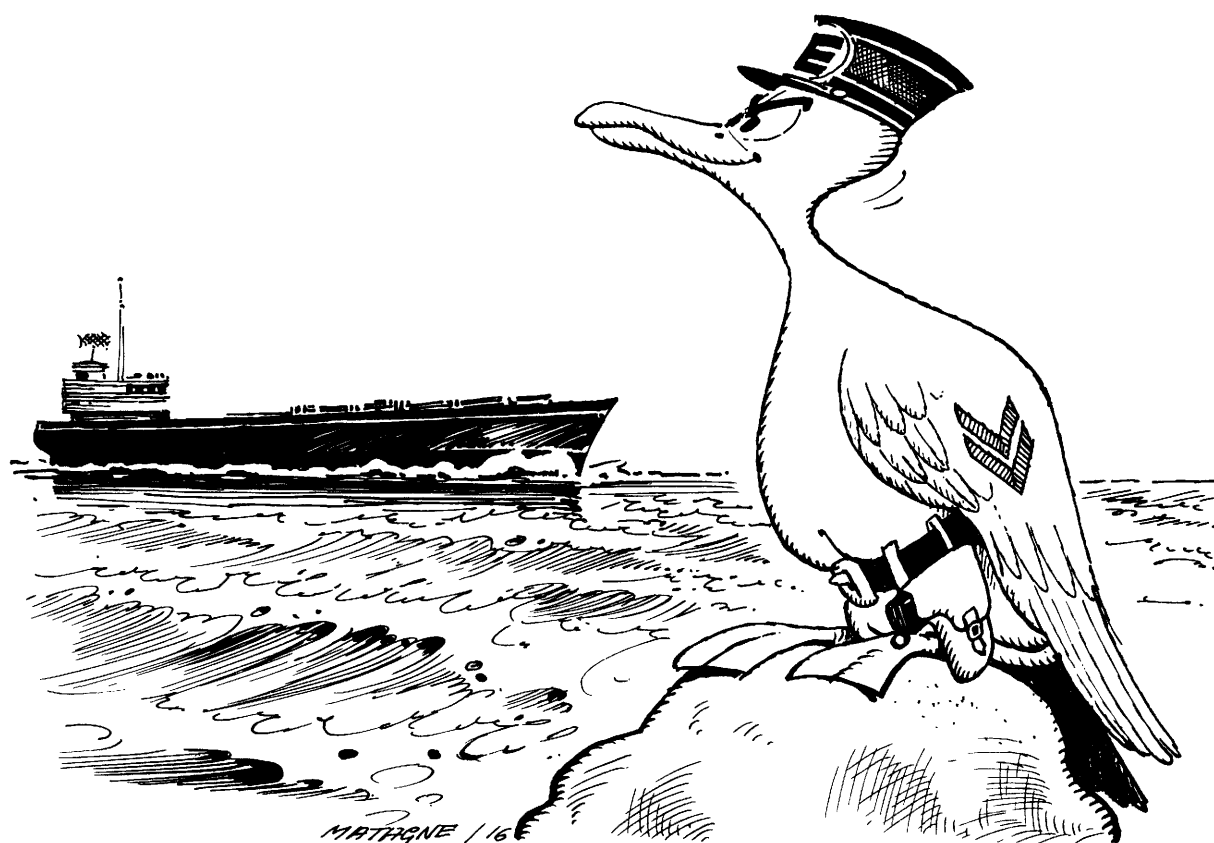


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The Community moves against marine pollution



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Commission of the European Communities
Directorate General of Information
Rue de la Loi 200
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THE COMMUNITY MOVES AGAINST MARINE POLLUTION

Who can say whether another catastrophe like Amoco-Cadiz won't happen again. The disastrous spillage caused the sixth major oil slick to threaten the coasts of Europe and the fourth to hit the coasts of Brittany - not surprising considering the volume of traffic around Europe's shores. More than one million tonnes of oil per day is transported to France's Pas-de-Calais coast line where visibility is as low as a few miles half of the time and where gale force 8 winds prevail one day in every four.

The threat of further oil slicks is permanent. Isolated efforts at protection are fruitless . . . legislation is too disparate . . . flags of convenience are frequent (40%) . . . too many shipowners . . . too many tankers . . . too many different systems. Controlling marine pollution can only succeed with action at the international level.

