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COMMITTEE ON THE PEACEFUL USES OF THE  
SEA-BED AND THE OCEAN FLOOR BEYOND THE  
LIMITS OF NATIONAL JURISDICTION

SUB-COMMITTEE III

Statement made by the representative of the Inter-Governmental  
Maritime Consultative Organization on the activities of the  
Organization pertaining to ships' routing, traffic separation  
schemes, areas to be avoided by certain ships and related  
questions, at the 22nd meeting of Sub-Committee III held on  
26 July 1972

Mr. Chairman:

The document which has been presented by IMCO on that Organization's activities pertaining to ships' routing and traffic separation schemes, describes in detail the work which has been done, and planned for the future, in connexion with the establishment of traffic separation and routing schemes in areas of the sea where there is dense or converging traffic. The object of these schemes is to reduce the number of ships meeting in opposite or nearly opposite courses, thus lessening the risk of collisions. This work, which IMCO carries out in co-operation with governments, national agencies, companies and other interested concerns, derives from the responsibility placed on IMCO by its Convention. That Convention imposes on IMCO responsibility for the adoption of the highest practicable standards in matters concerning maritime safety and efficiency of navigation. The establishment of traffic separation and routing schemes (and the other activities related to these schemes) is, therefore, part of the essential and vital work which IMCO, as the specialized agency of the United Nations concerned with technical questions relating to shipping, has always conceived to be its special responsibility and mandate. This task of improving maritime safety and thus ensuring maximum security for life and property at sea is a task which the international shipping and maritime community has agreed must be performed. It is also a task for which IMCO is competent not only constitutionally but also in terms of experience acquired and expertise available.

But IMCO's concern with, and work in relation to, maritime safety is also a major part of that Organization's long-standing concern with the preservation of the marine environment. Since its very inception, and even before that, IMCO, with the full concurrence of its Member Governments (who now number well over 70), has always considered it to be part of its mandate and functions to ensure that the operation of ships in the marine environment does not result in unnecessary impairment of that environment. The "Torrey Canyon" disaster of 1967 brought vividly home to the international community and the governments represented in IMCO the importance of maritime safety and its relevance to the objective of protecting the marine environment

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from pollution. With the almost revolutionary increase in the size of tankers, with the dramatic increase in the world consumption of oil and hence the increase in the number and frequency of laden tanker movements, with the unprecedented and growing increase in the variety and quantities of noxious and toxic substances being carried in bulk by sea and over long distances from country to country and from continent to continent, it became clear that no system for preventing pollution of the seas could succeed fully unless it took into account and placed sufficient emphasis on the prevention of accidents involving tankers and other ships carrying hazardous cargoes. Indeed, it has been the view of many who are knowledgeable in this field that any programme of marine pollution prevention which disregarded accident-prevention is bound to fail. Nor, indeed, has it been supposed that it would be sufficient merely to ensure that tankers carrying oil were properly equipped and properly navigated. While the full application of accident-prevention measures to tankers and the carriers of other noxious cargoes is certainly necessary, it is by no means sufficient. It has been the view of governments in IMCO that measures of accident-prevention, including the "Maritime Rules of the Road" - of which the Traffic Separation and Routeing Schemes constitute an important part - should apply to all ships. For, in a collision between a super-tanker and a small dry-cargo ship, it would not be of any significance which was to blame, if the result of the collision is widespread oil pollution. And, if in an effort to avoid hitting a small pleasure yacht a large ship carrying dangerous chemicals were to capsize or be stranded, the consequential pollution of the seas and coastlines will not be any the less serious merely because the guilty party was the small pleasure yacht. The philosophy has, therefore, been to prevent accidents to all ships - including, of course, accidents which may cause pollution of the seas.

Thus the accident-prevention programme of IMCO (including the traffic separation and routeing schemes) is not only directed at safety of navigation and security for life and property, although these are important aspects as far as IMCO is concerned. That programme is also in a very important and relevant way part of IMCO's programme for preventing pollution of the sea arising from the use of the sea as a medium of transport by ships and similar craft. It is therefore appropriate that this Sub-Committee (Sub-Committee III), concerned as it is with the preservation of the marine environment, should have requested and received information on this aspect of IMCO's work. It is equally appropriate and, in my view, important that this aspect of IMCO's contribution to the global anti-pollution effort should form part of the background against which this Sub-Committee, and the Sea-Bed Committee itself, should tackle the crucial mandate entrusted to them by the General Assembly of the United Nations.

