

# CASE STUDY OF THE NETHERLANDS

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## 1 INTRODUCTION

### 1.1 General geographical context

The Kingdom of the Netherlands is located in the north-west of continental Europe.<sup>1</sup> It borders Belgium to the south and Germany to the east. Its northern and western limits are its coastline to the southern part of the North Sea. The Netherlands coastline has a length of about 390 kilometres, which is relatively small compared to the other coastal states in Europe but large when compared to the size of the country. Off the north coast lies the Wadden Sea, located mostly within the internal waters of the Netherlands. Large parts of the Wadden Sea are alternately submerged and exposed by the tides. This area is particularly rich in wildlife.

The Netherlands coastal area is subject to a wide variety of competing activities, among which shipping features prominently. The southern part of the North Sea is one of the busiest shipping areas in the world. Much of this shipping traffic passes in or near the Netherlands coastal area. Of the more than 400 000 commercial shipping movements that may be recorded annually on the North Sea, some 260 000 (60 per cent) take place off the Netherlands coast.<sup>2</sup> More than half of the ships involved are en route to or from Netherlands ports, while the rest are in passage in or near the Netherlands territorial sea. In view of the high density of shipping traffic, pollution resulting from illegal and accidental discharges from these vessels is a major source of concern.

<sup>1</sup> The Kingdom of the Netherlands consists of the Kingdom in Europe and the two dependent territories in the Caribbean, namely the Netherlands Antilles and Aruba.

<sup>2</sup> This figure does not include fishing vessels, naval and recreational shipping. See *North Sea Atlas for Netherlands Policy and Management*, ICONA (Interdepartmental Co-ordinating Committee for North Sea Affairs), Ministry of Transport, Public Works and Water Management, Amsterdam, Stadsuitgeverij, p. 56 (1992). See also *Voorgangsnota Scheepvaartverkeer Noordzee* (Progress Report Shipping Traffic North Sea), Ministry of Transport, Public Works and Water Management, pp. 24-25 (1996).

## 1.2 Different maritime zones claimed by the Netherlands and their delimitation

Currently, the Netherlands only exercises jurisdiction over vessel-source pollution in its territorial sea, with enactments to extend this to the recently established exclusive economic zone<sup>3</sup> still pending.

The Netherlands territorial sea has a maximum breadth of 12 nautical miles,<sup>4</sup> as defined in the Act on the Limits of the Netherlands Territorial Sea.<sup>5</sup> Up to 1985 the breadth of the Netherlands territorial sea was three n.m. One of the main reasons for the extension to 12 n.m. was to extend jurisdiction over marine pollution, in particular (oil) pollution originating from vessels.<sup>6</sup> The decision of the Netherlands government to establish an EEZ was based on similar considerations.<sup>7</sup>

According to the act establishing an EEZ for the Kingdom of the Netherlands, which was adopted on 27 May 1999,<sup>8</sup> the Netherlands EEZ is the area outside and adjacent to the territorial sea, not extending beyond 200 n.m. from the baselines from which the breadth of the territorial sea is measured.<sup>9</sup> The outer limits of the EEZ have been established by decree (Art. 2).<sup>10</sup> In Art. 3 of the 1999 EEZ Act the Kingdom claims, with due regard for the limits set by public international law, sovereign rights and jurisdiction as set out in Art. 56 (1)(a and b) of the 1982 United Nations Convention on the Law of the Sea.<sup>11</sup>

Agreements have been concluded with Belgium for the delimitation of all maritime zones and with Denmark, Germany and the United Kingdom for the

delimitation of the continental shelf.<sup>12</sup> The boundaries of the EEZ coincide with those of the continental shelf.<sup>13</sup>

The Netherlands has not claimed archipelagic status for its dependent territories in the Caribbean, namely the Netherlands Antilles and Aruba. This is consistent with Art. 46 (b) of the 1982 Convention which does not allow for continental archipelagos.<sup>14</sup> Furthermore, while the special coastal-state powers in ice-covered areas under Art. 234 of the 1982 Convention can obviously not be invoked by the Netherlands, the designation of parts of the Wadden Sea as a protected area under the Nature Protection Act must be mentioned in the context of Art. 211 (6) of the 1982 Convention.<sup>15</sup> Geographically, however, this area does not extend beyond the outer limits of the territorial sea and is not otherwise in conflict with Art. 21 (2) of the 1982 Convention or other limitations on coastal-state jurisdiction in the territorial sea either. Finally, in conformity with Art. 60 of the 1982 Convention, safety zones established around artificial installations at sea do not exceed 500 metres.<sup>16</sup>

While not a maritime zone in its own right, mention should be made of the special situation between the island of Aruba and Venezuela. Here, mutual extension of the width of the territorial seas has created areas in which the regime of transit passage applies as laid down in Part III of the 1982 Convention. The need to agree on a maritime boundary and to regulate particular aspects of the legal

<sup>3</sup> Hereinafter cited as EEZ.

<sup>4</sup> Hereinafter cited as n.m.

<sup>5</sup> *Wet grenzen Nederlandse territoriale zee*, of 9 January 1985, *Staatsblad* (Official Journal of the Netherlands) 129 (1985).

<sup>6</sup> See Parliamentary Papers, Second Chamber, 1982-1983, no. 17554, no. 3. See also Dotinga, H. & Soons, A., 'The Netherlands and the Law of the Sea', in *The Law of the Sea: The European Union and its Member States* (Treyes, T. & Pineschi, L., eds), The Hague, Martinus Nijhoff, p. 365, 370 (1997).

<sup>7</sup> Parliamentary Papers, Second Chamber, 1996-1997, no. 25446 (R 1994), no. 3, p. 2.

<sup>8</sup> *Rijkswet instelling exclusieve economische zone*, of 27 May 1999, *Staatsblad* 281 (1999). Hereinafter cited as 1999 EEZ Act. See *NILOS Newsletter* no. 17, p. 2. The *NILOS Newsletter* is available on Internet: <www.law.uu.nl/english/iscp/framenilos.asp>.

<sup>9</sup> 1999 EEZ Act, Art. 1.

<sup>10</sup> According to Art. 2 of the 1999 EEZ Act. This was done by decree of 13 March 2000, *Staatsblad* 167 (2000).

<sup>11</sup> Multilateral convention, signed on 10 December 1982, 1833 *UNTS* 3. The full text can be found on Internet: <www.un.org/Demis/los/losconv1.htm> The convention

<sup>12</sup> See Dotinga, H. & Soons, A., supra note 6, pp. 400-403. See *NILOS Newsletter* no. 14, p. 4 for the maritime delimitation agreements concluded between Belgium and the Netherlands in 1996.