International Conventions do exist, but they are ineffective as far as the European Commission is concerned. And not ratified by many countries means they are not even applied. Lacking controls that are sufficiently strict and sanctions which are suitably dissuasive, the Conventions are mere paper. Without interstate cooperation, they have nothing to back them up. But the European Commission wants to make real progress and has proposed a number of measures to prevent accidents and eliminate accidental sea pollution. At the international level, it has been playing a leading role in bringing about ratification and respect for these international conventions. At the Community level it has launched an anti-pollution programme without any prompting. Given the size of the problem, the programme may appear modest. But given the resources the Community has at its disposal, it is in fact somewhat ambitious.

COMMISSION PROPOSALS

1. Action programme for oil slicks

Following the Ekofisk accident the European Commission sent the Council a proposal on preventive measures, and control and reduction of oil pollution. The Commission has examined its own proposals, and following the Amoco-Cadiz catastrophe, has strengthened its own seven-point action plan made up of:

- the processing of existing information and centralising methods of dealing with oil pollution in the sea; to make this information immediately available in case of accidental pollution.

This information includes, in particular, an inventory of available manpower and its qualifications, plus the materials available for dealing with oil slicks;

- processing information on oil tankers which could pollute Community waters and coastlines, and offshore drilling rigs under EEC jurisdiction.

This data bank - compiled as before through periodic reports from Member States - would contain files on tankers which have already polluted Community waters as well as plans for rapid action in case of accidents;

- a body of measures to strengthen the cooperation and effectiveness of the anti-pollution teams that exist or that will be created in Community countries. The European Commission is examining ways of coordinating these action teams at the Community level: combined exercises, equipment comparisons, information exchanges, etc;
- studying possible Community participation in developing anti-pollution ships to carry equipment necessary to deal with oil pollution. This could enable design and construction costs to be shared. The Commission is examining the extent to which it will contribute financially to the operation;
- examining tugboat requirements along European coasts. If there are not enough tugboats available, or if they are not the right type, the Commission will propose that the Community take the appropriate initiatives;
- studying possible modifications and improvements of legal rights covering compensation from oil slick damage. The Commission will try to ensure that the "polluter pays" principle is more effectively applied so that the people who are physically or morally responsible for pollution should bear the necessary costs for cleaning up and preventing further pollution. The Commission will examine the extent that insurance companies can be made to cover not only immediate costs such as beach cleaning but also the indirect damage done to people who earn their living from the resources of coastal waters;
- developing a research programme on the chemical and mechanical means of dealing with oil pollution of the sea, on the nature of the hydrocarbon pollutants and their effects on fauna and flora. One particular research topic will be the short and long-term effects of hydrocarbons and detergents/dispersants on marine organisms and the ecosystem.

2. COMMUNITY PARTICIPATION IN INTERNATIONAL AGREEMENTS

In addition to this action programme, the European Commission has advised the Council of Ministers to:

- negotiate Community participation in the Bonn agreement (1969) on cooperation to combat oil pollution in the North Sea;
- conclude the Barcelona Convention's protocol (1976) on cooperation in critical situations against the pollution of the Mediterranean from hydrocarbons and other harmful substances.

3. ACCIDENT PREVENTION

(i) Ratification by the Nine of the MARPOL and SOLAS conventions and the International Labour Organisation's (ILO) Convention No. 147

These conventions (see inventory of international conventions in annex) regulate pollution discharges and ship safety rules, but they have yet to come into force. Applying the rules will be the step towards preventing accidents such as Amoco-Cadiz. By ratifying them simultaneously, the Nine can bring pressure to bear on other countries to follow suit and apply the minimum norms. The Commission will examine ways of strengthening control measures since the provisions of MARPOL and SOLAS are far from satisfactory. It will also look at the possibility of strengthening the norms itself.

(ii) Extension of the Nine's territorial waters to 12 miles

The EEC countries have not yet adopted a Community limit for their territorial waters (it varies from 3-12 miles). Coastal states only have sufficient power to enforce regulations in their territorial waters. It is therefore important for Community countries to extend their policing to this minimum 12 mile frontier.

(iii) Extension to the Community level of the administrative agreement of the eight North Sea countries

This administrative agreement, signed in 1978, intends to make up for the lack of application of the ILO convention No 147 (see annex) which has not been ratified by any country. The eight countries bordering on the North Sea have agreed to police vessels anchored in their ports to ensure they respect the labour norms established by the ILO (competence of crews, living and working conditions on board). The Commission will soon be advising the Council to extend this agreement throughout the Community.