IMCO has in the past indicated, and several times reiterated, its willingness within the limits of its resources and competence, to assist and co-operate with the Sea-Bed Committee and its Sub-Committees in their work. The use of the traffic separation schemes as part of the pollution-prevention programme is, I consider, one of the lessons which this Sub-Committee, and also Sub-Committee II which deals with the subject of navigation in narrow straits, may well find not merely relevant but perhaps also instructive and helpful. It is for that reason that the Secretariat of IMCO, with the full approval of the IMCO Council, acceded to the request of the Sea-Bed Committee and made the information available. It is for that same reason that the Secretariat has been authorized by the Council of IMCO to continue to extend to the Sea-Bed Committee and its Sub-Committees as appropriate, the fullest co-operation and assistance in all matters in which IMCO, either because of its concern or its experience, can provide some assistance to the work of the Committee. It gives me great pleasure, Mr. Chairman, to present to this Sub-Committee the document describing IMCO's activities in connexion with Ships' Routeing, Traffic Separation Schemes and Areas to be Avoided by Certain Ships and Related Questions.

In doing so, I would like to emphasize a few points. First, these schemes are proposed and adopted in close co-operation not only with private commercial and industrial concerns interested in the subject. In adopting, reviewing or amending any of these schemes due account is taken of the views and wishes of all States and other bodies interested in or affected by the proposed schemes. The result of this method of work is that when the schemes are finally adopted, they generally command universal or near-universal acceptance and support.

The second point I want to emphasize is that, up until now, the schemes which have been adopted have been in the form of recommendations. There has been no question of IMCO deciding, unilaterally or otherwise, to promulgate schemes which are automatically binding on States. The schemes adopted by IMCO bodies derive their legal effect and mandatory character - when they do - solely from their having been accepted by individual States and incorporated in national legislation. What IMCO does is offer its forum for the consideration and elaboration of the most practical and feasible schemes; and then pass them on to governments for their adoption and implementation. The fact that many governments adopt and implement these schemes, wholly or in substantial part, is due mainly to the respect which these schemes command by virtue of their origins and the manner of their adoption.

However, based on past experience, and in accordance with wishes which have been expressed by States, proposals have been made that IMCO should look for means of making these schemes more widely applicable. One of the means suggested has been to have the IMCO Assembly recommend to all Member States and other interested States to make these schemes mandatory on ships and ship-owners subject to their jurisdiction. This would consist in States making it an offence for ships of their flag to proceed against the established flow of traffic in a traffic lane covered by an IMCO traffic separation scheme.

But even here, the action to make these schemes mandatory would be action taken by States and not by IMCO.

Finally, I wish to emphasize that the establishment of traffic separation schemes in designated areas does not have any bearing whatsoever on questions relating to sovereignty or jurisdiction in respect of the areas concerned. The objective of the schemes is purely technical, in the sense that they are aimed at preventing collisions and other maritime accidents and thus avoid loss of life and property and impairment of the marine environment. IMCO does not concern itself with questions of the sovereignty or jurisdiction over the seas. The general principles of the IMCO Traffic Separation Schemes clearly stipulate that "Nothing in the ... principles shall be deemed to affect the ... rights, claims or views of any government in regard to the limits of territorial waters."

As I said earlier then, these schemes are established solely in pursuance of IMCO's efforts to maintain maritime safety and to help in the prevention of pollution of the sea arising from the use of the seas by ships.

But Mr. Chairman, both at this session and at earlier sessions of the Sea-Bed Committee and also at meetings of this Sub-Committee, doubts have been expressed and questions raised about the legitimacy and constitutionality of IMCO's work in the field of marine pollution prevention by ships. It has been suggested, first, that IMCO does not have the constitutional competence to engage in work relating to marine pollution because there is nothing in the IMCO Convention relating to marine pollution. Secondly, it has been asserted that IMCO's work in relation to marine pollution constitutes an unnecessary duplication of the work being done by other United Nations agencies including especially the work of the Sea-Bed Committee, and Sub-Committee III in particular. I wish,

Mr. Chairman, if I may, to answer some of these queries at this stage, because I believe that a clearing of the air will go a long way to ensuring the co-operation between IMCO and this Committee will be placed on an informed level and thus be made more capable of producing the most fruitful of results.

