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GREENPEACE AND THE DUMPING OF WASTES AT SEA:
A CASE OF NON-STATE ACTORS' INTERVENTION IN
INTERNATIONAL AFFAIRS

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Introduction:

It is fair to say that existing restrictions and bans on the dumping and incineration of wastes at sea¹ would not have been enacted unless Greenpeace² had undertaken and maintained a campaign to this aim in the 1970s, 1980s and 1990s. Greenpeace's campaign to protect the ocean from waste dumping has been one of the most persistent and popular campaigns of the environmental organisation in its entire history. It represents an excellent case study of the role that non-state actors can play in international relations.

Greenpeace's campaign against ocean dumping has been successful in changing the mind-sets of most governments and industries³. The ocean is no longer considered as the ultimate dustbin for wastes, and those still carrying out the limited ocean dumping practices that are still allowed are on the defensive and often carry them out with shame. However, land-based discharges and emissions from the nuclear and chemical industries continue and urgently need to be brought to an end.

¹ Dumping and incineration at sea is defined as the deliberate disposal of wastes from ships, aircraft and other vessels. It does not include land-based discharges of wastes into the marine environment from rivers, estuaries and the coast line, nor the so-called operational and accidental discharges from ships.

² Greenpeace is the international organisation that started in the 1970s to protect the environment and promote nuclear disarmament. It is known from the public mostly for the action it undertakes at sea (i.e. against nuclear testing, commercial whaling, ocean dumping, or for the protection of Antarctica, etc), but Greenpeace's actions – for the most part – are undertaken in a political context which is illustrated in this article. With offices in many countries of Western and Eastern Europe, North and South America, Asia, and international headquarters in the Netherlands, Greenpeace is solely funded by private donations. Greenpeace receives no funding from governments nor industry.

³ Whereas there are other cases in which Greenpeace played a significant, and even an essential role, to shift international environmental policy (i.e. commercial whaling moratorium under the International Whaling Commercial, the moratorium on the exploitation of minerals resources in Antarctica, the Comprehensive Nuclear Test Ban Treaty, etc), the case of ocean dumping is a very good case-study because it one, perhaps together with the ban on waste trade adopted under the Basel Convention, where Greenpeace has been the only environmental NGO campaigning to change the international regime.

Twenty Years Against Dumping:

The year 1998 marked the twentieth anniversary of Greenpeace's campaign against ocean dumping. It was July 1978 when Greenpeace first encountered a vessel routinely and deliberately dumping wastes at sea, approximately 400 miles South West of Cornwall in an area that had been specified by the Nuclear Energy Agency (NEA) of the Organisation for Economic Co-operation and Development (OECD) as the designated dumpsite of the Western European nuclear industry. The Greenpeace ship *Rainbow Warrior* found the *Gem*, a dumping vessel chartered annually by the UK Atomic Energy Authority (UKAEA) to carry out the disposal of so-called *low-* and *intermediate-*level radioactive wastes coming from medical and military establishments as well as – increasingly – that which was emanating from nuclear power plants.

Since its early days, in the late 1940s, the nuclear industry had chosen the open ocean as a convenient place to dispose of its inconvenient wastes. The USA, the USSR, France, the UK, Germany, Sweden and other states used the sea as their dumpsite, both in the Pacific and the Atlantic, and they were determined to continue.

The Oslo Convention was the first regional treaty to regulate the dumping of wastes at sea ever to be signed -- it was negotiated in 1972 by the countries bordering the north-east Atlantic. The nuclear industry successfully blocked efforts to include radioactive wastes within the auspices of the convention. Consequently, whereas the Oslo Convention regulated the dumping of sewage sludge, dredging spoils, and organohalogen compounds (amongst others) for almost twenty five years, the Contracting Parties had no right even to comment on the dumping of radioactive wastes. Yet, paradoxically, the NEA designated dumpsite for radioactive wastes was inside the area covered by the convention.

A few months later in 1972 the *London Dumping Convention* was negotiated. This is a global treaty, and would, for the first time, regulate the dumping of wastes at sea worldwide. However, here, the discussions were less dominated by the Western European nuclear states, and, as a result, the dumping of so-called *high-level* radioactive wastes was banned. This was seen at the time as a step forward. Yet in fact, it did not provide adequate protection because the classification of radioactive wastes as high, medium, or low-level had been drawn-up under the auspices of the International Atomic Energy Agency (IAEA) for handling purposes (for the protection of workers). It had little to do with the radio-toxicity and the isotopic composition of radioactive wastes. Hence, among so-called *low-level* radioactive wastes, could also be found extremely radio-toxic and persistent isotopes such as plutonium and strontium.

Dumping at sea was taking place out of sight. As a result, it was out of everyone's minds. Apart from those involved in the narrow circles in which ocean dumping operations were planned and executed, no-one had any real knowledge of what was going on out in the open ocean. It was virtually impossible to question operations of which no one had any real knowledge: *Out of sight, out of mind...*

But from 1978 onward Greenpeace would campaign to make sure that ocean dumping became increasingly visible, and it would become more and more difficult for the nuclear industry to portray itself as a responsible industrial sector searching for the best all-round solutions to its waste stream, its number one problem.

Public Attention:

At first, not much attention was paid to the encounter between Greenpeace and the *Gem*. Greenpeace was, at the time, a very small organisation that was not very well known.⁴ In addition, electronic means of instant communication did not exist or were inaccessible. It took time to raise the profile of a new issue. Without the persistence of the members of Greenpeace in the years to come, it could all have ended as a mere anecdote: a rubber dinghy from the *Rainbow Warrior* sailed under the *Gem*'s dumping platform, and was smashed by a barrel said to contain radioactive wastes... Nothing else really happened, in the summer of 1978.

Every summer, the *Gem* and other vessels continued to dump increasing quantities of radioactive wastes from the UK, Belgium, Switzerland and the Netherlands.⁵ Every summer, more Greenpeace ships were joining them. They played cat and mouse with each other until one gave up. Once, the dumpers used fire hoses to fill the environmentalists dinghies with water and jam their engines; so Greenpeace found pilots who could out-maneuvre the power-hoses. The next year, the dumpers had built cages around the dumping platforms - Greenpeace used them to board the dumping vessels and occupy the discharge ramps... It could have gone on forever. Each time, in addition, the governments under whose flag the ships were registered claimed that they were acting within the law, and that their operations were authorised by the *London Dumping Convention*, the international treaty of 1972.

Their claim encouraged Greenpeace to look closer at this *London Dumping Convention*. Was dumping really given a seal of approval by the United Nations? If this was the case, was the decision based on sound science and transparency? Were the dumpers reporting adequately on their activities? In 1981, Greenpeace applied for "observer status" at the meetings of the Contracting Parties to the Convention, held annually in the headquarters of the UN's International Maritime Organisation (IMO) in London. The aim was to question the rights of a few countries to use the *global commons* as their radioactive junkyard.

