Chapter 5

Problems of Implementation of the North Sea Declarations: A Case Study of the United Kingdom*

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Introduction

In considering the impact of the Bremen and London Declarations, an important question is obviously the extent to which the North Sea states have implemented the various undertakings given in these Declarations. The aim of this chapter is to look at this question of implementation, focusing in particular on the United Kingdom. Of the North Sea states, the UK is particularly appropriate as the choice of such an implementation study, both because it is one of the major polluters of the North Sea and because it is commonly regarded as being the North Sea state least keen on stricter controls on pollution of the marine environment.

To study the degree to which the UK (or any other North Sea state) has complied with or implemented the various undertakings in the Bremen and London Declarations is not, however, a straightforward matter. First of all, it is not always easy to determine exactly what obligations the Declarations contain. A number of the provisions of the Declarations (particularly of the Bremen Declaration) are vague and imprecise. Nor, as will be seen below, are the provisions of a Declaration on a particular topic always internally consistent. A second problem is the difficulty in some cases of making a judgement as to whether a particular obligation of the Declarations has been complied with: for example, whether as required by paragraph XVI. 39 of the London Declaration, “best available technology” is being applied to “minimize” any pollution caused by radioactive discharges from nuclear industries; or, in the case of dumping of waste at sea, whether there are “practical

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alternatives” on land which would therefore mean that no dumping should take place. A final difficulty in making an implementation study is that in assessing whether there has been compliance or implementation, it is usually not enough simply to look at the relevant legislation of the state concerned. In most cases it is essential, and often more important, to look as well at administrative policy and practice: however, information on these matters (at least in the UK) is not always easy to obtain.

Although the British Government has not, as far as the authors are aware, made any public statement about the legal status of the INSC Declarations, it is likely that it does not regard the Declarations as being legally binding. Nevertheless the Government has said that it “attaches considerable importance to implementing” the Declarations.

Much of this implementation is being done through the existing legislative and administrative framework, although major new legislation is planned in order to regulate inputs to rivers and estuaries of substances that are persistent, toxic and liable to bioaccumulate. It is also noteworthy that in February 1988 the Department of the Environment published a “Guidance Note” on the London Declaration, the purpose of which was to set out the Government’s thinking about the implications of each section of the Declaration, and to indicate what action was expected to follow as a result.

For reasons of space this chapter cannot look at all the matters dealt with by the Bremen and London Declarations and see how far the UK has complied with or implemented them. Instead it concentrates on looking at compliance and implementation in two areas—ininputs of dangerous substances into rivers and estuaries and dumping. These two areas have been selected for study because, first, they illustrate rather well some of the problems involved in doing an implementation study which were referred to above, and second, these two areas are ones with which it might be expected beforehand that the UK would have difficulty, or show some reluctance, in complying. By looking at these areas, therefore, some idea of the impact of the Declarations can be gained.

**Inputs via Rivers and Estuaries of Substances that are Persistent, Toxic and Liable to Bioaccumulate**

The provisions of the Bremen Declaration on the reduction of pollution from land-based sources were primarily directed towards the EC and the Paris Commission. It

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1. Though the then UK Secretary of State for the Environment, Mr. Ridley, has been reported as saying that the London Declaration was not legally binding but a common declaration of political will. See (1988) 19 Marine Pollution Bulletin 3.
4. Part C.