The purpose of this article is to analyse and criticise the provisions of the Final Declaration of the Third International Conference on the Protection of the North Sea, adopted in the Hague on 8 March 1990 relating to the control of marine pollution by emissions of dangerous substances from land-based sources, and to assess their implications for the further development of environmental policy and law at national, European and international levels. The Hague Declaration will be examined not only against the background of the earlier declarations adopted by the first and second North Sea conferences, held respectively in Bremen in 1984 and in London in 1987, but also within the wider context of the existing international legal instruments and European Community directives relating to different sources of direct and indirect pollution of the marine environment by toxic, persistent and bio-accumulative substances.

The Legal Status of the Declarations: An Academic Dispute

Much of the scholarly debate surrounding the North Sea declarations has focused on their legal status. Are they to be considered as mere political declarations,
as some form of “soft law”, or do they on the contrary contain “hard”, legally binding commitments on the part of their signatories? I do not intend to dwell on this question, which has already been addressed at great length by other authors, who appear to hold widely divergent views on the matter. In my view, the most relevant question is not whether or not the North Sea declarations, or certain parts of them, are legally binding on the signatories, but to what extent they are likely to be effective and to be implemented. This question does not in reality hinge on their legal status, but much more on their actual content, whatever the relative “hardness” or “softness” of their various provisions in legal terms.

My view is that, whatever position one takes as to the legal or political nature of the declarations, many, if not most, of the commitments made by riparian states in London, Bremen and the Hague belong to the realm of legal and/or political symbolism, in that they are so vaguely formulated that they do not significantly restrict the discretion of national policy-makers in making regulatory decisions. In other words, the North Sea declarations in fact contain very few substantive obligations, be they of a legal or political nature.

The political process of the International Conferences on the Protection of the North Sea (INSC), initiated in Bremen in 1984, has been hailed as an example of regional environmental co-operation, as a source of “political impetus” for the further development of national, European Community and international law in the area of marine pollution control, yet the question may legitimately be asked: does the process actually generate any substance?

Transforming Political Commitments into Legal Instruments: A Slow-Motion Process

It is quite clear that the governments participating in the INSCs view those conferences primarily as a political exercise, though not as one undertaken in a legal vacuum. While the INSC itself does not actually purport to create law directly, its proclaimed intent is to lay down general policy objectives which are then to be implemented through the development of legal norms at the national level and at the international level, in the forum of international organizations and regulatory commissions whose explicit mandate it is to develop such norms.

Indeed, the successive declarations constantly refer to the Oslo and Paris Commissions and the European Economic Community as the forum through which

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8 Referring to the INSC process initiated in Bremen in 1984, the Hague Declaration notes with apparent satisfaction: “The political work regarding the protection of the North Sea environment has taken place within what has become an effective international framework.” Hague Declaration, p. 3 (emphasis added).