At the same time, Greenpeace started addressing the problem of the continued dumping of chemical wastes at sea, which was taking place with little or no control in many areas, including the North and Mediterranean Seas. Greenpeace Germany's first campaign tackled the dumping at sea of wastes from the manufacture of titanium dioxide, a white pigment used in a wide variety of industries including paint, food and pharmaceutical manufactures. They targeted the *Kronos*, a dumping vessel operated in the North Sea by *Bayer AG*, the giant German chemical company; they pursued it and exposed this case of deliberate pollution until land-based recycling alternatives were implemented. This campaign continued in the Netherlands, Belgium, France, Spain, and elsewhere. Nowadays, the chemical industry proudly promotes the fact that they make a healthy profit recycling the wastes from titanium dioxide, but they omit to mention that without Greenpeace, they would, perhaps, still be dumping it at sea.

As it turned out, the *London Dumping Convention* was doing little more than keeping a record of whatever information its Contracting Parties chose to tell it as to the quantities and sorts of

⁴ At the time, Greenpeace only had small offices in five countries, and the *Rainbow Warrior* had been bought in Europe only a few months before. It was not until a year later, in 1979, that the umbrella organisation Greenpeace International was formed.

⁵ In the summer of 1982, the largest dumping operation ever undertaken officially took place at the NEA dumpsite; four ships were involved in dumping 10,000 tonnes of wastes representing nearly 130,000 curies of radioactivity. The Curie is a unit that is very nearly equal to the rate of disintegration of one gram of radium.

wastes that were being dumped at sea. There was no thought of further restrictions on the *rights of states* to dump, and certainly none on banning the dumping of radioactive and/or industrial wastes at sea. In a sense, the *London Dumping Convention* was providing a convenient legitimacy to the increasing number of countries wanting to use the sea as a garbage dump.⁶ And when a member state did not want to co-operate in good faith, there was nothing they could do.⁷

Sub-seabed Disposal:

In the early 1980s, it also became clear that the nuclear industry had never really accepted the prohibition under the *London Dumping Convention* to dump high-level radioactive wastes at sea and that they wished to overturn this decision.

They recognised that radioactive waste dumping *on* the seabed was banned, because they had no choice. But at the same time, they claimed that dumping *under* the seabed was not banned. Under the auspices of a *Sub-Seabed Disposal Working Group* of the Nuclear Energy Agency of the OECD (the same people who were co-ordinating the dumping *low-* and *intermediate-*level radioactive wastes in the north-east Atlantic) the UK, France, Japan, the US, Germany, Switzerland, Belgium and the Netherlands spent millions of dollars annually to develop the *sub-seabed disposal option* for high-level radioactive wastes: equipped with drilling gear and/or suppository-shaped *free-fall penetrators* (containers which would penetrate the seabed like armour piercing bullets) ships from these countries would shoot the high-level wastes under the seabed. In the early 1980s, research cruises took place in the Caribbean (near Haiti and Cuba), the Eastern Atlantic (between the Canary Archipelago and Madeira Island) and the South Pacific in order to identify future dump sites and test the *free fall penetrators*. Of course, none of the bordering countries were informed, let alone consulted.

A majority of countries, together with Greenpeace, pointed out that this irreversible method was irresponsible. The interpretation that the *London Dumping Convention* did not include dumping *under* the seabed was – at best – questionable. Similar to dumping *on* the seabed, but even more so, dumping *under* the seabed was impossible to monitor. In the event of leakage, the radioactive wastes would be irretrievable.

⁶ For example, both Japan and the USA announced in 1979 their intention to initiate new programmes of radioactive waste dumping at sea. Japan had been planning to dump up to 100,000 curies per year into a Pacific Ocean site 600 miles North of the Northern Marianas. In 1982, the US also considered a plan to scuttle ageing nuclear submarines in the Atlantic and Pacific Oceans. These dumping programmes would have involved the dumping of as many as 100 decommissioned nuclear submarines, each representing 50,000 curies of radioactive wastes. In addition, the US Department of Energy has maintained hopes to be able to find ways to dump at sea thousands of cubic metres of radioactively contaminated soils dating back to the early years of their nuclear weapons programmes in the 1940s, the so-called *Manhattan Project* which preceded the bombing of Hiroshima and Nagasaki. Although they had not dumped since the 1960s, France, Germany and others, such as Italy, were also hoping to resume ocean dumping in the early 1980s, as they faced ever increasing amounts of radioactive wastes generated by their nuclear power programmes. France and the UK also wanted to dispose of their decommissioned nuclear submarines at sea.

⁷ In 1991 and 1992, Greenpeace revealed that the USSR had secretly been dumping low level radioactive waste as well as high level radioactive waste in the Kara and Barents Seas, and the Sea of Japan (Ref. Report of the 15th Consultative Meeting of Contracting Parties to the London Convention, 1992, “Necessary Correction to IAEA’s Inventory of Radioactive Wastes in the Marine Environment: Soviet/Russian Dumping Activities”, submitted to the 15th Consultative Meeting of the London Convention, 1992, Doc. LDC 15/INF. 18).

The nuclear states feigned polite attention, but there was a lot at stake for the *dumpers*: if they could get away with it, the nuclear industry would have considered that it had met its pledge to “*resolve*” the nuclear waste issue before the turn of the century.

Dumping Ban:

Greenpeace’s persistence began to pay off in the mid 1980s. In 1983, faced with evidence that radioactive waste dumping was increasing rather dramatically, the Contracting Parties to the *London Dumping Convention* adopted a resolution calling for a moratorium on the dumping of radioactive wastes at sea pending the outcome of a study by a panel of experts. Essentially the call was not binding at all. The six countries that had not voted in favour could have technically and legally continued dumping.⁸ But the vote showed that ocean dumping had become too controversial. In the UK, Greenpeace managed to convince the *National Union of Seamen* (NUS) and elsewhere in Europe, the *International Transport Federation* (ITF), to call for a boycott by seamen and transport workers. As a result, the annual dumping programme was called off, and 1983 became the first year of the nuclear age with officially no radioactive waste dumping operation.

Two years later, a panel of experts appointed and controlled by the International Atomic Energy Agency (IAEA) could not convince the Contracting Parties that ocean dumping was a safe and legitimate practice. Among other considerations, the Contracting Parties found that the panel was formed almost exclusively of partial experts who had direct interests in pursuing the ocean dumping approach. Therefore it was agreed that an *intergovernmental panel of experts* with wider terms of reference would be created, and that political, economic and social issues should be included within their deliberations. For the duration of the panel a moratorium would be maintained.⁹

While the intergovernmental panel undertook its work, between 1988 and 1993, Greenpeace was able to prompt the Contracting Parties to the *London Dumping Convention* to focus more of its attention on the effects of incineration and the dumping of industrial wastes into the ocean.

As was the case with the nuclear industry, the chemical industry had found it convenient to dispose of its wastes at sea, either by deliberate combustion in specially built vessels, or by straightforward dumping. Many of the toxic wastes, especially the organohalogens, persist in the marine environment and bioaccumulate in the food chain, with associated consequences for fisheries and other legitimate uses of the sea.

It had been agreed in 1978 that the deliberate incineration of toxic wastes at sea would be controlled under the *London Dumping Convention*.¹⁰ It was to be considered as an *interim method* of disposal only: “*Incineration at sea shall in no way be interpreted as discouraging progress towards environmentally better solutions including the development of new techniques*”.¹¹ But *Ocean Combustion Services* (OCS), a company established to build and operate specially-designed combustion vessels was investing extensively, and intended to expand this polluting practice.