<sup>13</sup> See supra note 10.

<sup>14</sup> See also the Netherlands declaration upon ratification of the 1982 Convention, infra note 25, under IV.

<sup>15</sup> See Art. 21 of the *Wet op de Natuurbescherming* (Nature Protection Act), of 15 November 1967, *Staatsblad* 572 (1967), as amended. A new Nature Protection Act, which thoroughly revises the existing act, was adopted on 25 May 1998 (*Staatsblad* 403 (1998)). The designation of protected areas will be based on Arts 10 and 27. As of 15 March 2000, only parts of the new act had entered into force (*Staatsblad* 15 (1999)). See *NILOS Newsletter* no. 16, pp. 2-3 and no. 17, p. 2.

<sup>16</sup> See Art. 27 of the *Mijnwet Continentaal Plat* (Continental Shelf Mining Act), of 23 September 1965, *Staatsblad* 428 (1965), as amended. Moreover, in 1988 a procedure was adopted which automatically establishes safety zones around mobile mining installations (*Procedure instelling veiligheidszone rond verplaatsbare mijnbouwinstallaties* (Procedure for the Establishment of Safety Zones Around Mobile Mining Installations), of 3 November 1988, *Staatscourant* (Daily Journal of the Netherlands containing official notices and Ministerial

regime in certain areas led to the 1978 Willemstad Treaty.<sup>17</sup> Those issues relevant to transit passage in relation to vessel-source pollution are discussed in Part 2.4.

### 1.3 Status iuris concerning the main international conventions relating to marine pollution

The Netherlands is party to all the international conventions relevant to vessel-source pollution. For the purpose of this publication,<sup>18</sup> this includes the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties,<sup>29</sup> the Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil,<sup>2</sup> the International Convention for the Prevention of Pollution from Ships,<sup>20</sup> the International Convention for the Convention, 17 February 1978<sup>21</sup>

<sup>17</sup> Boundary Delimitation Treaty between the Republic of Venezuela and the Kingdom of the Netherlands, Willemstad, 31 March 1978. This treaty entered into force on 15 December 1978. *The Law of the Sea – Maritime Boundary Agreements (1970-1984)*, New York, United Nations Office for Ocean Affairs and the Law of the Sea (Sales no. E.87.V.12), p. 139 (1987). Hereinafter cited as 1978 Willemstad Treaty.

<sup>18</sup> Other relevant instruments not discussed in this publication and to which the Netherlands is a party are the Convention on the International Regulations for Prevention of Collisions at Sea, 20 October 1972, 1050 *United Nations Treaty Series* (hereinafter cited as *UNTS*) 16 (hereinafter cited as COLREG Convention); the International Convention on Load Lines, 5 April 1966, 640 *UNTS* 133 (hereinafter cited as Load Lines Convention); the International Convention on Standards of Training, Certification and Watchkeeping of Seafarers, 7 July 1978, 1361 *UNTS* 2 (hereinafter cited as STCW Convention); the International Convention for the Safety of Life at Sea, 1 November 1974, 1184 *UNTS* 2 (hereinafter cited as SOLAS Convention); the International Labour Organization (hereinafter cited as ILO) Convention no. 147 concerning Minimum Standards in Merchant Ships, 29 October 1976, as available on Internet: <lolex.ilo.ch:1567/scripts/convide.pl?query=C147&query0=147> (hereinafter cited as ILO no. 147); and the International Convention on Oil Pollution Preparedness, Response and Co-operation, 30 November 1990, 30 *International Legal Materials* pp. 733-761 (1991). For more information on these conventions see, *inter alia*, the homepage of the International Maritime Organization (hereinafter cited as IMO), as available on Internet: <www.imo.org>.

<sup>19</sup> Multilateral convention, 970 *UNTS* 211. The full text can also be found on Internet: <sedac.ciesin.org/pidb/lexis/intervention.high.seas.casualties.1969.html>. The convention entered into force on 6 May 1975. Convention hereinafter cited as Intervention Convention.

<sup>20</sup> Multilateral protocol, 1313 *UNTS* 3. The full text can also be found on Internet: <sedac.ciesin.org/pidb/lexis/intervention.high.seas.casualties.protocol.1973.html>. The protocol entered into force on 30 March 1983. Hereinafter cited as 1973 Intervention Protocol.

<sup>21</sup> Multilateral convention, 12 *International Legal Materials* pp. 1319-1444 (1973) and multilateral protocol, 17 *International Legal Materials* pp. 546-578 (1978).

(except for annexes IV and VI)<sup>22</sup> and the 1982 Convention.<sup>23</sup> Due to the frequent amendments to many of the IMO regulatory instruments, the Netherlands continuously needs to update its laws and regulations.<sup>24</sup>

Reference should also be made briefly to the lengthy declaration that the Netherlands issued upon ratification of the 1982 Convention.<sup>25</sup> While this declaration deals largely with more general issues which are not directly related to vessel-source pollution, attention should be drawn to one relevant statement. Under headings I and II (1) the Netherlands declares that under the 1982 Convention the right of innocent passage or freedom of navigation in the EEZ for 'all ships, including foreign warships, nuclear-powered ships and ships carrying nuclear or hazardous waste' (emphasis added), cannot be subjected to prior consent or notification.<sup>26</sup>

In discharging its obligations under these international instruments, the Netherlands is also a party to the Agreement for Co-operation in Dealing with Pollution of the North Sea by Oil, 9 June 1969, as later replaced by the Agreement for Co-operation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances, 13 September 1983.<sup>27</sup> This implements the obligation to

<sup>22</sup> Hereinafter cited as MARPOL 73/78 Convention.

<sup>23</sup> As at 31 May 2000, neither annex IV nor annex VI (which is contained in the 1997 Protocol to the MARPOL 73/78 Convention) has entered into force. Information available on Internet: <www.imo.org>.

<sup>24</sup> See the homepages of IMO and the United Nations Division on Ocean Affairs and the Law of the Sea (hereinafter cited as DOALOS) as available on Internet: <www.imo.org> and <www.un.org/Depts/los>, respectively. The Netherlands signed the 1982 Convention on 10 December 1982, but its basic objections against the deep seabed regime as contained in Part XI prevented it from ratifying the Convention. These objections were removed by the adoption of the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1994 (as available on Internet: <www.un.org/Depts/los/convention1.htm>). Hereinafter cited as 1994 Implementation Agreement. It became a Party to the 1982 Convention and the 1994 Implementation Agreement on 28 June 1996 (*Staatsblad* 357(1996)).

