Compliance Group established by the 1996 Protocol to the 1972 London Ocean Dumping Convention

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“Maritime Border Diplomacy”
Bali, 22-25 June 2011
Does maritime boundary matter in the effective protection of marine environment?

● 1982 UNCLOS Preamble
  “Conscious that the problems of ocean space are closely interrelated and need to be considered as a whole”

● Jurisdictional approach vs. Holistic approach
Mare Nostrum

- Latin for “Our Sea”
  Roman name for the Mediterranean Sea
  Resuscitation of Fascist Propaganda?
- New concept with substantial contents
- 1982 UNCLOS, Art. 123 (b) – holistic approach
  “States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organization:
  (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;”
Sources of Marine Pollution

- Shipping
- Dumping – an extension of pollution from land
- Sea-bed activities
- Land-based activities
Dumping (1)


(a) "Dumping" means:

(i) any deliberate disposal at sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;

(ii) any deliberate disposal at sea of vessels, aircraft, platforms or other man-made structures at sea.

(b) "Dumping" does not include:

(i) the disposal at sea of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or structures;

(ii) placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Convention.

(c) The disposal of wastes or other matter directly arising from, or related to the exploration, exploitation and associated off-shore processing of sea-bed mineral resources will not be covered by the provisions of this Convention.
Dumping (2)

- 1982 UNCLOS, Art. 1, para. 1(5)
  
  "(a) "dumping" means:
  
  (i) any deliberate disposal of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;
  
  (ii) any deliberate disposal of vessels, aircraft, platforms or other man-made structures at sea;
  
  (b) "dumping" does not include:
  
  (i) the disposal of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or structures;
  
  (ii) placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Convention."
Dumping (3)

- 1996 Protocol to the 1972 London Convention, Art. 1.4

  1. "Dumping" means:
     1. any deliberate disposal into the sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;
     2. any deliberate disposal into the sea of vessels, aircraft, platforms or other man-made structures at sea;
     3. any storage of wastes or other matter in the seabed and the subsoil thereof from vessels, aircraft, platforms or other man-made structures at sea; and
     4. any abandonment or toppling at site of platforms or other man-made structures at sea, for the sole purpose of deliberate disposal.

  2. "Dumping" does not include:
     1. the disposal into the sea of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or other man-made structures;
     2. placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Protocol; and
     3. notwithstanding paragraph 4.1.4, abandonment in the sea of matter (e.g., cables, pipelines and marine research devices) placed for a purpose other than the mere disposal thereof.

  3. The disposal or storage of wastes or other matter directly arising from, or related to the exploration, exploitation and associated off-shore processing of seabed mineral resources is not covered by the provisions of this Protocol.
London Convention and its Protocol

- **1972 London Convention**
  - 87 Parties
  - Art III.3: “"Sea" means all marine waters other than the internal waters of States.”

- **1996 Protocol**
  - 40 Parties
  - Art 1.7: “"Sea" means all marine waters other than the internal waters of States, as well as the seabed and the subsoil thereof; it does not include sub-seabed repositories accessed only from land.”
Bamako Convention

- 1991 Bamako Convention on the ban of the Import into Africa and the Control of Transboundary Movement of Hazardous Wastes within Africa
- adopted in Bamako, Mali, on 30 January 1991 and came into force on 10 March 1999
- Art 4.2: Parties in conformity with related international conventions and instruments shall, in the exercise of their jurisdiction within their internal waters, territorial seas, exclusive economic zones and continental shelf, adopt legal, administrative and other appropriate measures to control all carriers from non-Parties, and prohibit the dumping at sea of hazardous wastes, including their incineration at sea and their disposal in the seabed and the sub-seabed; any dumping of hazardous wastes at sea, including incineration at sea as well as seabed and sub-seabed disposal, by Contracting Parties, whether in internal waters, territorial seas, exclusive economic zones or high seas shall be deemed to be illegal.
OSPAR Convention

- Convention for the Protection of the Marine Environment of the North-East Atlantic
- combines and up-dates the 1972 Oslo Convention on dumping waste at sea and the 1974 Paris Convention on land-based sources of marine pollution
- Art 1(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:...
- Art 1(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.
Implication for Fukushima Accident

Discharge of radioactive water from NPP stopped
What is the Compliance Group (CG)?

- **1996 Protocol, Art. 11.1**
  “No later than two years after the entry into force of this Protocol, the Meeting of Contracting Parties shall establish those procedures and mechanisms necessary to assess and promote compliance with this Protocol. Such procedures and mechanisms shall be developed with a view to allowing for the full and open exchange of information, in a constructive manner.”

- **1996 Protocol, Art. 9.5 (subsidiary body)**
  “Reports submitted under paragraphs 4.2 and 4.3 shall be evaluated by an appropriate subsidiary body as determined by the Meeting of Contracting Parties. This body will report its conclusions to an appropriate Meeting or Special Meeting of Contracting Parties.”

- **Compliance Procedures and Mechanisms pursuant to Article 11 of the 1996 Protocol (CPM)**
  - adopted in 2007: LC 29/17, annex 7
## Why does “Compliance” matter?