⁸ Proposed by Spain, the resolution was adopted by 19 votes in favour, six against, and five abstentions. Japan, the Netherlands, South Africa, Switzerland, the UK and the USA voted against, while Brazil, the Federal Republic of Germany, France, Greece and the USSR abstained.

⁹ Proposed by Spain again, the 1985 resolution was adopted by 26 votes in favour, 5 against, and 7 abstentions.

¹⁰ Amendment to Annex I of the *London Dumping Convention*, adopted by the 3rd Consultative Meeting of Contracting Parties, entered into force on 11 March 1979.

¹¹ *Regulation 2.2.* of the 1978 Addendum to Annex I of the *London Dumping Convention*.

Perhaps even more importantly, the ocean dumping and incineration options were identified by Greenpeace and others as primary disincentives to clean technologies and clean production methods. Slowly, but surely, the Contracting Parties to the *London Dumping Convention* moved away from a philosophy that considered the oceans to be a *sink* for industrial wastes, to one that now considers that ocean dumping should be avoided, unless there is absolutely no other alternative. In other words, within a few years, the international community's perception of ocean dumping evolved from considering the practice as part of the solution to it becoming part of the problem.

This evolution was exemplified by the adoption of resolutions calling for a phase out of the incineration at sea of noxious liquid wastes (1988), and the phasing out of the dumping of industrial wastes at sea (1990).¹²

In 1992, in the light of this evolution and in anticipation of the outcome of the intergovernmental panel of experts on radioactive wastes the following year, Greenpeace was able to propose to the Contracting Parties that the name of the convention, known until then as the *London Dumping Convention*, should be changed in recognition of the shift away from ocean dumping. The proposal was agreed unanimously, and the word “*Dumping*” was dropped from the title.¹³

Finally, in 1993, the intergovernmental panel of experts on radioactive wastes disposal at sea concluded almost a decade of work. Greenpeace International had been given opportunities to provide input to the panel, by way of oral and written submissions in the first few years, and by way of full participation in the last few.¹⁴ For several years, Greenpeace International had also prepared and distributed each year in advance of all key meetings to all Contracting Parties a *Greenpeace Annotated Agenda* to keep them alert to all relevant developments in the field of policy and science pertaining to all issues relevant to the *London Convention*.

In their “*Final and Comprehensive Statement*”, the experts recognised that ocean dumping differed from other available options for radioactive waste management. They pointed out “*the diffusibility of the waste radionuclides in sea water which could result in transboundary transfer of these radioactive materials*” as well as the “*comparative difficulty of monitoring radioactive waste packages dumped at sea*”. For the intergovernmental experts, “*the consideration of these characteristics, together with the relative difficulty of retrieval, [was] a necessary part of any assessment of the sea disposal option*”. Like Greenpeace, the overwhelming majority of Contracting Parties concluded that this statement (arising from the most detailed international assessment ever made of any radioactive waste disposal option) provided a very strong basis on which to ban the dumping of radioactive wastes permanently, in full compliance with Article XV (2) of the *London Convention*.¹⁵

To conclude a decade of controversy, in November of 1993, the Contracting Parties to the *London Convention* unanimously adopted amendments banning the dumping of industrial wastes at sea (effective 1st January 1996) and their incineration at sea, and by majority vote the

¹² Resolution LDC.35 (11) *Status of Incineration of Noxious Liquid Wastes at Sea*, and Resolution LDC.43 (13) *Phasing Out Disposal of Industrial Waste*.

¹³ “*Calling the Convention by Its Name*”, Doc LDC.15/5 submitted by *Greenpeace International*.

¹⁴ Greenpeace International has participated in the Consultative Meeting of the London Convention since 1983, but several countries – led by France and the UK – opposed for several years Greenpeace’s participation in the Panel of Experts under the pretext that it was an *intergovernmental* panel, thereby restricting Greenpeace’s input to written submissions and an oral presentation at the beginning of each meeting. In 1991, though, both France and the UK lifted their objection, thereby permitting Greenpeace to participate fully in the Panel of Experts.

¹⁵ Article XV (2): “*Amendments to the Annexes will be based on scientific or technical considerations*”.

dumping of radioactive wastes.¹⁶ The three amendments became legally binding on Contracting Parties to the *London Convention* and the *Law of the Sea Convention* (UNCLOS)¹⁷ on 20 February 1994; in other words, they are *law* in virtually the entire world.

The Oil Industry's Preferential Treatment:

Throughout the controversy over the dumping of radioactive and industrial waste dumping at sea, the representatives of the oil industry had remained very discreet. Under the umbrella organisation of the E&P Forum¹⁸, the pressure group funded by the offshore industry, they attend all the meetings of the International Maritime Organisation (IMO), the *London Convention*, and regional conventions such as the north-east Atlantic's *OSPAR Convention*,¹⁹ the Mediterranean's *Barcelona Convention*, and so forth. Greenpeace International also has observer or consultative status in these intergovernmental fora, among others, thereby having the right to submit written documents, and to take part in discussions in plenary and working and drafting groups, unless decided otherwise by the majority of Contracting Parties.

Offshore Operational Discharges:

As with (and in some respect more than) other “dirty” industries, the offshore industry discharges significant quantities of liquid and gaseous wastes into the environment, both to air and water. And, of course, their installations must be disposed of once they have aged and been decommissioned. But they managed for many years to evade the ever-tighter restrictions that have been applied to other sectors.

Greenpeace and others (including some governments officials) often speak of the *preferential treatment* enjoyed by the offshore industry, and this is not an overstatement.

For example, the *London Convention* stipulates that “*the disposal of wastes or other matter directly arising from, or related to the exploration, exploitation and associated off-shore processing of seabed mineral resources will not be covered by the provisions of this Convention*”.²⁰ In plain language, this means that from an offshore installation – regardless of science, impacts, and the restrictions to which other industries are subject – you may dump whatever you please, and in whatever quantities.²¹ For a treaty that pledges to base its decisions on “sound science” this preferential

¹⁶ Resolution LC. 49(16) *Concerning Phasing Out Sea Disposal of Industrial Waste*, Resolution LC.50 (16) *Concerning Incineration at Sea*, and Resolution LC.51 (16) *Concerning Disposal at Sea of Radioactive Waste and Other Radioactive Matter*. France, the UK, Belgium, and China abstained on Resolution LC.51 (16) but later accepted it. The Russian Federation also abstained, and has not accepted that resolution, although they announced in November 1997 at the annual meeting of Contracting Parties to the *London Convention*, that they would “*lift their reservation very soon*”. Notwithstanding their reservation, the Russian Federation has not dumped radioactive wastes at sea to the best of Greenpeace's knowledge since October 1993.

¹⁷ Article 210.6 of UNCLOS: [*Pollution from dumping*]; “*National laws, regulations and measures shall be no less effective in preventing, reducing and controlling such pollution than the global rules and standards*”.

¹⁸ The E&P Forum (Exploitation and Production Forum) is funded and directed by the oil companies involved in offshore operations.