<sup>25</sup> The Netherlands thus takes a different attitude than, for example, Belgium (see the contribution by E. Franckx and T. De Bondt, Part 1.3.3).

<sup>26</sup> As available on Internet: <www.un.org/Depts/los/decl.htm#Netherlands>. See also *NILOS Newsletter* no. 14, pp. 4-6.

<sup>27</sup> However, the Explanatory Note to Art. 5 of the *Bestint houdende vaststelling van aanvullende bepalingen voor de scheepvaart in de territoriale zee* (Decree Establishing Shipping Regulations for the Territorial Sea), of 27 February 1996, *Staatsblad* 170 (1996), foresees the possibility that prior notification will in the future be applied to ships in transit. Moreover, Art. 7 of this decree provides for prior notification for special transports such as oil-platforms and tunnel-sections. The former convention was published at 704 *UNTS* 3 and entered into force on 9 August 1969 (hereinafter cited as 1969 Bonn Agreement); the latter was published in *Command Paper* 9104 (the full text is also available on Internet:

co-operate in the detection of discharge violations pursuant to Art. 6 (1) of the MARPOL 73/78 Convention. In addition, the Netherlands Shipping Inspectorate (*Scheepvaartinspectie*) participates in the 1982 Paris Memorandum of Understanding on Port-State Control,<sup>28</sup> as the Netherlands maritime authority,<sup>29</sup> which provides for a harmonized regional regime for in-port inspection regarding standards set at the global level, largely by the IMO.

## 2 PRESENT NETHERLANDS LEGAL FRAMEWORK

The following sections will, as a rule, only deal with the situation of the Kingdom of the Netherlands in Europe, and will exclude the legal framework for the Netherlands Antilles and Aruba.

### 2.1 Overview

The regulatory framework by which the MARPOL 73/78 Convention is implemented in the Netherlands is the Prevention of Pollution from Ships Act.<sup>30</sup> Separate decrees implement those annexes of the MARPOL 73/78 Convention including its Protocol I to which the Netherlands has become a party.<sup>31</sup>

<sup>28</sup> As available on Internet: <www.parisismou.org>. This memorandum entered into force on 1 July 1982 (the 21st amendment entered into force on 1 July 1999). Hereinafter cited as Paris MOU.

<sup>29</sup> The Paris MOU is not concluded by states but by their maritime authorities.

<sup>30</sup> *Wet voorkoming verontreiniging door schepen*, of 14 December 1983, *Staatsblad* 683 (1983), as amended. Hereinafter cited as PPSA. The PPSA replaced the 1958 *Wet olieverontreiniging zeewater* (Seawater Oil Pollution Act, of 9 July 1958, *Staatsblad* 344 (1958)) which acted as the national implementation of the International Convention for the Prevention of Pollution of the Sea by Oil, 12 May 1954 (327 UNTS 3). The convention entered into force on 26 July 1958). This act applied to Netherlands ships, as well as foreign ships in the Netherlands territorial sea (Arts 2 and 4 of the Seawater Oil Pollution Act).

<sup>31</sup> Annex I: *Besluit houdende regelen ter voorkoming van olieverontreiniging door schepen* (Oil Decree), of 27 March 1986, *Staatsblad* 160 (1986), as amended;

annex II: *Besluit houdende regelen ter voorkoming van verontreiniging door niet schepen in bulk vervoerde schadelijke vloeistoffen (niet bijlage)* (Noxious Liquid Substances in Bulk Decree), of 17 March 1988, *Staatsblad* 112 (1988), as amended;

annex III: *Besluit voorkoming verontreiniging door niet schepen vervoerde schadelijke stoffen in verpakte vorm* (Packaging Decree), of 10 January 1995, *Staatsblad* 40 (1995), as amended;

annex V: *Besluit houdende regelen ter voorkoming van verontreiniging door vuilnis van schepen* (Garbage Decree), of 22 December 1988, *Staatsblad* 636 (1988), as amended;

protocol I: *Besluit houdende regels betreffende melding van voorvallen van*

A major review of the PPSA, which *inter alia* takes account of the establishment of the Netherlands EEZ, has been in preparation for years but has not been finalized at the time of writing.<sup>32</sup> While the 1999 EEZ Act and the amendments to the PPSA were originally intended to be presented to, and passed by parliament together, this approach was at some stage aborted. Instead, the 1999 EEZ Act was made a priority due, *inter alia*, to several plans for construction in the North Sea.<sup>33</sup> A number of other acts, in addition to the PPSA, are scheduled to be amended as a consequence of the 1999 EEZ Act.<sup>34</sup>

The application of the PPSA to foreign ships is currently governed by Arts 5 (3), 18 and 21. Art. 5 (3) applies to foreign ships, with respect to illegal discharges in the territorial sea, regardless whether the flag state is a party to the MARPOL 73/78 Convention.<sup>35</sup> The decrees to the PPSA define what constitutes illegal discharge in line with the annexes to the MARPOL 73/78 Convention. The Netherlands therefore makes no use of its discretion under Arts 21 (2) and 211 (4) of the 1982 Convention to set more stringent discharge standards for the territorial sea.

The new draft<sup>36</sup> to Art. 5 (3), however, makes the existing Art. 5 (1) also applicable to foreign ships. Thus, discharges committed by foreign ships anywhere in violation of the provisions of the MARPOL 73/78 Convention are prohibited. This comprises therefore not only the Netherlands territorial sea and the EEZ but also the high seas and the maritime zones of other coastal states. Under this situation, foreign ships are essentially at par with domestic ships under Art. 5 (1). No mention is made that foreign ships need to fly the flag of a party to the MARPOL 73/78 Convention or the 1982 Convention. Further comments on this new provision, including its relationship with Art. 218 of the 1982 Convention, are made in Part 2.6.

<sup>32</sup> The Council of State has recently provided its comments on the bill. Further reports are under preparation at the Ministry of Transport, Public Works and Water Management.

<sup>33</sup> Even though the enactment of the 1999 EEZ Act would arguably not have had a significant impact on these construction plans. See the editorial in *NILOS Newsletter* no. 17 on building at sea and Molenaar, E., 'Airports at Sea: International Legal Implications', 14 *International Journal of Marine and Coastal Law* pp. 371-386 (1999).

