



***CIEL Issue Brief: “Normal Operations of a Ship” in MARPOL:
A Review of MARPOL's Travaux***

Introduction

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention) excludes from its scope, "wastes which derive from normal operations of a ship, the discharge of which is covered by another international instrument". This formulation raises issues relating to the interaction between the Basel Convention and the International Convention for the Prevention of Pollution from Ships (MARPOL), since the latter instrument covers the discharge of wastes deriving from normal operations of a ship.

In this context, this *CIEL Issue Brief* addresses the following question: what do the *travaux préparatoires* of MARPOL reveal about the meaning of the terms "normal operations of a ship"?

Findings

An examination of the *travaux préparatoires* reveals that:

- a. Parties never defined “normal operations of a ship.”
- b. Parties did not address the situation of hazardous wastes resulting from industrial operations conducted onboard a ship.
- c. Parties considered hazardous wastes that were shipped.
- d. Parties also considered garbage and sewage generated from the operation of the vessel as a vehicle. More specifically, Parties considered: i) wastes arising from the functions of the ship as a vehicle (e.g. ballast, oil, fuel, lubricants, etc.), and ii) wastes arising from the crew (e.g., food waste, sewage, food packaging, garbage, etc.), whose presence was necessary for the ship to operate as a vehicle.
- e. Parties conducted several technical studies on several waste streams, but did not conduct technical studies on wastes resulting from industrial operations on board vessels. Such technical studies on factory wastes would have been required to identify best practices and other technical issues, since factory wastes are diverse and can be dangerous and thus involve complex management.
- f. Parties did not discuss receiving facilities for specialized types of chemical waste relating to factory operations on board vessels.

Background & Sources

MARPOL was negotiated in 1972 over the course of several months before being adopted on 2 November 1973 at the International Maritime Organization. During the negotiations, statements from countries, proposals for text, and scientific statements were distributed among parties involved with the negotiation. Additionally, after the negotiations, a summary document was

prepared for each day of discussion that included a summary of statements made by different negotiators, and votes taken on different proposed amendments. The summaries of the negotiations, and the documents circulated during the negotiation, make up the *travaux préparatoires* of MARPOL.

Analysis

The goal of MARPOL's negotiators was to draft a treaty to protect the world's oceans from operational intentional and accidental pollution from oil and other hazardous substances. This approach differed from previous treaties, which only covered a particular geographic part of the ocean.

While the different documents formed during the treaty-making process use the term "normal operations of a ship," the term itself is never defined.

The technical studies submitted for consideration of the drafters, and the drafters' comments on draft texts, suggest that negotiators considered dry garbage and sewage generated on board a ship; as well as the transport of oil and noxious chemicals. There is nothing in the *travaux préparatoires* showing that negotiators considered the need to regulate the production of hazardous wastes resulting from industrial production onboard vessels. In other terms, "normal operations of a ship" does not cover industrial processes onboard vessels. Instead, the terms focus on the wastes resulting from the ship's operations relating to its movement.

Purpose of MARPOL

Countries viewed the scope of the treaty as protecting all of the world's oceans from intentional and accidental pollution of oil and other hazardous wastes from ships (including fixed and floating platforms). The focus of negotiations was on technical aspects of ships, including design, to prevent accidental discharges. Accordingly, countries worked on drafting norms and standards for ship-building as well as practices to prevent pollution. One of the main reasons cited for the need of MARPOL was that not enough countries had signed onto previous conventions regarding oil pollution.¹

A major objective of the treaty was to eliminate the intentional discharge of oil into the oceans. However, countries also wanted the treaty to cover harmful substances other than oil in order to protect the marine environment. Most countries wanted to prevent sea pollution from vessel discharges of any toxic substance that would have an adverse impact on the marine environment. The parties also intended that the treaty should eliminate intentional pollution (except in a few rare circumstances such as in response to an oil pollution event), and reduce accidental pollution of oil and other hazardous materials.

Normal operations of a ship

The documents prepared during the drafting of the treaty employ the phrase "normal operations of a vessel", but the meaning of the terms are never defined. However, the technical

¹ IMCO, *Summary Record of the First Plenary Meeting*, MP/CONF/SR.1(Oct. 25, 1973) (Statements from UK negotiator stating the importance of creating a new treaty that would cover all of the oceans since previous treaties had only covered specific portions of the ocean and had not been adopted by all parties.)

reports considered during negotiations shed light on what can be considered “normal operations” of a ship.