¹⁹ The OSPAR Commission is the intergovernmental organisation regulating marine pollution in the northeast Atlantic. It is governed by the OSPAR Convention, 1992, which has superseded the Oslo Convention, 1972 regulating ocean dumping, and the Paris Convention, 1974 regulating land-based sources of marine pollution. The OSPAR Convention entered into force in March 1998. Its Contracting Parties are Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, the UK as well as the European Commission.

²⁰ Article III.1(c) of the *London Convention*.

²¹ This article was originally introduced because in the early 1970s there was high expectation that the exploitation of polymetallic nodules would represent an important industrial sector for the future. However, the offshore oil and gas industry is the only one that has so far benefited from it. Some

treatment for the offshore industry is awkward, to say the least. Besides political considerations, nothing can justify that the dumping of wastes which is banned from moving objects (ships) should be permitted if it takes place from fixed platforms. Obviously, the cumulative effects and therefore the concentrations in sediments and marine life caused by dumping from a fixed platform are higher.

For many years, the exemption contained in Article III.1(c) of the *London Convention, 1972* was widely recognised as being an anachronism. When the Contracting Parties set out to draft and negotiate the *1996 Protocol to the London Convention* that was intended to bring the Convention into line with contemporary environmental policy, there was apparently broad support to rectify the situation. The negotiation of the 1996 Protocol took several years, and initially there were no forceful voices against bringing the offshore industry into line as proposed by the delegations from the Netherlands, Denmark and other countries. However, at the *Special Meeting of Contracting Parties* in November 1996 convened to adopt and sign the Protocol, a number of countries which had virtually never taken part in the work of the *London Convention*, and which were, for the most part, not even Contracting Parties, turned up and threatened not to adhere to the new Protocol if it covered the discharges of the offshore industry. And the majority agreed to another exemption clause reinstating the discriminatory regime. Article 1.3 of the *1996 Protocol* states that: “*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*”.²²

Although it may have considered that it “won” in this instance, the offshore industry has placed itself in a situation that may have – in the long run – far reaching consequences. Whereas they like to portray themselves as a high performance, “high-tech”, industry, they have demonstrated that they use and promote the lowest standards of environmental protection, and that they have little or no intention to improve. Yet, whether their policies will be deemed acceptable for much longer is an open question.

Disposal of Disused Offshore Installations:

The controversy over the dumping of decommissioned offshore installations which was triggered by Greenpeace’s action against the dumping of Shell’s *Brent Spar* storage buoy in 1995, cannot be seen in isolation.

Accustomed to this permissive attitude on behalf of the regulators, the offshore industry had thought that nothing would prevent them from dumping their redundant, decommissioned offshore installations at sea.

The *Convention on the Continental Shelf* of 1958 had established that all offshore installations would be removed from the marine environment with a view to preventing hazards to shipping and to future legitimate uses of the sea. But instead of taking this requirement seriously and planning ahead for the dismantling of their installations on shore, the oil companies spent their revenues elsewhere, and made plans to dump or abandon the disused platforms, which they found most inconvenient to bring ashore. They actively lobbied the IMO

countries, of course, do apply restrictions nationally and regionally, but they are clearly a minority: until 1995, for example, the UK only had one part time inspector for the hundreds of platforms located in the UK sector of the North Sea. And this inspector had to rely on the helicopters of the oil companies to go and “inspect”.

²² Article 1.3. of the *1996 Protocol to the London Convention on the prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972*, Doc. LC/SM 1/6. The power and strength of the oil industry within the IMO is partly explained by the funding mechanism of this UN Specialised Agency which is largely reliant upon the super-tanker industry, given that the member-states’ fees to this organisation are proportional to the tonnage of their respective merchant fleets.

and obtained the “right” to abandon, in the marine environment, platforms located in more than 75 metres of water or with topsides weighing more than 10,000 tonnes in air.

Officially, the offshore industry favoured a “case-by-case” approach. In practice, this meant abandonment or dumping (“toppling”) whenever they wished. In some circumstances, the case for *toppling* could even be created by the operator’s own deliberate “laissez-faire” or poor housekeeping.²³

Whilst campaigning against the dumping at sea of radioactive and industrial wastes, and against ocean incineration, Greenpeace had consistently urged governments to address this issue. At meetings of the IMO, the *London Convention*, *OSPAR* and the *Barcelona Convention*, Greenpeace representatives witnessed how the oil industry pressure group, the E&P Forum, was building and maintaining a web of support for its own short-term interests. But, rightly or wrongly, Greenpeace saw this as an issue for the future.

Consequently, when the plan to dump the *Brent Spar* (a former oil storage buoy from the early times of oil exploitation in the 1970s when the oil fields were not yet connected to land by pipelines) at sea came to Greenpeace’s attention at the end of 1994, it was seen as a warning light. Unless opposition was expressed to this first dump, the oil industry would consider that it was politically acceptable to dump disused offshore installations.²⁴ More than a hundred could follow.²⁵

Besides this issue of precedence, Greenpeace and others questioned the “case-by-case” approach because it hindered the development of an “integrated removal strategy” by which shipyards and the recycling market could be prepared in optimum conditions. It was also striking that whenever confronted with new technical challenges (exploration and exploitation in ever-deeper waters, and in hostile environments such as the Arctic) to find and extract more oil and gas, the offshore industry always met them. But when it came to cleaning up after itself, it was prepared to use technical problems as an excuse, and declared itself unable to meet the demand. For Greenpeace and others, in this respect, the issue of the removal of offshore installations therefore raised the wider issue of corporate responsibility.

The events surrounding the occupation of the *Brent Spar* by Greenpeace activists in 1995 are still in everyone’s minds, including the long controversy that followed.^{26 27}

²³ It has been informally and verbally reported that the operators in at least one oil field in the Norwegian sector of the North Sea are suspected to be deliberately creating conditions (by poor maintenance and allowing the installation to fall into a dangerous state of disrepair) on which to build a case that the only solution is to dump.

²⁴ Correspondence between Shell and the UK Government of the time, dated from 1994 and published in the Spring of 1997 has shown that the UK Government had a particular interest with the *Brent Spar* as setting a precedent that would re-open the ocean dumping option for the bulky wastes of the offshore and other industries (See *Greenpeace International’s* submission to the 1997 Meeting of the OSPAR Committee on Programmes on Measures, PRAM, May 1997).

²⁵ One of the UK scientists who was most vocal in defending the ocean dumping option, Dr. Tony Rice, Head of Sea Floor Biology at the Institute of Oceanographic Science, told the *Daily Telegraph* newspaper (31 May, 1995): “*The Brent Spar is one of the first rigs to be dumped in this way, so we need to monitor what is going on so we can confirm our view that the impact is negligible*”.

²⁶ See for example “*The Turning of the ‘Spar’*”, Chris Rose, London, June 1998, or “*Corporate Legitimacy in Risk Society: The Case of Brent Spar*”, in *Business Strategy and the Environment*, Jesper Grolin, June 1998.

