorities may inspect a foreign vessel and where the condition

of the vessel warrants it, they may detain the vessel until it can proceed to sea without presenting an unreasonable threat of harm to the marine environment (Churchill & Lowe, 1988, 345).

f. **The United Nations Convention in the law of the Sea UNCLOS (1982)**

By Article 217, flag states are to lay down penalties adequate in severity to discourage violations and periodically inspect their vessels and investigate alleged violations of the rules by their vessels (Churchill & Lowe, 1988, 348). Article 220(2) stipulates that where a foreign vessel is suspected of having violated the coastal states anti-pollution legislation or applicable international rules relating to pollution from ships during its passage through the territorial sea, the coastal state may, without prejudice to its general enforcement competence in the territorial sea as set out in section 3 of part II of the Law of the Sea Convention, undertake physical inspection of the vessel and where the evidence so warrants, institute legal proceedings. Furthermore, under Article 233 the coastal state has a power of arrest under section 3 of part II. Where the pollution from the foreign vessel is “wilful and serious”, then the passage of that vessel is no longer innocent and so the coastal state has unrestricted enforcement jurisdiction. However, where the alleged violation of the coastal states legislation is committed by a vessel during the exercise of its right of transit passage through a strait, the coastal state may arrest the vessel only if the violation causes or threatens major damage to the marine environment of the straits.

By Article 220(3) to (8), where the alleged violation which took place in the Exclusive Economic Zone (EEZ) has resulted in a discharge causing major damage or threat of major damage to the coastal or related interests of the coastal state or to any resources of its territorial sea or Exclusive Economic Zone, the coastal state may arrest the vessel. The coastal state may also exercise its enforcement jurisdiction or powers in its territorial sea or EEZ in respect of violations not only of its own pollution rules but also of applicable international rules and standards (Churchill & Lowe, 1988, 349). Article 220 (1) follows customary law (though supplements it) as it introduces the concept of EEZ by providing that a state may arrest in one of its ports and prosecute a vessel which is alleged to have violated that state’s pollution laws or applicable international rules in its territorial sea or EEZ.

Article 218 is however innovatory as it provides that a port state may also take legal proceedings against a vessel in one of its ports that is alleged to have discharged pollution matter outside that state's territorial sea or EEZ in violation of applicable international rules and standards established through competent international organization or general diplomatic conference. The port state must not take legal proceedings where the discharge occurred in the internal waters, territorial sea or EEZ of another state unless that state or the flag state so request (Churchill & Lowe, 1988, 350). Finally, Article 235(2) provides that: "states shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction".

THE CHALLENGES OF IMPLEMENTING INTERNATIONAL LAWS ON MARINE POLLUTION

The challenges or problems militating against effective implementation of International instruments on marine pollution are the same problems undermining the implementation of international laws generally. These problems are numerous, some of which will be briefly identified here. One of such problem is the slow pace of domestic legislative and implementation (administrative) procedures of state signatories to international instruments. In many cases, after signing an international instrument, some states are slow or reluctant to domesticate such laws in their countries for such laws to become binding effect in the relevant state.

The delay may be informed by a change in representatives (officials) who participated in the process of adopting the instrument or a change in government policies and priorities leading to a diversion of preference and interest. For example, with regards to the 2001 Bunkers Convention, Australia was the first state to make a proposal for such an international instrument to be enacted in 1994 and was part of the initiative. Later on, she was also part of the negotiation team for the convention until it was adopted in 2001. However, Australia is yet to ratify the Bunkers Convention of 2001 till date (Zovko, 2006).

Also, the overbearing influence of powerful states that may be slow or reluctant to ratify such instruments over weaker states also hinders effective implementation of international instruments. Furthermore, the problem of setting up and maintaining an effective International

Compensation Fund also forestalls the compensation of victims of marine pollution (Zovko, 2006). In addition to the foregoing, the influence and control of strong states over international organizations and agencies responsible for implementing international laws also contributes to the inability to enforce sanctions against marine pollution as the activities of these organizations and agencies are largely determined by the strong states and they hardly function independently. Finally, inadequate financial and material resources also hinder effective implementation of international laws on marine pollution.

CONCLUSION

The utilitarian value of the sea, comprising of the marine environment and the living resources of the sea cannot be overemphasized. The sea is useful for various important purposes including sea navigations and voyage, carriage and transportation of goods, fishing, mineral exploration and exploitation, collection of water, etc. These activities naturally attract extensive interests and use of the sea. The escalated use of the sea has exposed the marine environment to various forms of marine pollution. This development has led to the formulation of rules and regulations for the use of the sea, prevention of marine pollution and sanctions for the violation of these regulations, as briefly highlighted above. If these rules and regulations are strictly enforced, in addition to the recommended measures stated below. Incidents of marine pollution will drastically reduce.

RECOMMENDATIONS

In order to be more effective and to achieve better results in the implementation of international laws on marine pollution, the following recommended points should be adopted: powerful and advanced states should demonstrate seriousness, have integrity and commitment in ratifying and implementing international laws on marine pollution. Also, serious economic sanctions such as withdrawal of financial assistance and technical aids, and imposition of trade embargos should be imposed on erring states as penalties for violation of international laws on marine pollution. Furthermore, suspension of offending member states from membership of international organizations should also be adopted as sanction for the violation of these

international marine pollution laws. Also, international organizations and agencies responsible for the implementation of these laws should be further strengthened through increased supply of financial and resources to them to enable them function more effectively in the enforcement of anti-marine pollution laws.

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