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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

AUSTRALIA: WORKING PAPER ON PRESERVATION OF THE  
MARINE ENVIRONMENT

Introduction

This paper is presented in accordance with the request of Working Group 2 of Sub-Committee III of the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor Beyond the Limits of National Jurisdiction. It is intended for use only as a working paper, and does not necessarily reflect the final attitude of the Australian Government.

In preparing this paper, special attention has been paid to the Recommendations and Declaration of the 1972 United Nations Conference on the Human Environment. Of particular relevance are Principles 7, 21 and 22 of the Declaration of the United Nations Conference on the Environment, and Recommendation 92 which recommended that States endorse the principles agreed at the second session of the Intergovernmental Working Group on Marine Pollution (IWGMP). The Recommendation also took note of the three principles which were discussed at that session but were neither endorsed nor rejected, and referred them to the Law of the Sea Conference. The recently concluded Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter also contained a number of valuable statements of general principle.

The central issue in this field for decision by the Law of the Sea Conference is the nature and extent of the general legal rights and obligations of States, particularly coastal States, in relation to the preservation of the marine environment. The formulation or review of detailed technical rules, standards and procedures in conformity with these general rights and obligations should be undertaken through competent international organizations and other appropriate bodies. Any formulations or reviews being made in advance of the Law of the Sea Conference, such as at the 1973 IMCO Conference on Marine Pollution, should be drafted so as to avoid prejudicing the position of any State on the nature and extent of these general legal rights and obligations.

While there is general recognition of the need for urgent and effective action to prevent marine pollution this need must be balanced with the interests of States in freedom of navigation, economic considerations and other matters. Without this balance of interests, it will not be possible to gain the universal acceptance necessary for any treaty on the preservation of the marine environment which may be adopted by the Conference. The purpose of this working paper is to set out as principles some of the elements which we see as being important in achieving this balance.

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## Principles

- (a) States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies. This right shall be exercised in accordance with the duty of all States to protect and preserve the marine environment, both in their own interests and in the interests of mankind as a whole, and to take all practicable measures available to prevent or minimize damage to the marine environment outside their territorial sea from all sources including land-based sources within their national jurisdiction.
- (b) States should co-operate with other States and competent international organizations in the further elaboration and implementation of internationally agreed rules, standards and procedures for the prevention of marine pollution on global, regional and national levels. In the formulation of global measures for the preservation of the marine environment, States should take into account the special characteristics of particular geographical and ecological regions.
- (c) States with interests in the marine environment of a geographically common area should co-operate in formulating common policies and measures for the protection of such areas. States should endeavour to act consistently with the objectives and provisions of such policies and measures.

## Comment

This is based largely on principle 21 of the Declaration of the United Nations Conference on the Environment, on principle 3 of paragraph 197 of document A/CONF.48/8 which was endorsed by recommendation 92 of that Conference and on article 1 of the Dumping Convention. It reflects a basic theme which has arisen in the United Nations deliberations on pollution over recent years, viz. that while a State may do whatever damage it wishes to areas under its own sovereignty, it may not cause damage to areas outside its sovereignty.

This is based on principles 8 and 11 of paragraph 197 of document A/CONF.48/8 which was endorsed by recommendation 92 of the United Nations Conference on the Human Environment.

This is based on article VIII of the Dumping Convention.

## Principles

- (d) States should promote, either directly or through international bodies, programmes of scientific, technological and, where appropriate, financial assistance, such assistance including inter alia the training of scientific and technical personnel, the supply of necessary equipment and facilities for research, monitoring, surveillance and the prevention or minimizing of pollution, and advice on the method of administration of pollution prevention programmes.
- (e) (i) States have the responsibility to ensure that activities under their jurisdiction or control do not cause damage to other States, including the environment of other States. If activities under the jurisdiction or control of one State cause damage to areas under the jurisdiction of another State, including the environment of another State, the first-mentioned State is internationally liable to the second State and shall pay compensation accordingly;
- (ii) States also have the responsibility to ensure that activities under their jurisdiction or control do not cause damage to the environment of areas beyond the limits of national jurisdiction. States shall co-operate further to develop effective procedures for the payment of compensation in respect of damage to the environment of areas beyond the limits of national jurisdiction.

## Comment

This reflects principle 21 of the Declaration on the Human Environment. It is essential, particularly for developing countries, that sufficient knowledge and facilities are available for the performance of their responsibilities under these principles. Without derogation from the responsibility of the individual State concerned, it is necessary that programmes of mutual scientific, technological and financial assistance are available to ensure that no State's development is disproportionately hindered by observance of its international obligations.

This is based on principle 22 of the Declaration of the United Nations Conference on the Environment. The question of liability of a State for damage caused to the marine environment has been divided into two parts. The first deals with damage to areas under the jurisdiction of another State and affirms the liability of the offending State to pay compensation for such damage. The second deals with damage to areas beyond the limits of national jurisdiction. While the concept of responsibility of a State for damage caused to such areas has been asserted, there are considerable technical difficulties in this concept, e.g. how and by whom claim for damage is to be made, what is the measure of compensation, to whom are damages to be paid. Until the régime for areas beyond the limits of national jurisdiction has been established, it is not possible to give any solution to these difficulties. The most that can be said at this stage is that States should co-operate in developing effective procedures for approaching these problems.

## Principles

- (f) Coastal States have a special interest in the preservation of the marine environment adjacent to their coast. In order to protect this special interest, and to enable them to carry out their duty to protect and preserve the marine environment, coastal States shall in addition to their sovereign rights over their territorial sea, have the right to take all reasonable measures to control activities within a broad area adjacent to their coast for the purpose of preventing or minimizing damage to the marine environment. In determining the reasonableness of any measures, particular reference shall be made to international rules, standards and procedures as a primary, though not necessarily conclusive, source of evidence.

- (g) The principles herein outlined shall not apply to naval vessels, military aircraft or their auxiliaries. States shall, however, ensure that to the greatest extent feasible, their naval vessels and auxiliaries act in a manner consistent with the object and purpose of these principles.

## Comment

It is considered that while the right outlined in this principle should only allow the taking of "reasonable measures" the right should not necessarily be limited to taking measures pursuant to or in accordance with internationally agreed rules, standards and procedures. It is for the coastal State itself to decide how it may best protect its own interests and how best to discharge its special responsibility to preserve the marine environment adjacent to its coast.

At the same time, it is accepted that the special interests of the coastal State must be balanced with the interests of all States in ensuring freedom of navigation. Accordingly, it is provided that a coastal State can only take "reasonable" measures, and international rules, standards and procedures have been made a primary source of evidence as to what is "reasonable". To guarantee that this standard of reasonableness is observed, a provision providing for compulsory settlement of dispute has been included. The combination of all these elements is seen as providing a proper balance between the needs of coastal States and the need for freedom of navigation.

This is based on similar provisions which have been used in previous conventions on marine pollution, e.g. the 1954 Oil Pollution Convention, the Dumping Convention.

## Principles

- (h) Any dispute as to the interpretation of these principles shall be subject to review by an international arbitral and/or judicial tribunal at the request of any one party to that dispute.

## Comment

See also comment on principle (f) above. The form and nature of this compulsory review should be considered along with any provision for review which may be discussed in relation to other subject areas of the Sea-Bed Committee's mandate.