<sup>34</sup> This includes the *Wet verontreiniging zeewater* (Marine Pollution Act), of 5 June 1975, *Staatsblad* 325 (1975), as amended; the *Scheepvaartverkeerswet* (Shipping Traffic Act), of 7 July 1988, *Staatsblad* 352 (1988), as amended, which *inter alia* implements the COLREG Convention; and the *Schepenwet* (Ships Act), of 1 July 1909, *Staatsblad* 86 (1932), as amended, which implements mainly the SOLAS Convention and the Load Lines Convention but also contains elements of the STCW Convention and ILO no. 147.

<sup>35</sup> The observations made in relation to discharges apply, *mutatis mutandis*, to the notification requirement laid down in Art. 12 of the PPSA.

Arts 18 and 21 of the current PSSA, concerning compliance with construction, equipment, design and manning standards,<sup>37</sup> distinguish between party and non-party states. The standards do not deviate from those laid down in the annexes to the MARPOL 73/78 Convention.<sup>38</sup> At first sight it seems that there are more grounds for detention for ships of states parties. Ships flying the flag of non-parties can only be detained if the ship is so constructed, organized or equipped that there is a risk of pollution of the marine environment. This is supported by the fact that the PSSA does not explicitly embody the no-more-favourable-treatment clause,<sup>39</sup> although it is implicitly incorporated in Art. 21 (2).<sup>40</sup> Enforcement practice, however, shows a consistent application of the NMFT clause with the same rules being applied to parties and non-parties to the MARPOL 73/78 Convention.

The NMFT clause is nevertheless explicitly incorporated in the Port-State Control Act.<sup>41</sup> This act implements EC Council Directive 95/21/EC of 19 June 1995, as amended by Directive 98/25/EC of 27 April 1998. The object of the directives is to improve in-port inspection of vessels to verify compliance with standards contained in the relevant IMO and ILO regulatory instruments. The 1982 Paris MOU was subsequently amended to take innovative aspects of the directives into account.<sup>42</sup> In its turn, the Port-State Control Act is modelled on the 1982 Paris MOU.

Accidental pollution caused by ships is regulated by the, 1992 North Sea Emergencies Act,<sup>43</sup> which implements the Intervention Convention and the 1973 Intervention Protocol. The NSEA applies to all pollution emergencies in the southern part of the North Sea that have caused or may cause serious harm to the Netherlands coast or related interests. Under the act, measures can be taken by the Coast Guard in a case of a pollution emergency on the high seas to prevent, mitigate or eliminate grave and imminent danger to the Netherlands coastline or related interests, which may reasonably be expected to result in major harmful consequences. In the territorial sea the competent authorities can also adopt measures in respect of all vessels involved in any type of accident creating a serious

<sup>37</sup> Hereinafter cited as CEDM standards.

<sup>38</sup> Previously, vessels registered in the Netherlands occasionally had to comply with more stringent standards than laid down in IMO regulatory instruments. A policy to make registration in the Netherlands more attractive (see *NILIOS Newletters* nos 13, 14 and 17 on 'Ocean Shipping') brought these standards back at par with the international minimum level in IMO regulatory instruments.

<sup>39</sup> Hereinafter cited as NMFT clause.  
<sup>40</sup> Explanatory Note to the PSSA (Parliamentary Papers, Second Chamber, no. 17320, no. 3, p. 13).

<sup>41</sup> See Art. 4 of the *Wet havenstaatcontrole* (Port-State Control Act), of 6 November 1997, *Staatsblad* 558 (1997), as amended. See *NILIOS Newletter* nos 14 to 17.  
<sup>42</sup> See Molenaar, E., 'EC Directive on Port State Control in Context', 11 *International Journal of Marine and Coastal Law* pp. 241-288 (1996); and by the same author *Coastal State Jurisdiction over Vessel-Source Pollution*, The Hague, Kluwer Law International, p. 122 (1998).  
<sup>43</sup> *Wet bestrijding ongevallen Noordzee*, of 12 March 1992, *Staatsblad* 211 (1992).

impediment to navigation or seriously damaging sea defences and other works.<sup>44</sup> In these circumstances orders can be given to the master of a (foreign) vessel concerning the position of the ship, the rendering of assistance to it, or the grounding, sinking or destruction of the ship involved and its cargo. According to Art. 5 of the NSEA, the orders have to be proportionate and should not go beyond what is reasonably necessary to prevent, mitigate or eliminate harmful consequences. If these orders prove insufficient, they can be implemented by the authorities, including assuming control of the vessel.<sup>45</sup> Exercise of these powers is subject to prior consultation with the owner of the ship and, if a foreign vessel is involved, the flag-state authorities, unless urgency requires immediate action.<sup>46</sup>

## 2.2 Innocent passage

The right of innocent passage is not explicitly mentioned in the national legal framework. However, Art. 13 (a) of the Act containing General Provisions regarding Legislation<sup>47</sup> and Art. 8 of the Penal Code<sup>48</sup> ensure that legislation will not be applied if inconsistent with international law. Similarly, draft Art. 43 (a) for the amended PSSA provides that the applicability of the PSSA is restricted by exceptions recognized in international law. Netherlands enactments would therefore not be considered applicable if inconsistent with the right of innocent passage.<sup>49</sup>

In judicial procedures the right of innocent passage has nevertheless repeatedly been recognized and applied to specific cases. For example, in the *Attican Unity* Case<sup>50</sup> the Netherlands Supreme Court held that the *Attican Unity* was not entitled to claim the right of innocent passage since it intended to enter the Netherlands territorial sea for the sole purpose of beaching the vessel. Entry for this purpose could not be classified as 'passage', irrespective of its 'innocent' character. Also, in the *Long Lin* Case<sup>51</sup> the Judicial Division of the Council of State held that a state's territorial sovereignty in principle allows it to deny the non-innocent passage of foreign ships through its territorial sea. For ships in distress this authority is restricted in so far that the gravity of the ship's situation should be balanced against

<sup>44</sup> See NSEA, Arts 3 and 5 (6).

<sup>45</sup> *Ibid.*, Art. 6.

<sup>46</sup> *Ibid.*, Art. 7.

<sup>47</sup> *Wet algemene bepalingen*, of 15 May 1829, *Staatsblad* 28 (1829), as amended. *Wetboek van Strafrecht*, of 3 March 1881, *Staatsblad* 35 (1881), as amended.

<sup>48</sup> See also the recognition of the right of innocent passage in the Netherlands declaration upon ratification of the 1982 Convention, referred to in Part 1.3.