²⁷ The biggest controversy surrounded the release by Greenpeace shortly before Shell made their announcement on 20th June 1995 that they would not dump the *Brent Spar* of an inaccurate estimate of the amount of oily sludge. In May, Greenpeace had dropped a crude probe down a vent pipe on the *Brent Spar*, and found a certain depth of oil, from which it later calculated that up to 5,000 tonnes could still be inside. Greenpeace informed Shell, the UK Government and, on 16 June, the UK media. As Chris

In January 1998, Shell finally recognised that, having considered the matter thoroughly, the *Best Practical Environmental Option* was the re-use of the installation as a quay extension near Stavanger in Norway. From Shell's short-list of seven options, ocean dumping came out worst from every point of view (including CO₂ emissions) except, perhaps, cost.²⁸ The alternative solution was implemented. In mid July 1999, it was announced that it was completed successfully.²⁹

On 9 June, 1995, in the middle of the *Brent Spar* controversy, while Greenpeace volunteers were standing on top of Shell's installation as it was being towed into the north-east Atlantic, the Environment Ministers of the countries bordering the North Sea stated, notwithstanding reservations from the UK and Norway that they were "*aware that an increasing number of offshore installations in the North Sea are approaching the time of their decommissioning. Even if the offshore installations are emptied of noxious and hazardous materials, they might still if dumped or left at sea, pose a threat to the marine environment. Disposal of such installations on land by recycling recyclable materials and by ensuring safe and controlled disposal of unavoidable residues would be in accordance with generally agreed principles of waste management policy*".³⁰

In line with this thorough statement which summarised what the *Brent Spar* controversy was about, the North Sea Environment Ministers agreed "*that decommissioned offshore installations shall either be reused or be disposed of on land*", and they "*invite[d] OSPAR to implement this agreement*".

As a result, three weeks later, the *OSPAR Commission* adopted by vote, notwithstanding reservations from Norway and the UK, "*a moratorium on the disposal at sea of decommissioned offshore installations until the Oslo Commission or a Commission in its succession has adopted a Decision on the disposal of offshore installations with a view to banning the disposal of such installations at sea*".³¹ This decision entered into force on 4 August 1995.³²

Rose reports in his "*The Turning of the 'Spar'*", *op. Cit.* "*At the time the oil estimate went almost completely unreported in the press*". Rose shows that from over 40 articles published in the UK printed media on *Brent Spar* between 17 and 20 June, 1995, "*none of them even mentioned the new oil estimate [...] The oil estimate got small mentions in the Telegraph on 20 June and in the Sunday Telegraph on 18 June, neither of which used it as the lead to the story. While the Mail and Today both mentioned the estimate on 21 June, otherwise it went unremarked when the turnaround was announced, despite whole pages of coverage. As well as receiving almost no publicity, the wrong oil estimate came too late to affect the public boycotts, Chancellor Kohl's lobbying of John Major at the G7, the political decisions at the North Sea Ministers or OSCOM, or any of the other key parts of the campaign*". In the month of August, in discussions with the marine surveyor DNV who were conducting for Shell an inventory of the *Brent Spar*, it appeared that the estimate was wrong due to a human error – a mistake that Greenpeace publicly recognised. This voluntary acknowledgement gave rise to a public controversy on Greenpeace's methodologies. It is the view of the author of this paper that Greenpeace's mistake was essentially to make public any kind of inventory at that time, given that the North Sea Environment Ministers, in considering that "*even if the offshore installations are emptied of noxious and hazardous materials, they might still if dumped or left at sea, pose a threat to the marine environment*" (abstract from paragraph 54 of the 4th Ministerial Declaration for the Protection of the North Sea, 9 June 1995) had already ruled that the issue of the inventory was irrelevant.

²⁸ Shell's press release of 29 January, 1998.

²⁹ *Lloyd's List*, July 1999.

³⁰ Paragraph 54 of the 4th Ministerial Declaration for the Protection of the north Sea adopted in Esbjerg, Denmark, 9 June, 1995.

³¹ Operative Paragraph 1 of *OSCOM Decision 95/1 on the Disposal of Offshore Installations*.

³² The OSPAR Commission can adopt decisions that are legally binding on all the member states that have accepted them. In the case of *OSCOM 95/1*, with their reservations, the UK and Norway were not legally bound.

Shell had halted the *Brent Spar* dumping operation on 20 June 1995.

The offshore industry, as well as the UK and Norway, immediately claimed that this decision was insignificant, because the UK and Norway who licence the vast majority of offshore installations in the North Sea had not accepted it. Legally speaking, they were, of course, correct, but the political reality was different. It was very difficult in those circumstances for anyone to dump anything. And – as a matter of fact – since this decision was adopted, 18 installations were brought ashore³³, including the *Brent Spar*, and none were dumped at sea.

In 1996, a long process of negotiations was begun in an attempt to reach a consensus as to which installations could be exempted from the ban which, de facto, was in place since 1995. The aim was the adoption of a unanimous decision by a Ministerial Conference of the OSPAR Commission.³⁴

Since the launch of its campaign against the dumping of the *Brent Spar*, Greenpeace had recognized that there were reasons to leave *in-situ* some 22 large concrete gravity based structures. Similarly, at the end of 1996, the European Commission published a study it had commissioned from a prestigious Dutch engineering firm, which reported that – in addition to these 22 concrete platforms – additional studies were required for only seven large steel installations.³⁵ A *prior justification procedure* had been drafted for adoption by the OSPAR Ministerial Conference with a view to addressing this kind of problem.

On the other hand, the offshore industry, supported by the UK and Norwegian administrations, tried to derail this process hoping to re-open the ocean dumping option almost entirely. One of those proposals appeared in May 1998 in a memorandum prepared by Alan Simcock, a UK civil servant acting as Chair of the OSPAR Commission. Mr. Simcock's proposal was to allow the dumping of not less than 102 steel installations. This was presented by the author as a genuine attempt to reach a consensus. But, as he should have expected, the majority of Mr. Simcock's colleagues told him that his proposal was not very helpful.

In response, Greenpeace invited Mr. Seim, an engineer who worked for Aker Seipem, the firm that had conducted the dismantling of the *Odin* platform in Norway to give a presentation at the preparatory meeting *OSPAR Heads of Delegations* of May 1998. Despite a blatant attempt by Mr. Simcock to prevent him from speaking, Mr. Seim was able to explain that much had been learned from recent experience, and that the engineering industry was able to make a safe and very profitable business from land-based dismantling. According to the engineering industry, there was no technical, safety, environmental or economic reason to prevent the dismantling ashore of all steel installations.³⁶

³³ These include several that were candidates for ocean dumping originally, such as ESSO's *Odin* platform in the Norwegian sector.

³⁴ Originally scheduled in 1997, the OSPAR Ministerial Conference was postponed and held finally in July 1998 in Sintra, Portugal.

³⁵ "A Technical Review of the Disposal Methods of Decommissioning and Disposing of Offshore Oil and Gas Installations", Contract No. B4-3040/SS/000259/MAR/D1, prepared for the European Commission DG XI and DG XVII.