First, the view that IMCO's competence does not extend to prevention of marine pollution and that, therefore, IMCO's work in this area, even if desirable, has been unconstitutional and should not continue. The one thing that can be said for certain on this point is that this point of view has been shared neither by the governing bodies of IMCO nor by the governments which have been interested in, and engaged with, the problem of pollution prevention in the past two decades. The view that IMCO's objectives and competence properly include concern with marine pollution is given unambiguous support by the fact that, even before the Organization came into existence the governments of a large number of States, in plenary diplomatic conferences, had decided that it was proper and necessary for it to perform functions in this area. The IMCO Convention was adopted in 1948 but did not come into force until 1959. In the intervening period, the International Conference for the Prevention of Pollution of the Sea by Oil was held in London in 1958. That Conference adopted the International Convention for the Prevention of Pollution of the Sea by Oil (1954). The Conference assigned the depositary functions in respect of the Convention to the Government of the United Kingdom, but on the understanding that these functions would pass to IMCO when the latter body came into being. It is difficult to believe that the governments of States, most of whom had participated in drawing up the IMCO Convention would have agreed to confer on IMCO functions in respect of marine pollution if they had not also believed that these functions could be legitimately exercised by the Organization in accordance with its Constitution. And, following the coming into being of IMCO with the first Assembly in January 1959, the Organization's work in the field of marine pollution prevention and control has not only continued but developed to be one of the most important areas of its work - and success. The governments represented in IMCO (which number well over 70) as well as a fairly large number of governments which are not Members of IMCO but interested in the work on marine pollution, have proceeded on the unmistakable assumption that it is both desirable and right that IMCO should deal with this problem. The organizations in the United Nations System have similarly recognized the desirability and legitimacy of IMCO's work in this area; and it can now be said that the role of IMCO, at least in respect to the prevention and control of marine pollution arising from the use of the marine environment by ships and similar vessels, is not only recognized by most governments and organizations, but recognized by almost all to be primary.

Nor is this recognition based solely or even primarily on a legalistic interpretation of the IMCO Convention, nor indeed on the fact that there has been a vacuum in the structure of UN-related organizations in this field. Valid as these reasons might be by themselves, IMCO's work in the field of marine pollution prevention and control has been based on more substantial grounds.

First it was based on the recognition, by the Governments Members of IMCO, that the pollution of the sea was one of the important technical matters affecting shipping, and indeed arising from the operation of ships. In particular it was recognized that pollution of the sea by ship-borne oil and other cargo had to be controlled not only as part of the control of the technical operations and practices of world shipping but also as a major part of the objective of promoting the highest practicable standards in matters concerning maritime safety. It would be impossible to deal with the technical requirements for operating ships and cargoes at sea, to strike the necessary balance between the demands of safety and efficiency and the demands of economic operation, without also dealing with the problem of pollution arising from the operation of the

ships and the handling of cargo. The fuel used to propel many ships and much of the cargo carried by most ships are, either by their nature or because of the quantities carried, capable of presenting pollution hazards of various degrees to the sea and its resources.

A second reason for IMCO's work in the field of marine pollution prevention and control is that as a specialized agency whose concern is limited to maritime matters (and whose competence in regard to technical matters affecting shipping is unquestionably exclusive) IMCO has a special responsibility to the other users of the environment, as well as to coastal States, to take all practicable measures to reduce to the barest possible minimum the level of pollution of the sea which may arise from the fact that the ships are using that medium.

It is without question that pollution of the sea has tremendous potential (and decidedly adverse) impact on other uses of the sea. One only has to think of the effect of a polluted sea on oceanographic and scientific research and exploration, on the use of the sea space for meteorological investigation, on the fish and other food resources of the sea and on the operation of the vessels and craft used in exploiting these resources, to realize how significant the operation of ships can be to the marine environment and its uses. And it cannot be doubted that a polluted sea presents serious hazards not only to the health of sea life of all kinds but also to the health of persons. And of course serious incidents of marine pollution can have the most damaging effects on the use of the coastal and other related interests of States - uses which in the case of many States have a crucial economic impact and in every case will have some relevance to the amenities available to citizens and tourists.