<sup>49</sup> *Hoge Raad* (Supreme Court), 7 February 1986, *Nederlandse Jurisprudentie* no. 477 (1986). English commentary by H. Meijers in 18 *Netherlands Yearbook of International Law* pp. 402-407 (1987), who *inter alia* submits that the Supreme Court ignores the fact that the ship was in distress, which restricts the discretion of coastal states.  
<sup>50</sup> *Recht van de Zee*, *Internationale Division of the Council of State*, 10 April 1905

the threat that the ship poses to the coastal state. Such circumstances allow the state to ask reasonable conditions for entry into its territorial sea.<sup>52</sup>

### 2.3 Willful and serious pollution

As the right of innocent passage is not explicitly incorporated into the Netherlands legal framework, no direct link exists with the qualification 'willful and serious pollution', as would have been mandated by Arts 19 (2)(h) and 230 (2) of the 1982 Convention. Nevertheless, seriousness and intent are elements that are taken into account when deciding on the appropriate penalty for violations. The Act on Economic Offences<sup>53</sup> distinguishes in Art. 1 (a) between two categories of environmental offences:

- Serious offences, which have affected or threaten to affect the environment: Arts 5, 12, 13, 23 (2, 4 and 5), and 35 (3) of the PSSA. These offences are crimes if they have been committed intentionally. Crimes can be punished by a maximum of six years imprisonment or a fine; misdemeanours by a maximum of one year or a fine (Arts 2 (1) and 6 (1)(1 and 3) AEO);
- less serious offences, mainly related to violations of administrative rules: Arts 6 (2), 10 (1)(b and d), 11 (1, 3 and 5), 16, 17, and 31 of the PSSA. These offences are crimes if they have been committed intentionally. Crimes can be punished by a maximum of two years imprisonment or a fine; misdemeanours by a maximum of six months or a fine (Arts 2 (1) and 6 (1)(2 and 4) of the AEO).

This system of distinguishing between serious and less serious offences could in fact lead to situations where a discharge violation is not 'serious' within the meaning of Arts 19 (2) and 230 (2) of the 1982 Convention but nevertheless leads to a non-monetary penalty such as imprisonment. However, reference should be made to Art. 13 (a) of the General Provisions Act, Art. 8 of the Penal Code and draft Art. 43 (a) of the PSSA mentioned in Part 2.2, which would, *prima facie*, ensure consistency with the 1982 Convention even though this cannot automatically avoid the imposition of penalties in conflict with the 1982 Convention.

### 2.4 Transit passage

As already touched upon in Part 1.2, the transit passage regime laid down in Part III of the 1982 Convention applies to certain areas between the island of Aruba and Venezuela. The 1978 Willemstad Treaty, which was partly adopted to deal with the

regime of transit passage, explicitly recognizes this regime in a way that conforms with the 1982 Convention.<sup>54</sup>

More specifically relating to vessel-source pollution, Art. 4 (6)(a and b) of the 1978 Willemstad Treaty reproduces almost verbatim Art. 39 (2) of the 1982 Convention. In addition, subparagraph (c) provides that vessels in transit must comply with 'regulations regarding both the obligation of carrying documents on board, and special safety measures, as have been agreed to internationally, for vessels powered by nuclear energy or vessels carrying nuclear materials or other substances that by their nature may be dangerous or harmful'.<sup>55</sup>

This provision, which contains the substance of Art. 23 of the 1982 Convention, is thus made applicable to the regime of transit passage. This would not seem an unreasonable elaboration of the obligations under Art. 39 (2) of the 1982 Convention. Moreover, Art. 4 (8) of the Treaty provides that measures 'for the prevention, reduction and control of pollution (...) which affect navigation in the exercise of the right of passage in transit, shall be taken by mutual agreement'. This requirement does not apply to 'laws and regulations passed by the Netherlands Antilles'<sup>56</sup> to bring into effect such measures as are generally accepted internationally in respect of the discharge of fuel, fuel wastes or other harmful substances'. The expression 'generally accepted' thus appears where Art. 42 (1)(b) of the 1982 Convention uses 'applicable'. This is in fact more consistent with the convention's regulatory approach over vessel-source pollution.<sup>57</sup> Moreover, the final sentence contains some minor deviations from Art. 42 (1)(b) of the 1982 Convention which do not seem to have the intention of deviating from the general sense of that convention.<sup>58</sup> On the contrary, by incorporating these provisions into the 1978 Willemstad Treaty, the Netherlands not only affirms recognition of the transit passage regime but also seems to indicate that legislation normally applied to the territorial sea does not automatically apply to areas subject to the regime of transit passage.<sup>59</sup>

<sup>54</sup> 1978 Willemstad Treaty, *supra* note 17, Art. 4. See also the General Provisions Act, *supra* note 47, Art. 13 (a) and the Penal Code, *supra* note 48, Art. 8, which would *prima facie* ensure consistency with the 1982 Convention (see *supra* sub 2.2), and the Netherlands declaration upon ratification of the 1982 Convention (under III), as already referred to *supra* note 25.

<sup>55</sup> 1978 Willemstad Treaty, *supra* note 17, Art. 4 (6)(c).

<sup>56</sup> This should be read to include Aruba as the 1978 Willemstad Treaty was concluded before Aruba obtained a special status.

<sup>57</sup> Molenaar, E., *Coastal State Jurisdiction over Vessel-Source Pollution*, *supra* note 42, pp. 338-339.

<sup>58</sup> Such as 'fuel' instead of 'oil' and 'harmful' instead of 'noxious'.

<sup>59</sup> Molenaar, E., *Coastal State Jurisdiction over Vessel-Source Pollution*, *supra*

<sup>52</sup> This ruling appears to take account of the criticism by H. Meijers in his note in the *Atlantic Unity Case* (*supra* note 50).

<sup>53</sup> *Wet Economische Delicten* of 7 June 1980, *Staatshandelingen* 1980, no. 40.



## 2.5 The concept of 'generally accepted'

The concept of 'generally accepted', which is pivotal to the work of the International Law Association's<sup>60</sup> Committee on Coastal State Jurisdiction Relating to Marine Pollution, only appears in Art. 4(8) of the 1978 Willemstad Treaty.<sup>61</sup> The Netherlands government has stated at least on one occasion that the MARPOL 73/78 Convention must be regarded as 'generally accepted'.<sup>62</sup> Furthermore, the Netherlands takes care not to impose measures more stringent than those contained in IMO regulatory instruments. Consequently, where legislation applies to foreign ships in maritime zones where the concept of 'generally accepted' is relevant,<sup>63</sup> it means, in effect, that the rules and standards of IMO regulatory instruments are regarded as 'generally accepted'.