Technical Reports

During the drafting of MARPOL, parties requested and prepared "final reports" on technical studies related to ship design and pollution control. Overall there are two broad categories relating to these technical studies: (1) impacts of pollution, and (2) engineering studies to determine possibilities of containing pollution on ships. Examples of final reports considered during negotiations included:

- *Ship generated sewage treatment and holding systems*, I.M.C.O. Marine Pollution Sub Committee, MP/Conf/INF.14/1
- *Collection and Disposal of Ship-Generated Dry Garbage*, USSR, MP/Conf/INF.14/2
- *Retention of oil on board*, IMCO Sub-Committee on Marine Pollution, MP/Conf/INF.14/4
- *Clean tanks for ballast prior to vessel sailing*, Pierre Theobald, MP/Conf/INF.14/5
- *Segregated Ballast tankers*, United States, MP/Conf/INF.14/6
- *Dual purpose tanks with means to isolate oil or noxious materials from water*, Department of Ocean Engineering Massachusetts Institute of Technology, MP/Conf/INF.14/7
- *Pollution caused by discharge of noxious substances other than oil through normal operational procedure of ships engaged in bulk transport*, IMCO Sub-Committee on Marine Pollution, MP/Conf/INF.14

The technical studies requested and considered by the Parties during negotiation shed light on the types of activities the negotiators wanted MARPOL to address. The activities that the parties likely considered to be *normal operations* of a ship include: ballasting, the generation of dry garbage onboard vessels; sewage treatment; and intentional and accidental discharge of noxious substances that were subject to transport. Nothing in the technical studies suggests that the Parties considered the effects of hazardous wastes resulting from industrial processes onboard vessels.

Conclusion

While the *travaux préparatoires* does not include a definition of “normal operations,” the technical studies considered during negotiations illustrate the types of activities that were considered during the drafting of MARPOL. The major concerns were oil, ship generated dry garbage and sewage, and transport of noxious chemicals.

Neither the technical studies nor the records of negotiations indicate that MARPOL ever considered the possibility of a factory located on a ship.

ANNEX: DOCUMENTS REFERENCED*

*Note: This is not a list of all of the documents contained in the *Travaux préparatoires*, but just a listing of documents used for this memo

Collection and Disposal of Ship-Generated Dry Garbage, USSR, MP/Conf/INF.14/2

Clean tanks for ballast prior to vessel sailing, Pierre Theobald, MP/Conf/INF.14/5

Dual purpose tanks with means to isolate oil or noxious materials from water, Department of Ocean Engineering Massachusetts Institute of Technology, MP/Conf/INF.14/7

IMCO, Summary Record of the First Plenary Meeting, MP/CONF/SR.1

IMCO, Summary Record of the Second Plenary Meeting, MP/CONF/SR.2

IMCO, Summary Record of the Third Plenary Meeting, MP/CONF/SR.3

IMCO, Summary Record of the Fourth Plenary Meeting, MP/CONF/SR.4

IMCO, Summary Record of the Fifth Plenary Meeting, MP/CONF/SR.5

IMCO, Summary Record of the Sixth Plenary Meeting, MP/CONF/SR.6

IMCO, Summary Record of the Seventh Plenary Meeting, MP/CONF/SR.7

IMCO, Summary Record of the Eighth Plenary Meeting, MP/CONF/SR.8

IMCO, Summary Record of the Ninth Plenary Meeting, MP/CONF/SR.9

IMCO, Summary Record of the Tenth Plenary Meeting, MP/CONF/SR.10

IMCO, Summary Record of the Eleventh Plenary Meeting, MP/CONF/SR.11

IMCO, Summary Record of the Twelfth Plenary Meeting, MP/CONF/SR.12

IMCO, Summary Record of the Thirteenth Plenary Meeting, MP/CONF/SR.13

Pollution caused by discharge of noxious substances other than oil through normal operational procedure of ships engaged in bulk transport, IMCO Sub-Committee on Marine Pollution, MP/Conf/INF.14

Retention of oil on board, IMCO Sub-Committee on Marine Pollution, MP/Conf/INF.14/4

Segregated Ballast tankers, United States, MP/Conf/INF.14/6

Ship generated sewage treatment and holding systems, I.M.C.O. Marine Pollution Sub Committee, MP/Conf/INF.14/1

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