³⁶ At the following meeting of *Heads of Delegations* of the OSPAR Commission held on 8 June 1998, the offshore industry's pressure group E&P Forum issued a paper called "*Clarification of Inaccuracies in the Presentation by Mr. R.H. Seim of Aker Saipem*", in an attempt to discredit Mr. Seim, and give the impression that Aker Saipem JV disagreed with their consultant. But a close examination of this paper shows that Aker Saipem did not disagree with the testimony delivered by Greenpeace: in their conclusion, Aker Saipem carefully states "*IN OUR CLIENTS' VIEW the Odin platform, because of its limited facilities and lightweight, was more typical of jackets in 75 m water than its 103 m actual water depth*" (emphasis added). Aker's client is, of course, the oil company ESSO. And, for all of their revenues, Aker

The OSPAR Environment Ministers, at their Ministerial Conference held in Sintra, Portugal in July 1998 had the final say. As it was to be expected, they agreed that the public would not understand why – three years after the start of the *Brent Spar* controversy – the offshore industry should be allowed to rid itself of its decommissioned offshore installations by dumping them at sea. The UK Deputy Prime Minister John Prescott, present in Sintra, had made his intention known to “*rid the UK of the Dirty Man of Europe tag*” that the former Tory governments of Margaret Thatcher and John Major had won at each Ministerial Conference for the Protection of the North Sea between 1987 and 1995. The French Environment Minister, Dominique Voynet, a leading member of the *Green Party*, also played an important role in making Sintra a success, together with her colleague Anna Lindh from Sweden, Svend Auken from Denmark, and the European Commissioner for the Environment, Ritt Bjerregaard. The government of the host country, Portugal, also had a special interest in making the OSPAR Conference a success. In the summer of 1998, Lisbon had organised EXPO-98 on the Future of the Ocean, the key event of 1998 as the UN-designated *International Year of the Ocean*, and as a result, Portugal provided exceptionally good facilities.

After very long hours of negotiations, it was agreed that “*the dumping, and the leaving wholly or partly in place, of disused offshore installations within the maritime area is prohibited*”³⁷. An exemption may be considered only “*By way of derogation [...] if [...] there are significant reasons why an alternative [...] is preferable to reuse or recycling or final disposal on land*”³⁸. In such circumstances, a dumping permit may be issued only for “*all or part of the footings of a steel installation in a category listed in Annex 1, placed in the maritime area before 9 February 1999, to be left in place; a concrete installation in a category listed in Annex 1 or constituting a concrete anchor base, to be dumped or left wholly or partly in place; any other disused offshore installation to be dumped or left wholly or partly in place, when exceptional and unforeseen circumstances resulting from structural damage or deterioration, or from some other cause presenting equivalent difficulties, can be demonstrated*”.³⁹

In the Sintra Statement signed at the end of the OSPAR Ministerial Conference, all the Ministers were very clear as to the meaning and extent of their decision: “*We RE-EMPHASISE our commitment to prevent the sea being used as a dumping ground for waste, whether from the sea or from land-based activities. We ADOPT a Decision on the disposal of disused offshore installations in support of this. Under this Decision, all dumping of steel installations is prohibited. Derogations, subject to assessment and consultation under agreed procedures, may allow the footings of steel installations weighing more than 10,000 tonnes to remain in place. However, WE WILL STRIVE to avoid using such derogations for footings of steel installations, by returning to land for recycling and disposal all steel installations where it is safe and practicable to do so. Derogations will also be available for concrete installations. We HAVE no plans to create new concrete installations in any new oil-field developments in the maritime area. Concrete installations will only be used when it is strictly necessary for safety or technical reasons.*”⁴⁰ Furthermore, the Ministers agreed that “*the Commission will review this Decision from time to time in the light of developments, with the aim of reducing as fast and as far as possible the cases for which derogations from the general ban on sea disposal may be considered*”.⁴¹ Last, but not least, the Ministers also “*agree[d] that environmental goals should be set for the offshore oil and gas industry and improved management mechanisms established to achieve them.*”

very much depends on the oil industry. Ref. Document *HOD (3) 98/2/NGO.1*, presented by the E&P Forum.

³⁷ Paragraph 2 of *OSPAR Decision 98/3*. The maritime area, as defined by the OSPAR Convention, covers the entire north-east Atlantic, from Gibraltar to the Arctic.

³⁸ Paragraph 3 of *OSPAR Decision 98/3*.

³⁹ Op. Cit.

⁴⁰ Paragraph 22 of the Sintra Statement.

⁴¹ Paragraph 23 of the Sintra Statement.

The Commission will adopt a strategy for this purpose at its next meeting”⁴², thereby recognising that the current environmental record of the offshore industry with regard to the discharge and emission of hazardous wastes, is unacceptable.

On behalf of the offshore industry, the E&P Forum stated at the end of the OSPAR Ministerial Conference that it was “very disappointed” by the outcome.⁴³ In contrast, Greenpeace hailed it as “a victory for the environment and for the people of Europe”, in reference to the wide public support received during the 20 years of Greenpeace campaign against ocean dumping and, most notably, during the *Brent Spar* controversy of 1995.⁴⁴ A few days later, E&P Forum’s Technical Director John Campbell wrote: “*there should be no doubt that this outcome was based on political expediency rather than on carefully evaluated facts and practical realities*”.⁴⁵ But, ironically, the very same issue of the magazine in which those words were printed carried several advertisements from UK- and Norway-based engineering firms publicising their capability and their willingness to take on contracts to remove offshore installations.⁴⁶ Once ocean dumping was banned, the engineering firms that had so far not spoken out for fear of upsetting their main clients, the oil and gas industry were prompt in picking up this new market opportunity, as Greenpeace had anticipated. A few weeks later, a German-Norwegian consortium also started publicising a specially designed *Offshore Shuttle*, which would cut down the time and cost of removal operations.

Now that the dumping of decommissioned offshore installations is banned in Western Europe pursuant to the OSPAR Decision, attention is likely to be drawn to similar activities in other regions, which still need to be addressed by other regional fora, or globally by the IMO and the *London Convention*.

But the controversy on ocean dumping of decommissioned offshore installations has also reminded us that there will always be a need to remain vigilant. Virtually every month, Greenpeace comes across plans, here or there, to re-open the ocean dumping option - on the seabed, or under it; in the abyssal plains, or in coastal environments.

It is high time that governments and industry stopped putting the international ocean dumping regulatory regime under threat. This will certainly remain a *test case* of their ability to live up to their claim to become more “green”.

Next Step; Zero Discharge from Land-Based Sources:

Ocean dumping raises another issue of precedence.

It is likely that with hindsight, these twenty years of controversy over ocean dumping will also be remembered as having been crucial in establishing the principle that the oceans are not a rubbish tip for industrial wastes. The international community must now be better prepared and more determined to prevent marine pollution from land-based sources.

It is estimated that approximately 75 to 85 % of all marine pollution inputs come from land-based activities. *Point* and *diffuse* sources in the river basins and catchment areas, discharges

⁴² Paragraph 24 of the Sintra Statement.

⁴³ E&P Forum press release, 23rd July 1998.

⁴⁴ “*Greenpeace Claims historic Victory at OSPAR Conference*”, Greenpeace International press release, 23rd July 1998.

⁴⁵ “*Political Expediency on Top*”, John Campbell, in *Energy Day*, August 10, 1998.