<table>
<thead>
<tr>
<th>Dispute settlement procedures</th>
<th>Multilateral non-compliance procedures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sufficient damage has been done</td>
<td>Even in the situation where no damage has been done</td>
</tr>
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</table>
| Dispute resolution | 1. to identify Parties’ compliance difficulties  
2. to facilitate better compliance |
| In an adversarial manner | In a cooperative manner |
| Legally binding | Recommendatory |
| Sanction-oriented | Managerial mode |
Members of the CG

- **CPM Art. 3**
  - Members are nominated by Contracting Parties to the London Protocol, based on equitable and balanced geographic representation of the five Regional Groups of the United Nations
  - Limited in size to fifteen members
  - Composed of individuals selected on the basis of their scientific, technical or legal expertise

- **Current Members (7 members)**
  - Mr Shang (China) - elected for 3 terms in 2008, expiring in October 2011
  - Mr Chang-Hoon Shin (Rep. of Korea) - elected for 3 terms in 2009, expiring in October 2012
  - Ms Anne Daniel (Canada) (Chair) - elected for 3 terms in 2008, expiring in October 2011
  - Mr Hans Lammers (Netherlands) - elected for 3 terms in 2009, expiring in October 2012
  - Ms Carla Pike (UK) – elected for 3 terms in 2010, expiring in October 2013
  - Mr Oming’o (Kenya) – elected for 3 terms in 2010, expiring in October 2013
  - Mr Hisakazu Kato (Japan) - elected for 2 terms in 2008, expiring on 15 October 2010, but extended for 1 term in 2010, expiring in October 2011
Agenda at the meeting of the CG

- Provisional Agenda for the 4th session to be held on 17-19 October 2011
  - Review of individual submissions
  - Consideration of any reports referred under paragraphs 6.2, 6.4 and 6.5 of the CPM
  - Identification and review of factors contributing to the difficulties experienced by Protocol Parties in fulfilling their reporting obligations under Article 9.4.1 of the Protocol
  - Identification and review of factors contributing to the difficulties experienced by Convention Parties in fulfilling their reporting obligations under Article VI(4) of the Convention
  - Contribution to the work of the Correspondence Group on dumping reporting
  - Examination of reports received under Articles 9.4.2 and 9.4.3 of the Protocol
  - Consideration of compliance issues related to the "Barriers to Compliance" Project
  - Exploration of the viability of making historical documents related to the development of the London Convention available on the LC/LP website
  - Compliance promotion: development of materials and inputs into the work of other LP bodies
Individual Submission

● CPM 4

4.1 An issue regarding individual situations of possible non-compliance may be raised by:
.1 the Meeting of Contracting Parties;
.2 a Party regarding itself; and
.3 a Party that has reservations about another Party’s compliance with the obligations under the Protocol when it has an interest that is affected or likely to be affected by the possible non-compliance. A Party intending to make a submission under this subparagraph should before so doing undertake meaningful consultations with the Party whose compliance is in question with the aim of resolving the matter.
Reporting obligation and the CG

- Review of the reports submitted pursuant to CPM 6.2, 6.3, 6.4 & 6.5
  - Information Item 1:
    1. nature and quantities of all wastes or other matter for which dumping permits have been issued;
    2. quantities actually dumped where practicable; and
    3. location, time and method of dumping
  - Information Item 2:
    1. condition of the sea for the purposes of this Protocol
  - Information Item 3:
    1. administrative and legislative measures; and
    2. summary of enforcement measures
  - Information Item 4:
    1. effectiveness of the administrative, legislative and enforcement measures; and
    2. problems encountered in the application of the measures
- Report on incidental information (non-compliance in the high seas)
Identified difficulties in fulfilling reporting obligation

- Lack of human resources capacity to collect the information on dumping activities carried out
- Lack of human resources capacity to prepare the report
- Recent reorganization of the national authority
- Lack of information at the national level on dumping activities
- Lack of institutional coordination
<table>
<thead>
<tr>
<th>State Party</th>
<th>Date of signature or deposit of instrument</th>
<th>Focal Point Known</th>
<th>Responded to Circular on Article 9.4.2 (Measures)</th>
<th>Responded to Circular on Article 9.4.1 (Permits)</th>
<th>Reported dumping data in 2008</th>
<th>Reported since Entry into Force</th>
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<td>State Party</td>
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<td><strong>Total of Contracting States:</strong> 38</td>
<td>Total not known: 6</td>
<td>Total responding: 9 (plus from Hong Kong, China)</td>
<td>Total responding: 11 (plus from Hong Kong, China)</td>
<td>Total: 21 (plus from Hong Kong, China)</td>
<td>Total: 28 (plus from Hong Kong, China)</td>
<td></td>
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</table>
Prospective Party
- In collaboration with B2C Project, the CG provides prospective Parties with possible option for obtaining advice and guidance to facilitate its becoming a Party

Regional or national workshop
- The CG recommended that the Secretariat obtain information about whether implementing legislation is in place. If not, then the State with no implementing legislation might benefit from attending the B2C Project's regional and national workshops
Current Status of the 1996 Protocol

- States Parties
  - 1 ASEAN member States (Philippines) among 40 Parties to the 1996 Protocol
Conclusion

- Potential costs of the membership of the Protocol
  - No membership fees
  - Preparing and enabling national legislation, Administering a licensing system and procedures, Conducting field and compliance monitoring activities and preparing reports thereon, and Attending annual meetings of the Parties and the Scientific Groups.

- 1982 UNCLOS, Article 210 (6)
  - “National laws, regulations and measures shall be no less effective in preventing, reducing and controlling such pollution than the global rules and standards.”

- Invitation to the 1996 Protocol
  - Becoming a party to the Protocol will be conducive to making mare nostrum (our sea) more sustainable