## 2.6 Enforcement

Consistent with the focus of the Final Report of the ILA Committee, a distinction is made between in-port enforcement and enforcement at sea. Coastal-state enforcement essentially relates to violations of its laws and regulations committed within its maritime zones. The actual enforcement action, however, can take place both in port and at sea. Port-state enforcement relates to violations of CEDM standards identified in port and discharge violations committed beyond the port (coastal) state's maritime zones. All port-state enforcement takes place in port.<sup>64</sup> The following sections discuss in-port enforcement, enforcement at sea and some general remarks on safeguards.

### 2.6.1 In-port enforcement

In-port inspections regarding environmental and safety standards for ships are in general covered by the Port-State Control Act.<sup>65</sup> However, Art. 19(2) of the PSSA allows investigation of any foreign ship to find out if it is responsible for a discharge beyond the Netherlands territorial sea in contravention of the MARPOL 73/78 Convention. Consistent with Art. 6 of the MARPOL 73/78 Convention, no further enforcement action is undertaken unless it is proved that the illegal discharge has taken place within the Netherlands territorial sea.

<sup>60</sup> Hereinafter cited as ILA.

<sup>61</sup> See supra note 17.

<sup>62</sup> Parliamentary Papers, Second Chamber, 1996-1997, no. 25446 (R 1594), no. 3, p. 7.

<sup>63</sup> For discharge standards in the EEZ, and for CEDM standards in both the territorial sea and the EEZ (1982 Convention, Arts 21(2) and 211(4 and 5)). The proposed draft Arts 5 and 17 of the PSSA are relevant here.

<sup>64</sup> This distinction is similar to the one proposed by the Netherlands (Parliamentary Papers, Second Chamber, 1996-1997, no. 25446 (R 1594), no. 3, p. 8).

As part of the comprehensive review of the PSSA, however, the new draft of Art. 19 provides the competence to investigate whether foreign ships are responsible for illegal discharges anywhere.<sup>66</sup> Pursuant to the proposed Art. 36(1) of the PSSA, the Penal Code applies to these violations, allowing for detention and penalties. Together these provisions constitute a claim to the powers available under Art. 218 of the 1982 Convention, to which the Netherlands is entitled as a state party. One interesting aspect that was already noted in Part 2.1, is that no mention is made of the foreign ship needing to fly the flag of a party to the 1982 Convention. However, although state practice is scarce<sup>67</sup> and Art. 218 of the 1982 Convention is therefore not likely to have a concurrent basis in customary international law, the large number of states which are party to the 1982 Convention keeps the probability of conflict with the *pacta tertiis* principle low. In any case, the existence of Art. 13(a) of the General Provisions Act, Art. 8 of the Penal Code and draft Art. 43(a) of the PSSA mentioned in Part 2.2, may be applied to avoid such conflict.

### 2.6.2 Enforcement at sea

The enforcement powers under Art. 15 of the PSSA can be applied at sea to foreign ships but only when these ships are in the Netherlands territorial sea, sailing to or from a Netherlands port (Art. 17(b) of the PSSA). Enforcement based on this provision alone would therefore not be possible for ships in lateral passage. The enforcement competence under Arts 18 to 23 of the AEO, which relate to the general enforcement powers of the competent authorities regarding economic offences, cannot be used in the sphere of the PSSA.

This situation is changed fundamentally under the pending draft of the PSSA. New Art. 17 of the PSSA simply states that Art. 15 of the PSSA applies to foreign ships in the territorial sea or the EEZ of the Netherlands. The right to require information pursuant to Art. 220(3) of the 1982 Convention will only be exercised in cases of violations of discharge standards and is directly linked to the captain's obligation to notify the competent authorities in cases which involve discharged pollutants (new Art. 12(1 and 3)). Initially, boarding and inspection under Art. 15 of the PSSA are only justified 'in so far as this may reasonably be deemed necessary for the performance of their duties'.<sup>68</sup> To a large extent, this would seem to cover the requirement of 'clear grounds' in Art. 220(3) of the 1982 Convention. Enforcement powers with respect to CEDM standards do not seem to be available and even in its amended form the PSSA does not seem to provide for the detention of a ship within the territorial sea or the EEZ. In view of this, it is not really

<sup>66</sup> See supra sub 2.1.

<sup>67</sup> When the amended PSSA thus enters into force, the Netherlands will be one of the few states to claim powers under Art. 218 of the 1982 Convention (see Molenaar, E., *Coastal State Jurisdiction over Vessel-Source Pollution*, supra note 42, pp. 109-110, who *inter alia* refers to practice by Germany and the United Kingdom).

problematic that it was considered unnecessary to incorporate any of the main conditions of Art. 220 (5) of the 1982 Convention.<sup>69</sup> Finally, the fact that the amendments make no distinction between the territorial sea and the EEZ is not problematic, as long as application in practice does not conflict with the distinctions that indisputably exist in the 1982 Convention.<sup>70</sup>

### 2.6.3 Safeguards

At the outset, reference should again be made to Art. 13 (a) of the General Provisions Act, Art. 8 of the Penal Code and draft Art. 43 (a) of the PSSA mentioned in Part 2.2, which aim at consistency with international law. Although the applicable enforcement powers have all been laid down in the PSSA, and sanctions largely in the AEO, aspects of enforcement procedure, including safeguards, are often incorporated in the Code of Penal Procedure.<sup>71</sup> Nevertheless, the PSSA contains several relevant safeguards as well.<sup>72</sup> The obligation not to delay a foreign vessel longer than is necessary has not been incorporated into these enactments. This was considered unnecessary as it would be addressed in instructions for inspection officers and, in any case, those adversely affected by delay would be entitled to a tort action against the government.<sup>73</sup>

As indications exist that the prompt release procedure under Art. 292 of the 1982 Convention will be frequently resorted to,<sup>74</sup> it should be pointed out that Art. 37 of the PSSA stipulates that release must be made promptly subject to reasonable procedures such as bonding. However, consistent with Art. 226 (1)(c) of the 1982 Convention, prompt release may be refused for vessels considered unseaworthy.<sup>75</sup> This refusal is open to appeal pursuant to Art. 27 of the PSSA.