(iv) Joint action by the Nine within IMCO

Within the Intergovernmental Maritime Consultative Organisation (which aims to resolve all types of navigation problems at the international level), the Commission is examining approaches which the Nine could jointly take in the following four fields:

- navigation lanes: compulsory shipping lanes should be extended to those coastal waters threatened by pollution. To ensure that ships respect these lanes, a system for monitoring oil tanker movements should be developed and tankers should be obliged to signal any damage to coastal authorities;
- navigation safety: coastal states should be able to demand use of a pilot in dangerous areas, or the use of tugs in case of damage;
- mutual assistance: the Community could propose organising an international or regional mutual assistance system (tug-boats, coast guards, etc.) which could assist when tanker damage threatens to pollute the coastline;
- crew qualifications: a convention on training sea personnel and awarding of certificates is currently being prepared by IMCO. Concerted action by the Nine should accelerate its adoption and implementation.

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EXTENDING ORIGINAL PROPOSALS

The action programme proposed by the European Commission is basically an extension of the ideas contained in a report sent to the Council of Ministers in June 1977 following the Ekofisk accident in the North Sea. It covers the control and reduction of pollution from accidental oil discharges in the sea. The 1977 proposals also recommended that the Community become party to the Bonn agreement and the Barcelona Convention. The Council has yet to act.

In December 1977 the Commission examined the problems caused by shipping vessels which do not conform to required norms. A large proportion of the world's shipping sail under flags of convenience and as a result many of them do not meet safety standards and working conditions required by labour legislation in the Community. The Commission took the view that action against such practices should be stepped up even to the extent of perhaps refusing such ships access to Community ports.

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MANY CONVENTIONS BUT FEW RESULTS

The Community has signed several international conventions, but though they appear impressive, their effectiveness has yet to show (see guide to maritime conventions in annex).

Little appears to have changed since 1967 when the Torrey Canyon went aground and broke up (dispersing 110,000 tonnes of crude oil) and 1978 when the Amoco Cadiz did the same and threatened coasts in the English Channel with 200,000 tonnes of crude oil.

The ineffectiveness of the conventions is basically because they have not been put into force and because they contain a number of shortcomings.

Neither recent regulations nor the majority of agreements mentioned above have been enforced despite being ratified by a suitable number of countries. Community countries have been as guilty as the rest.

The basic problem, however, is not to bring pressure to bear on the offending countries. Even if all the member countries of IMCO were to ratify the conventions outstanding by the end of the month (under the shock of the damage done to the Brittany coastline) could ships guilty of the unauthorised dumping of oil in fact be arrested? And would ships which do not meet the prescribed norms be refused access to ports? Not very likely.

International regulations have a number of loopholes which can be exploited. International law which is currently in force does not encourage effective collaboration in finding offenders. Once a polluting ship escapes the jurisdiction of local coastal authorities, the country concerned is virtually powerless to prove the guilt of the ship, and take appropriate action. To take proceedings, the ship's captain has to be fool enough to bring his vessel back into one of the country's ports. By changing its flag or simply its owner, the ship can re-enter the waters of the offended country with impunity.

Once a convention has been ratified and is translated into national law it has, more often than not, relatively small teeth. The consequences of this are obvious: certain ship owners prefer to pollute and be taken to court rather than lose time and money by cleaning their tanks in port facilities.

It is perhaps also regrettable that IMCO does not have the regulatory power of the International Civil Aviation Organisation, though certain changes at IMCO are being planned.

Closing the Loopholes

Current regulations are basically inadequate and lack the means to prevent or deal with oil slicks, control international safety and navigation norms, or inspect crew qualifications.

The derisory facilities available to deal with accidental oil spillages bear no relationship to the loads carried by supertankers. The techniques available to deal with oil slicks are ineffective and methods such as detergents have caused more ecological damage than the oil itself. No convention has catered for coordinated action at the world level, though regional cooperation agreements have been brought in - Bonn agreement (1969) concluded by North Sea countries, the Helsinki Convention (1974) agreed by Baltic Sea countries, and the Barcelona Convention (1976) which aims to coordinate measures against pollution in the Mediterranean.

Introducing international shipping norms alone is not enough. Standards have to be enforced. At the moment, the country where the ship is registered is responsible. Many countries claim they are incapable of undertaking this responsibility and others (flags of convenience, etc) simply refuse.

The current trend (MARPOL and SOLAS) is to transfer part of the responsibility to the polluted country but this imperfect solution will doubtless lead to the emergence of "ports of convenience" and for this reason several Community countries have not ratified these conventions.

