



Valentin Bou - International legal approaches to waste water discharges

The international legal approaches to waste water discharges are highly disappointing. There is no single international convention dealing with waste water as such. It seems that the management and treatment of waste water has not originated the environmental concern of the international community, who has preferred to leave this problem mainly for the exclusive regulation by the domestic law of each State. Hence, the result is that most States in the World has not an appropriate domestic legislation concerning the management and treatment of waste water and, in cases where this legislation does exist, the differences from one State to another are even bigger than the coincidences. This situation is highly critical, as every State in the World generate waste water and its management and treatment can very well be considered as a global concern, both for Human health and for the environment, mainly for the marine environment near coastal areas, calling for international norms.

Only one aspect related to waste water has received a very small, partial and fragmentary attention by International Law and this aspect concerns the discharges of waste water into the seas, rivers or lakes as far as they may have transboundary polluting effects, that is, when at least two States are involved. The obvious result of these premises is that we can only find enforceable international norms when discharges of waste water take place in the open oceans or in regional seas with at least two coastal States, and in international rivers and lakes, which are considered as international water courses. The only exception to this statement is the Antarctic Treaty system. In this case, the environmental fragility of the Antarctic Continent and the Southern Ocean has determined the adoption of international particular strict environmental norms for this area, included the question of discharges of waste water on land or into the surrounding seas, with full independence of whatever transboundary polluting effect that they might have.

For the rest of the World and although most of waste water is originated on land and discharged either into the sea (open seas, regional seas) or in international water courses, there is no international treaty of world-wide scope of application dealing in detail with this environmental and sanitarian problem.

On the one hand, only for the hypothesis of waste water originated on land and discharged into the sea or in international water courses flowing into the sea, there are very general provisions on this topic in the 1982 United Nations Convention on the Law of the Sea. However, until now these very broad and general provisions have not been implemented at global level and only in some regional seas (most notably, although not exclusively, the North-East Atlantic, the Baltic and the Mediterranean Seas) regional cooperation has resulted in the adoption of international norms dealing with marine pollution from land-based sources which cover the question of marine discharges of waste water.

On the other hand, and although with a lesser intensity, waste water is also sometimes originated at sea and discharged into the seas. This second hypothesis takes place in two different cases. First, with sewage resulting from the operation of ships. Second, with produced water originated from oil exploration and exploitation activities carried out in offshore installations. For sewage resulting from the operation of ships, the 1973 International Convention for the Prevention of Pollution from Ships, as modified by the 1978 Protocol, known as MARPOL 73/78 Convention, is the main international convention facing prevention of pollution of the marine environment by ships from operational and accidental causes. It is worth mention that its Annex IV is entitled "Prevention of Pollution by Sewage from Ships" and it provides for a very detailed set of international norms on sewage discharges into the seas. In this case, discharges of sewage from ships into the seas is regulated by an international convention, that is, by a global legal instrument of "hard law" which is binding and mandatory for

its Contracting Parties. But neither in this case the legal situation is as optimistic as it may seem at first glance, because thirty years after the adoption of Annex IV to MARPOL 73/78 Convention, this Annex has not entered into force yet.

In the second case, the legal situation is even worse. For produced water resulting from offshore oil activities, there is no international norm of world-wide scope of application, neither of "hard law" (i.e. international conventions) nor of "soft law" (such as recommendations, declarations of principles, action plans, ...) dealing with this source of marine pollution. As far as no international norm limits the sovereign power of States to discharge produced water from offshore oil installations into the seas, this is an activity that remains free, without any legal restriction on it. At regional level, the legal situation is not much better. There is no regional convention providing for a detailed regulation for marine discharges of produced water into the seas. Only in one marine region, the North-East Atlantic, a Recommendation, that is, a "soft law" instrument which is neither binding nor mandatory for Contracting Parties, has very recently been passed.

The celebration of the Intergovernmental Conference to Adopt a Global Program of Action for the Protection of the Marine Environment from Land-based Activities in Washington, DC, from 23 October to 3 November 1995, marked a major turning point on this subject. The adoption at this Conference of the Global Program of Action for the Protection of the Marine Environment from Land-based Activities represented the beginning of a new era of global, regional and national collaboration all over the world to deal with all aspects implying waste water. In implementing this Global Program of Action, two other global legal instruments of "soft law" have been adopted thus far and deserve a special mention: the Strategic Action Plan on Municipal Wastewater and the Guidance on Municipal Wastewater. As a consequence of all these global legal instruments, new and numerous legal tools at the regional and national levels are emerging all over the world. During the next years, the phenomenon of new legal tools on waste water is expected to further increase and develop. But its implementation in practice, the building of national and local capacities and the training of specialized experts on waste water in all countries calls for additional funding. Maybe the next Earth Summit to be held in Johannesburg on September 2002 will be the appropriate international forum to allocate new additional funds for this healthy and environmental problem.