An interesting situation in which these provisions were invoked occurred in the *Mosoles* Case.<sup>76</sup> The owner of the *Mosoles* objected pursuant to Art. 27 of the

PSSA to the continued detention of the ship because it refused to empty its stop tanks at port reception facilities before departure. The Dutch Maritime Board decided that the decisive issue was whether the inspecting officer could reasonably have concluded that there was a threat of marine pollution if the contents of the ship's stop tanks were kept on board. The vessel's oil record book showed that two illegal discharges had occurred earlier in the same year. Taking into account the fact that the master could not supply the name of the next port of call, the Dutch Maritime Board found that the officer could reasonably conclude that a threat to the marine environment existed if the contents of the stop tanks were kept on board when the vessel sailed. The continued detention was not therefore overruled.<sup>77</sup>

Finally, a judgment significant for its evidentiary aspects is that of the Supreme Court in the *Gold Crest* Case.<sup>78</sup> At stake was the burden of proof in relation to Art. 5 (1) of the PSSA which prohibits the discharge of substances, subject to the exceptions embodied in the MARPOL 73/78 Convention. The Supreme Court ruled that the Public Prosecutor only has to show that the ship did indeed discharge hazardous substances. The burden of proof that the discharge falls under the exceptions is on the shipowner.

### 3 NETHERLANDS NATIONAL IMPLEMENTATION PRACTICE

As briefly mentioned in Part 1.3, the Netherlands Shipping Inspectorate is active within the framework of the 1982 Paris MOU and is committed to inspecting a minimum of 25 per cent of all ships entering Netherlands ports.<sup>79</sup> Also, under section 5 of the 1982 Paris MOU the Shipping Inspectorate is required to 'endeavour to secure evidence' relating to discharge violations of the MARPOL 73/78 Convention if so requested by another Maritime Authority.

Since 1969 the Netherlands has recorded (oil) spills in the zone designated to it under the 1969 Bonn Agreement. Aircraft have been used for detection since 1975. Since 1983, they have been equipped with remote sensing apparatus (permitting observations to be made at night and in fog). The flights are currently

<sup>69</sup> The draft Explanatory Note of 25 September 1996 to the amendments to the PSSA observes that these would be embodied in internal guidelines.

<sup>70</sup> See in this respect again the savings-clauses mentioned in Part 2.2.

<sup>71</sup> *Wetboek van Strafvordering*, of 15 January 1921, *Staatsblad* 14 (1921), as amended.

<sup>72</sup> For example, Art. 26 which concerns notification of the flag state, Art. 37 which stipulates that release shall be made promptly upon payment of a financial security and Art. 18 which limits inspection in principle to a certificate check unless certain exceptions apply (see Art. 5 (2) of the the MARPOL 73/78 Convention and Art. 226 of the 1982 Convention).

<sup>73</sup> Parliamentary Papers, Second Chamber, 1982-1983, no. 17320, no. 6, p. 7.

<sup>74</sup> See the judgments of the International Tribunal for the Law of the Sea in the *Saigo* and *Camouco* Cases, as available on Internet: <[www.un.org/Depts/los/ITLOS/ITLOSHome.htm](http://www.un.org/Depts/los/ITLOS/ITLOSHome.htm)>.

<sup>75</sup> PSSA, Art. 21.

<sup>76</sup> Dutch Maritime Board, 5 October 1993, cited in *2 International Maritime Law* 148 (1995) and in Anderson, D., 'Investigation, Detention and Release of Foreign Vessels under the Law of the Sea of 1982 and Other

<sup>77</sup> p. 165, 176 (1996).

<sup>78</sup> The Netherlands government supports a requirement for ships to dispose of waste and residues at reception facilities before leaving port. See *Fororgangsmødet mellem en Scheepvaart* (Progress Report Environment and Shipping), Ministry of Transport, Public Works and Water Management, 1998-2002, pp. 33-34. Hereinafter cited as Progress Report. The European Community also intends to take this approach (see Commission Proposal - COM (1999) 1862 final, 'COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT pursuant to the second subparagraph of Art. 251 (2) of the EC-Treaty concerning the Council common position on the amended proposal for a European Parliament and Council Directive on port reception facilities for ship-generated waste and cargo residues', as available on Internet: <[europa.eu.int/cur-lex/en/com/dat/1999/en\\_399PC1862S.html](http://europa.eu.int/cur-lex/en/com/dat/1999/en_399PC1862S.html)>).

<sup>79</sup> *Hoge Raad* (Supreme Court), 13 September 1994, no. 97413 E. Information can be obtained at the Paris MOU homepage on Internet: <[www](http://www).



carried out by the Coast Guard under the direction of the Coast Guard Centre (*Kustwachtcentrum*) in IJmuiden, which answers to the Royal Navy. In addition to this form of monitoring, reports of spills and polluting activities are also sent to the Coast Guard Centre and other competent authorities by third parties such as civil aviation, shipping and offshore installations.

Around 500 to 600 (oil) spills are reported each year.<sup>80</sup> A few of these can be directly traced back to ships. Most, however, are from unknown sources. Due to the fact that most of the spills are found in or near the shipping routes along the Wadden islands, it can be readily assumed that they originate from ships.

If the crew of the police or coastguard aircraft detects an offence, the captain of the ship concerned, or his deputy, will be questioned,<sup>81</sup> and an official report of the findings will be drawn up. Reports received by the Coast Guard Centre are processed and investigated. If the source of the spill is known and the ship involved is destined for a port in the Netherlands, the report will normally be handed over to the Shipping Inspectorate or other competent authorities for further investigation. If the ship's destination is a foreign port, the local authorities will be asked to continue the investigation and report their findings. If the destination is unknown the action taken will probably involve no more than sending a report to the flag state if the incident occurred outside the territorial sea. If it occurred within the territorial sea, the case will be 'put on hold' in the Netherlands. If the ship concerned is spotted again and enters a Netherlands port, the investigation will be completed. It is expected that once the amended PSSA enters into force, this will lead to more cases that are 'put on hold' as Netherlands' law will also prohibit discharges in its EEZ.

A recent overview of files prepared by the North Sea Public Prosecutor Investigation Office (*Stafpbureau Noordzee Officiere van Justitie*) provides information on the follow-up to the reports and the results of investigations relating to discharges of (harmful) substances from ships on the Netherlands continental shelf, including the territorial sea.<sup>82</sup> In the period from July 1987 to December 1998, 859 files were prepared on cases where a suspected offender had been identified. Approximately 70 per cent of these cases involved discharges that occurred outside the Netherlands territorial sea (i.e., in the Netherlands EEZ); the remaining discharges took place in the territorial sea. The fact that most of the discharges occurred outside the territorial sea does not come as a surprise, since the

busiest shipping lanes are located there. In more than 80 per cent of the cases the suspected offender was a foreign vessel.