The obligation to follow shipping lanes is not complemented (as with air corridors) by an international information network enabling coastal states to police navigation courses. These countries should be in the position to demand the use of pilots to eliminate the risk of spillages, and ships should be obliged to constantly inform coastal authorities of their movements. This system could be assisted by international or at least regional coordination of anti-pollution teams as IMCO proposed at its February 1978 session.

Several recent accidents have highlighted the importance of human error, which is often the result of inadequate crew training, particularly on convenience flag ships. Up until now international conventions have ignored this problem.

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WORKING WITHIN CONSTRAINTS

It takes an accident such as the Amoco Cadiz to demonstrate the ineffectiveness of international regulations and stress the need for inter-country cooperation. Some countries have been forced to take unilateral action: the USA, Canada and South Africa have barred port access to vessels which do not meet the required norms and these countries do not allow supertankers in certain coastal areas. France is currently drawing up similar measures. Why is the Community not trying harder to do the same?

With a stated priority of protecting the environment the Community has to balance two considerations: its dependence on oil and the need to permit free movement of shipping.

Economic constraints

The Community has to import 50% of its oil requirements and this oil has to be transported either by European or foreign vessels (in particular those under flags of convenience). The Community's oil fleet (20% of world shipping) also supplies third countries and transports 17% of oil imported by the USA and 9% of Japan's. If the Community applies minimum standards for tankers, costs will rise and Community trade will be put at a disadvantage. On its own the Community cannot enforce others to conform to these standards. The cooperation of the USA and Japan at the international level is required. This could also stimulate demand in the crisis-stricken shipbuilding sector.

Legal constraints

The 200 mile frontier separating national coasts on the high seas is composed of two zones: the 12 mile territorial zone (with extensive legal control) and the subsequent 188 miles known as the economic zone where the country can, according to the third conference on the Law of the Sea, introduce regulations and anti-pollution controls. In the Community's economic zones, national authority is limited to fishing (except France).

No EEC countries have empowered themselves to deal with pollution in this zone though under international law they do have the right. (Countries would of course take action to avert danger from an accident in their zone). The unwillingness of EEC countries to do this is basically the fear that similar measures would not be taken by third countries and this would hamper the free movement of European vessels in the economic zones of these countries.

The Community will be forced to take a course between the interests of the European fleet and the pressing need to protect Europe's coastline from pollution.

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MINI GUIDE TO INTERNATIONAL MARITIME CONVENTIONS

International regulations dealing with marine pollution are extremely complex and dispersed. Generally they fall into three categories:

- regulations dealing with the prevention of pollution from tankers (against pollution and against the causes of pollution);
- regulations dealing with vessel safety and navigation (not only oil transportation);
- regulations on liability and compensation for damage.

1. Preventing pollution from oil tankers

a. Oil discharge regulations - Convention of London (known as OIL POL)

- signed in 1954 under the auspices of the International Maritime Consultative Organisation (IMCO)
- object is to regulate (and ban in certain zones) the non-accidental discharge of oil during tank cleaning. (Once a tanker has unloaded its cargo, it pumps in sea water for ballast and to eliminate hydrocarbon fumes in its tanks. The water becomes polluted by the oil residue and is eventually discharged back into the sea)
- limitations: this Convention only allows "a posteriori" action once the offence has been committed and the link between the pollution and the guilty vessel can be proven
- faults: not introducing an international register of violations committed, and leaving proceedings up to the country where the ship is registered
- operation: the Convention has been ratified by the nine Community countries

b. Prevention of discharges

The major weakness of OIL POL is that it fails to tackle the causes of the pollution, i.e. does not oblige tankers to equip themselves with means of dealing with oil residues on board. The Convention was amended in 1971 but has not yet come into force.