⁴⁶ *Energy Day*, op. cit., advertisements by *Global Maritime, Offshore and Engineering Consultants*, and *Kraener Oil & Gas*.

into estuaries and coastal waters represent the major sources of pollution of the marine environment.⁴⁷

Given the time and effort that were necessary to ban waste dumping at sea, this is in a sense quite discouraging.

Yet, the countries bordering the North Sea, the Mediterranean, and the Baltic have now all agreed to work towards the cessation of the discharge and emission of toxic substances that are persistent and liable to bioaccumulate in the marine environment.⁴⁸ And the OSPAR Ministerial Conference of July 1998 also agreed to “mak[e] every endeavour to move towards the target of the cessation of discharges, emissions and losses of hazardous substances by the year 2020”.⁴⁹ Those who say that despite these fine words, a lot needs to be done for this objective to become reality are right. But the adoption of this target brings us closer. Slowly but surely, “zero discharge”, once the dream of only a handful of environmentalists is becoming the new paradigm.⁵⁰

The same is also true of the current controversy on the continued discharge of radioactive wastes from nuclear reprocessing facilities.⁵¹ Environmental damage from these discharges is now beyond doubt.⁵² At their meeting in Portugal in July, 1998, the Environment Ministers had to choose between ignoring this problem and letting the nuclear reprocessing plants “discharge as usual” (or, rather, *increase* their discharges), or agree instead to take action. Reaching agreement on this highly politicised issue took no less time than for the abandonment of decommissioned offshore installations. Common sense alone pleads strongly in favour of the immediate cessation of nuclear reprocessing discharges.⁵³ However, with this issue as with many others, it takes a very long time for common sense to prevail.

At their meeting in Sintra, the OSPAR Ministers made a significant step in the right direction with this issue. In clear reference to the nuclear reprocessing facilities, they agreed “to prevent pollution of the maritime area from ionising radiation through progressive and substantial reductions of discharges, emissions and losses of radioactive substances, with the ultimate aim of concentrations in the environment near background values for naturally occurring radioactive substances and close to zero for

⁴⁷ The rest of marine pollution inputs come from so-called *operational discharges* from shipping, as well as from accidental ones, and from deliberate dumping.

⁴⁸ Ref. Paragraph 17 of the 4th Ministerial Declaration for the Protection of the North Sea, Articles 1 and 5 of the 1996 Syracuse Protocol to the Barcelona Convention, and the Helsinki Commission's Decision of March 1998.

⁴⁹ Paragraph 4.1. of the OSPAR Strategy with Regard to Hazardous Substances, OSPAR 98/14/1, Annex 34.

⁵⁰ The European Council of Environment Ministers held on 24 June, 1999 – with explicit reference to the OSPAR, Helsinki and Barcelona Convention goals “recognize[d] that the Community Chemicals Policy should make a major contribution towards enabling the Community and the Member States to meet such international obligations”, in a Joint-Statement that is intended to act as guidance to the European Commission as it draws up a strategy document on European Chemicals Policy or publication in the year 2000. As a commentator puts it, “the Council's explicit recognition that the EU policy should be geared towards fulfilling the OSPAR, Helsinki, and Barcelona convention targets marks a significant change from earlier drafts of the statement that had failed to make the connection” (Cutter Information Corporation, *News & Analysis for Business and Policy Professionals*, Vol. 8, No 13, 2nd July, 1999).

⁵¹ The three nuclear reprocessing facilities in the OSPAR region, La Hague (France), Sellafield (UK) and Dounreay (UK) represent well over 90 % of all radioactive waste inputs in the region's marine environment, and their combined releases are by far the largest in the world.

⁵² Ref. Greenpeace International submissions on sampling programmes in the vicinity of the La Hague and Sellafield reprocessing facilities, OSPAR Commission, 1997 and 1998.

⁵³ A recent study submitted by Greenpeace International to OSPAR showed that radiation levels in the vicinity of Sellafield were comparable to those in the Chernobyl exclusion zone.

artificial radioactive substances.”⁵⁴ To this end, they agreed that by the year 2000 “the Commission will, for the whole maritime area, work towards achieving further substantial reductions or elimination of discharges, emissions and losses of radioactive substances”, and by the year 2020 “the Commission will ensure that discharges, emissions and losses of radioactive substances are reduced to levels where the additional concentrations in the marine environment above historic levels, resulting from such discharges, emissions and losses, are close to zero”.⁵⁵ The Ministers asked that in achieving this strategy, account be taken of legitimate uses of the sea, technical feasibility, and radiological impacts on man and biota.

In its submission to the Working Group designated to develop the action plan deriving from the strategy adopted by the Ministers, Greenpeace International has provided detailed evidence that the cessation of nuclear reprocessing is technically feasible, and is the best option for the legitimate uses of the sea (e.g. fisheries and recreational activities) and is necessary to reduce radiological impacts on man and biota.⁵⁶

In contrast, British Nuclear Fuel (BNFL), the operators of the Sellafield facility are apparently offering to reduce or eliminate only the discharge of Technetium-99, currently the most controversial radionuclide discharged from Sellafield because it was found at high concentrations in lobsters in the Irish Sea and in shrimps and sea-weeds in Scandinavia. Technetium-99 is only one of hundreds of radionuclides discharged by the nuclear reprocessing facilities, and even for this one alone, BNFL’s Principal Safety Advisor, Colin Partington warns: “We’re talking of a multi-million Pound spend, 10 million Pounds, maybe 100 million Pounds. The time to develop the concept, to do the design, the commissioning, maybe even the pilot work and then build the plant and operate it is not six months. We’re talking about possibly several years before we see significant reductions”.⁵⁷ As Greenpeace had anticipated, it would appear much simpler, and more economical, just to shut nuclear reprocessing down. Now, the OSPAR member states have to decide between *common sense* and *political expediency*, as some would put it.

The annual meeting of the OSPAR Commission held in June 1999 discussed proposals to implement the objectives adopted by the Ministers in Sintra. “In conclusion, OSPAR took note that the Contracting Parties to the Convention for the Protection of the Marine Environment of the north-east Atlantic agree to intensify their efforts to ensure that the Commission can identify and take the necessary action for achieving further substantial reductions or elimination of discharges, emissions and losses of radioactive substances in accordance with Paragraph 4.1 of the Strategy. In doing so, they will pay particular attention to the principal sources of discharges, emissions and losses of radioactive substances, including the reprocessing of nuclear fuel and some other nuclear and non-nuclear activities. Where action by operators of such activities is required, they will ensure that it is taken without delay”.

⁵⁸ At that meeting, six documents containing further evidence of the need and technical feasibility to eliminate the discharges and emissions from the nuclear reprocessing facilities were submitted by Greenpeace International. ⁵⁹ In contrast, the Uranium Institute, a pressure group funded and represented at OSPAR meetings by the operators of the nuclear reprocessing facilities at Sellafield and La Hague submitted one document in which they

⁵⁴ Paragraph 1.1. of *OSPAR Strategy with Regard to Radioactive Substances*, OSPAR 98/14/1, Annex 35.

⁵⁵ Paragraph 4.1. a. and b., *op. cit.*

⁵⁶ “*Implementation of the OSPAR Strategy with Regard to Radioactive Substances*”, submitted by Greenpeace International to the OSPAR Working Group on Radioactive Substances, January 1999.