About 26 per cent of the files (223 cases) are listed as dismissed by the North Sea Public Prosecutor Investigation Office, meaning the investigations have not led to a completed file and the case has not been processed any further.<sup>83</sup> All files relating to discharge violations that occurred in the Netherlands territorial sea (irrespective of the nationality of the vessel), as well as the files concerning discharges committed by Netherlands vessels on the Netherlands continental shelf outside the territorial sea were handed over to the district court's Public Prosecutor (180 cases; 21 per cent of the total).<sup>84</sup> The remaining files were handed over to the flag state (376 cases; 44 per cent of the total) or were sent to other competent authorities (55 cases; six per cent of the total).<sup>85</sup>

Approximately 83 per cent of the 180 cases that were handed over to the Public Prosecutor involved discharges in the territorial sea. Almost all of the remaining 17 per cent of the cases processed by the Public Prosecutor's office involved discharges committed outside the territorial sea by vessels registered in the Netherlands or the Netherlands Antilles. In 88 cases (49 per cent) the action taken by the Public Prosecutor led to a settlement with the offender (the majority outcome) or a conviction by the court.<sup>86</sup> The remaining cases either did not lead to a conviction (51 cases or 28 per cent of the total) or they are listed as pending (seven cases) or no further notice was received from the Prosecutor's office as to what happened (34 cases). Settlements varied from NLG 500 to NLG 30 000. Convictions mostly involved monetary penalties of varying severity, but have tended to go up considerably during the last few years.<sup>87</sup> Most of the cases where a settlement or a verdict was reached involved illegal discharges that had been detected during day-time.

The files concerning illegal discharges committed by foreign vessels outside the Netherlands territorial sea, but within the Netherlands continental shelf area, were in most cases handed over by the Shipping Inspectorate to the flag state. Only in 54 of the 376 cases (14 per cent) that were sent to the flag state was the imposition of a penalty reported to the Netherlands authorities. No penalty was imposed in 146 reported cases (39 per cent). In the remaining cases either no further notice was received from the flag state (140 cases or 37 per cent of the total) or they are listed as still pending (36 cases, or nearly 10 per cent of the total).

<sup>80</sup> ICONA, supra note 2, p. 82. More recent information confirming these figures was obtained from the North Sea Directorate (Directorate-General of Public Works and Water Management) of the Ministry of Transport, Public Works and Water Management).

<sup>81</sup> On the basis of the percentage of dead birds covered by oil found on the beach each year it is estimated that discharges of oil from ships on the North Sea are slowly decreasing. Estimates of annual discharges in the Netherlands EEZ run from 5 000 to 13 000 tons of oil. See the Progress Report, supra note 77, p. 31.

<sup>82</sup> By means of very high frequency radio contact.

<sup>83</sup> *Lozingsverantwoording 4-1-dossier*, 1987-1998 November 1999, North Sea Public

<sup>84</sup> All received reports of spills and discharges are investigated. However, not every investigated case leads to the drawing up of a completed file.

<sup>85</sup> The District Court of Amsterdam is charged with the prosecution of environmental offences committed on the North Sea.

<sup>86</sup> The remaining files (25 cases; three per cent of the total) were not processed or renumbered.

<sup>87</sup> The report of the North Sea Public Prosecutor Investigation Office refers to convictions in 23 cases in the period from June 1987 to December 1998. These convictions involved seven Netherlands vessels and 16 foreign vessels.

<sup>88</sup> One of the highest monetary penalties was imposed in a case in 1996 involving the Greek vessel *Irina*. The District Court of Amsterdam issued a fine of

From this overview of criminal cases it is apparent that relatively few illegal discharges that have been reported in the Netherlands area of the North Sea during the last 12 years have led to the imposition of criminal penalties. Of an estimated 7 500 discharges reported during this period, only a small number (about ten per cent) could be traced back to an actual offender (as far as discharges from ships are concerned). Only a few cases (about 17 per cent) where the alleged offender was known ultimately led to a conviction or a settlement. It can be noted, however, that the track record of the Netherlands authorities compares favourably with that of the flag states. Prosecution in the Netherlands led to the imposition of penalties in 49 per cent of cases, while this only occurred (as far as is known) in 14 per cent of the cases that were sent to the flag state. The application of the PPSA to the Netherlands EEZ is therefore likely to result in the prosecution of a larger number of cases involving discharge violations by foreign vessels.

Some cases involving illegal discharges from foreign vessels have led to civil actions. Several civil cases could be mentioned, for instance the 1987 *Hell/Skyron*, the 1987 *Junior*, the 1988 *Borcea*, and the 1992 *Nordfrakt* cases. The 1988 *Borcea* case led to the institution of both criminal and civil proceedings. However, the criminal proceedings led to a conviction not under the PPSA but under another act. The civil proceedings were not instituted by the state but by a non-governmental environmental organization.

#### 4 CONCLUSIONS

Like many European states, the Netherlands can boast a long-standing tradition in international shipping. The recent policy-initiatives to make registration for ships in the Netherlands more attractive reflect its will to safeguard and bolster that tradition. Prima facie evidence that it also accepts its responsibilities to exercise effective jurisdiction and control over its ships is implicit in its commendable level of ratification of international instruments relevant to vessel-source pollution. Further proof of its commitment are its active participation in IMO, in the Port-State Control Committee under the 1982 Paris MOU, within the framework of the 1983 Bonn Agreement, and its pro-active position in the *Mostales* Case.

It is surprising and disappointing, therefore, to observe that the Netherlands is taking so long to make use of its right under the 1982 Convention to exercise coastal-state prescriptive and enforcement jurisdiction over vessel-source pollution beyond the territorial sea. At the moment of writing the long awaited review of the PPSA has still not entered into force. Without it, discharges prohibited under the MARPOL 73/78 Convention and committed by foreign vessels in the Netherlands EEZ or even beyond, can only be reported to flag states. Experience has shown that this is not an effective remedy. Once the revised PPSA enters into force, however, it brings within reach many of these new powers provided by the 1982 Convention, including the innovative port-state jurisdiction under Art. 218. While the PPSA and other relevant enactments do not contain all the relevant detail of the 1982 Convention, they conform with it in general, if only due to the various savings-clauses that seek to ensure this.

With the amended PPSA in place, it seems that further regulatory activity is to be expected mainly at the international or regional level, namely within IMO, the 1982 Paris MOU and the EC. This is not to say that the Netherlands could never take such action, if it wished to do so. Aspects of enforcement, however, will continue to be a domain within which the Netherlands retains full competence. It is here that targeted and increased efforts could be made to enhance the state of the marine environment in general and of the North Sea in particular.

12 July 2000