In view of these undeniable effects of marine pollution which can arise from the operation of ships, the governments represented in IMCO have recognized that it would be not merely irresponsible but morally wrong on their part, if they failed to do anything to prevent ships polluting the seas or, when such pollution did occur, did nothing either to reduce its effects or to provide some compensation and reparation for the damage suffered. And such failure could not be justified or excused on the formalistic and legalistic argument that there is nothing in the Constitution of IMCO concerning the prevention of pollution.

In any event, even if one were to base oneself on the purely legal analysis of the situation, one would have to recognize that the Governments Members of IMCO who were the authors of the IMCO Convention and the Assembly of IMCO which, under the Convention and in accordance with the accepted principles of general international law in this regard, is the most competent body to interpret that Convention, have consistently, and without any questions or reservations, held that the prevention and control of marine pollution from ships and vessels using the marine environment is one of the most important tasks of IMCO.

But in emphasizing that IMCO is competent and fully equipped to deal with the problem of marine pollution by ships, none of the bodies of IMCO or governments participating in the work of IMCO has suggested either that IMCO has exclusive competence in this field, or that it could, in any case, deal with the problem unaided. The governing bodies and Member Governments of IMCO have recognized that the problem of marine pollution is a problem of many dimensions, partly because of the many and different legitimate uses of the seas and the effect of pollution on these uses, and partly because the task of identifying the various hazards and finding remedies thereto requires the contribution of many interests and many disciplines. Arising from this recognition, IMCO has sought, at every turn, to avoid duplication of effort and to promote co-operation with all the bodies of the United Nations and the specialized

agencies concerned with various aspects of marine pollution. In this regard, Mr. Chairman, IMCO's record of co-operation and collaboration with the bodies of the United Nations system can bear the most critical scrutiny. I need only call attention here to the role which IMCO has played and continues to play in the work of the Group of Experts on the Scientific Aspects of Marine Pollution (GESAMP). This inter-agency body, jointly sponsored by the United Nations and six specialized agencies - IMCO, FAO, IAEA, UNESCO, WHO and WMO - has, in its short life, performed useful work and produced useful data which has formed the basis of work not only for the sponsoring organizations but also for other bodies and for national governments in connexion with programmes for the prevention of marine pollution. IMCO's sponsorship of, and participating in, GESAMP is clear evidence of its recognition of the inter-relation between its work and the work of other agencies. IMCO's support for the idea of such a body and the positive measures it has made to assist the work and success of GESAMP should provide clear testimony of IMCO's desire to accentuate co-operation and de-emphasize duplication and competition.

It is in that spirit, Mr. Chairman, that IMCO has stated over and over again that it will assist in the work of the Sea-Bed Committee and its Sub-Committees; it is in that spirit that IMCO played a full and active role in the preparations for the Stockholm Conference on the Human Environment, in relation to the Conference's work on marine pollution; it is in that spirit that IMCO has stated unequivocally that its own conference in 1973 will take full account of the conclusions of the Stockholm Conference, the work of the Sea-Bed Committee and, if they are available, the conclusions of the proposed Law of the Sea Conference. Nothing that has been said or done in IMCO suggests that IMCO's programme is anything but supplementary to the work of the United Nations and the specialized agencies in the field of marine pollution. IMCO's concern is to contribute, within its competence and ability, to the efforts of the international community, as organized in the United Nations system, to preserve the marine environment for this and future generations.

In all it does in this field IMCO recognizes that it is part of a team. Naturally, it considers that the part it plays is a very important part and it ventures to feel that it plays its part reasonably well. But it is nevertheless part of a team - a world-wide team. It is the stated purpose of the governing bodies and the Member Governments of IMCO that the Organization shall continue to use its efforts, its experience and expertise and its resources to participate fully in the United Nations effort for the preservation of the marine environment. In doing so it will recognize the important role of the Sea-Bed Committee and co-operate with it. IMCO will also continue to be guided by the work and conclusions of the Committee and its Sub-Committees and by the conclusions of the proposed Conference on the Law of the Sea.

Thank you, Mr. Chairman.