⁵⁷ “*Sellafield must be seen to be Squeaky Clean*”, in *Nuclear Engineering International*, September 1998.

⁵⁸ Paragraph 3.52 of the Summary Record of the Meeting of the OSPAR Commission, Kingston-Upon-Hull, 21-24 June 1999, Document OSPAR 99/15/1.

⁵⁹ Documents OSPAR 99/4/15, OSPAR 99/9/17, OSPAR 99/4/Info.1, OSPAR 99/4/ Info.2, OSPAR 99/4/Info.3 and OSPAR 99/4/Info.4 submitted by *Greenpeace International*.

reiterate their view that they disagreed with the objective of zero concentrations in the marine environment adopted in 1998 by the Environment Ministers.⁶⁰

There was some controversy in 1998 when Greenpeace expressed the view in Sintra that the new OSPAR Objective with regard to Radioactive Substances could mark the beginning of the end of the nuclear reprocessing industry. There is a widespread belief that for many years the members of the OSPAR Commission failed to act in accordance to their legal obligation to “take all possible steps to prevent marine pollution”.⁶¹ This past record is not encouraging, but Greenpeace chose to give OSPAR the benefit of the doubt, perhaps for the last time. In anticipation of the decisions and measures that OSPAR is set out to adopt in the year 2000, “the observer of Greenpeace International pointed out that should nuclear reprocessing installations and other nuclear facilities fail to achieve the objectives and requirements set out in the OSPAR Strategy, Contracting Parties were obliged under this strategy to terminate their operation”.⁶²

Conclusion: The Limitations of Non-State Actors:

When – little more than twenty years ago – Greenpeace proposed for the first time that the nuclear and chemical industries should stop taking ships out to sea to dump or burn their wastes, these industries claimed that these environmental requirements were impossible to meet. Yet, twenty years later, what Greenpeace proposed then, had become international policy. At the turn of the century, for our children, going back to the age of ocean dumping would be inconceivable, and the same will be true, sooner or later, of land-based discharges.

When this saga started in the late 1970s, inevitably, the “competent authorities” (governments, industry as well as intergovernmental organisations) treated Greenpeace *at best* in a rather paternalistic manner and, *too often*, rather rudely. Not only were Greenpeace ships arrested (or rammed, or tear-gassed, or – on one occasion – sunk) in virtually every country, but determined efforts were also necessary for Greenpeace to gain the right to attend the meetings of intergovernmental organisations.⁶³

But times are changing. Nowadays many international secretariats and many government representatives are openly seeking the participation of Greenpeace and other environmental NGOs. There is even a feeling among many of them, reportedly, that *something is lacking* if Greenpeace is not there.

As the Secretary-General of the United Nations points out in his report to the UN General Assembly on “Arrangements and Practices for the Interaction of Non-Governmental Organizations in all Activities of the United Nations System”, NGOs “are no longer seen only as disseminators of

⁶⁰ Document OSPAR 99/4/18 and OSPAR 99/4/18Add.1 submitted by the *Uranium Institute*.

⁶¹ Article 2 of the Paris Convention for the prevention of Marine Pollution from Land-based Sources in the northeast Atlantic, 1974.

⁶² Paragraph 3.51.b of the Summary Record of OSPAR 99, Op. Cit.

⁶³ When Greenpeace International first applied for Observer Status with the *London Convention* in 1981, Greenpeace representatives had to stay outside during the entire week until they were told, after five days, that they would be admitted...two years later. Likewise for many years, until 1991, Greenpeace was only allowed to give a five-minute presentation at the opening of each Oslo/Paris Commissions meetings. Until 1990, the UK maintained a veto to prevent Greenpeace from participating. Once they had to give up their veto to NGO participation in OSPAR, the UK government wrote to other environmental NGOs that had never shown any interest until that time, and to “industrial” NGOs representing “dirty” industries (such as the oil industry’s E&P Forum and the chemical industry’s CEFIC), in the hope that this would undermine Greenpeace’s chances. Finally, it took years of “lobbying” for Greenpeace to be granted Consultative Status within the UN’s *International Maritime Organisation* in the late 1980s and early 1990s.

information, but as shapers of policy and indispensable bridges between the general public and the intergovernmental processes".⁶⁴

The emergence of NGOs in international affairs is one of the novelties of the last couple of decades. Governments and the business community no longer ignore that "by strongly advocating precaution, Environmental NGOs expand transnational environmental coalitions because this attracts governments who join only when environmental protection is given high priority by regimes".⁶⁵

For those of us who have been involved in this work for many years, this recognition is of course a satisfaction in some sense. But whilst intergovernmental fora where environmental issues are discussed have proliferated considerably in the last decade, NGOs have still limited resources. They cannot be present everywhere and at all times.

It is very important that governments and their intergovernmental organisations do not take advantage (willingly or not) of the inability of environmental NGOs to be present at all times as an excuse to justify their own lack of adequate action. Likewise, there is a risk that the umbrella organisations of industrial sectors interested in preventing or slowing progress in environmental policy enjoy a monopoly when environmental NGOs lack resources to attend meetings. In this connection, Greenpeace International has proposed that intergovernmental organisations do not invite only the representatives of the industrial sectors that cause the problems⁶⁶, but also (and as a priority) those that can provide and implement real solutions.⁶⁷

As with the "humanitarian" and "development" NGOs, there is a serious risk that Governments shirk some of their duties under the pretext that environmental NGOs are supposed or perceived to be doing a better job. Too often, for example, instead of meeting with their own police or calling *Interpol*, governments or intergovernmental organisations call Greenpeace when they suspect that environmental crime is taking place somewhere.⁶⁸ This situation must be avoided at all costs.

⁶⁴ Report of the Secretary-General to the 53rd Session of the UN General Assembly, Item 58 "Strengthening of the United Nations System", Document A/53/170, 10 July 1998.

⁶⁵ "Environmental NGOs and Regime Change: The Case of Ocean Dumping of Radioactive Waste", Lasse Ringius Cicero, *European Journal of International Relations*, 1997.

⁶⁶ For example, representatives of companies that produce and discharge hazardous wastes.

⁶⁷ For example, the clean production and clean technologies sector, or social groups following sustainable patterns in their use of natural resources.

⁶⁸ Since ocean dumping of industrial and radioactive wastes was banned by the London Convention in 1993, rumours of dumping operations in the Mediterranean, South East Asia, and off the coast of Somalia have been circulating, but governments have done little or nothing to verify them at the source. In 1995, Greenpeace also presented to the Consultative Meeting of Contracting Parties to the *London Convention* evidence that a company with connections in Italy, Eastern Europe and Switzerland, *Oceanic Disposal Inc.*, was actively searching clients interested in getting rid of their toxic or radioactive wastes at sea (Doc. LC 18/INF.7 "Oceanic Disposal Inc., Disposal of High-Level Radioactive Wastes at Sea", submitted by Greenpeace International); as a result, the Secretariat of the *London Convention*, on 10 January 1996 wrote to this company to warn them that their planned activities would be illegal under international law, but the *International Atomic Energy Agency* (IAEA) refused to issue a similar warning despite repeated requests from the Contracting Parties to the *London Convention*.