A new convention, MARPOL, has now been drawn up:

- signed in 1973 in London under the auspices of IMCO
- object is to strengthen the provisions of OIL POL dealing with hydrocarbons and to extend it to other dangerous substances and wastes carried by shipping. In particular it stipulated stricter tanker construction standards and forbids discharges in certain zones (Baltic, Mediterranean, etc)
- amended in 1978, the new tankers should have separate ballast tanks, and the older ones should have on-board cleaning equipment
- its originality lies in trying to introduce inter-state cooperation in tracking down offenders
- neither MARPOL or the amendments have come into force. MARPOL has not been ratified by any EEC countries

2. Safety and navigation regulations

SOLAS Conventions

- the first was signed in 1960 and replaced by SOLAS 1974 and amended in 1978 (IMCO)
- its object is to fix standards for construction, stability, radio-communication, emergency engines, etc. It also stipulates a system of inspection (certificates, visits by port authorities)
- SOLAS has yet to come into force. The 1974 Convention has been ratified by Denmark, France and the United Kingdom

Convention No 147 on minimum standards for merchant ships

- adopted in 1976 (International Labour Organisation)
- its object is to be an outline convention through which countries commit themselves to adopt (if they have not already done so) the minimum safety and labour provisions corresponding to ILO regulations which cover crew competence, social security, living and working conditions on board and all have a bearing on marine safety
- Convention No 147 has not been ratified by any country

Various IMCO recommendations on navigational safety

- object is to introduce shipping lanes and safety zones
- its limitation is that these lanes can only be made compulsory in territorial waters, i.e. not in a country's economic zone nor on the high seas
- faults: absence of a monitoring system and appropriate sanctions. For reasons of profitability many of these lanes are too close to the coastline (as in the case of Brittany)

3. Fixing rules for liability and compensation for damage from accidental pollution

Two Conventions signed in Brussels in 1969

- the object is to regulate pollution clean-up measures on the high seas in cases of accident
- the originality of the first Convention lies in its recognition of the right of countries threatened by pollution to take action on the high seas
- limitations: except in emergencies the threatened country must consult the country where the ship is registered and other interested countries before it takes action
- the second Convention stipulates that the owner of the ship is liable for all pollution damage
- faults: this Convention sets down a limit to financial liability which is out of step with the damages caused by today's super tankers
- both Conventions are in force (of the EEC countries only Ireland and Italy have not yet ratified them.) The complementary provisions to set up an international compensation fund for damage caused by oil pollution have not yet come into force. Private companies have taken the initiative, however, in introducing the TOVALOP and CRISTAL agreements which guarantee repayment of coastal clean up costs up to a limit of 30 million dollars.

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PRESS AND INFORMATION OFFICES OF THE EUROPEAN COMMUNITIES

BELGIUM

1049 BRUSSELS
Rue Archimède 73
Tel. 735 00 40/735 80 40

DENMARK

1045 COPENHAGEN K
4 Gammeltorv
Postbox 144
Tel. 14 41 40

FRANCE

75782 PARIS CEDEX 16
61, rue des Belles-Feuilles
Tel. 553 53 26

GERMANY

53 BONN
Zitelmannstrasse 22
Tel. 23 80 41

1 BERLIN 31
Kurfürstendamm 102
Tel. 8 92 40 28

IRELAND

DUBLIN 2
29 Merrion Square
Tel. 76 03 53

ITALY

00187 ROME
Via Poli, 29
Tel. 68 97 22 à 26

LUXEMBOURG

LUXEMBOURG
Bâtiment Jean Monnet B/O
Rue Alcide de Gasperi
Luxembourg-Kirchberg
Tél. 43011

NETHERLANDS

THE HAGUE
29, Lange Voorhout
Tel. 070-46 93 26

UNITED KINGDOM

LONDON W8 4QQ
20, Kensington Palace Gardens
Tel. 727 8090

CARDIFF CH1 9SG
4 Cathedral Road
Tel. 371631

EDINBURGH EH2 4PH
7, Alva Street
Tel. (031) 225.2058

CANADA

OTTAWA, Ont. K1R 7S8
350 Sparks St.
Suite 1110
Tel. 238 6464

CHILE

SANTIAGO 9
Avenida Ricardo Lyon 1177
Casilla 10093
Tel. 25 05 55

GREECE

ATHENS 134
Vassilisis Sofias 2
T.K. 1602
Tel. 743 982/83/84

JAPAN

102 TOKYO
Kowa 25 Building
8-7 Sanbancho
Chiyoda-Ku
Tel. 239-0441

SWITZERLAND

1202 GENEVA
37-39, rue de Vermont
Tel. 34 97 50

TURKEY

ANKARA
Kavaklidere
13, Bogaz Sokak
Tel. 27 61 45/46

UNITED STATES

WASHINGTON, D.C. 20037
2100 M Street, N.W.
Suite 707
Tel. (202) 872-8350

NEW YORK, N.Y. 10017
245 East 47th Street
1 Dag Hammarskjöld Plaza
Tel. (212) 3713804