



UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
LIMITED

A/AC.138/SC.III/L.28
9 March 1973

ORIGINAL: ENGLISH

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

DRAFT ARTICLES FOR A COMPREHENSIVE MARINE POLLUTION CONVENTION

Submitted by the delegation of Canada

NOTE: These preliminary draft articles are submitted for discussion purposes only and do not necessarily reflect the final or definitive views of the Canadian Government.

PREAMBLE

States Parties to this Convention,

Convinced that the marine environment and all the living organisms which it supports are of vital importance to humanity, and all people have an interest in assuring that this environment is so managed that its quality and resources are not impaired;

Convinced that coastal nations have a particular interest in the management of coastal area resources;

Recognizing that the capacity of the sea to assimilate wastes and render them harmless and its ability to regenerate natural resources are not unlimited, and that measures to prevent and control marine pollution must be regarded as an essential element in the management of the oceans and seas and their natural resources;

Recognizing that 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, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction;

Noting that marine pollution originates from many sources, including discharges through the atmosphere or from rivers, estuaries, outfalls and pipelines and from dumping, and that it is important that States use the best practicable means to prevent such pollution;

Being convinced that the duty of States to protect the marine environment requires effective action, either individually or jointly, for the prevention of marine pollution through the elaboration, implementation and enforcement of appropriate control measures, taking into account existing international agreements on the protection and preservation of the marine environment, the need for elaboration of further agreements in this field at global and regional levels, and especially the need to ensure that these agreements, together with relevant national measures, comprise an effective comprehensive approach to the protection and preservation of the marine environment,

Have agreed as follows:

Article I

BASIC OBLIGATION

States have the obligation to protect and preserve the marine environment.

Article II

MEASURES FOR PREVENTION OF POLLUTION

1. States shall take measures, either individually or jointly, as appropriate, to prevent pollution of the marine environment by substances or other matter liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the marine environment. In particular, States shall, to the best of their ability, take measures to ensure that activities under their jurisdiction or control do not cause damage to other States, including the environment of other States, by pollution of the marine environment. Such measures shall include measures (a) to control the release of the above substances or other matter from all sources within their jurisdiction, in particular land-based sources, (b) to minimize the release of toxic or dangerous substances, especially if they are persistent substances, to the fullest possible extent until it is demonstrated that their release in larger quantities or greater concentrations will not cause pollution, (c) for the prevention of accidents and the safety of operations at sea in accordance with agreed international standards including, (i) the design, equipment, operation and control of vessels, in particular those engaged in the carriage of substances whose characteristics or quantities are likely to cause pollution of the marine environment if accidentally released, (ii) the design, equipment, operation and control of installations and devices for the exploration or exploitation of the natural resources of the sea-bed or any other installations and devices operating in the marine environment.

/...

2. In taking measures pursuant to their obligations under this Convention, States shall take into account: (a) any international convention the purpose or effect of which is to protect and preserve the marine environment; (b) the relevant principles, standards, recommendations, procedures, guidelines, criteria, including water quality criteria, and action plans proposed by competent international organizations.

Article III

DEVELOPMENT OF MEASURES

States should co-operate on a global basis and as appropriate on a regional basis, directly or through competent international bodies, to elaborate and implement conventions, rules, principles, standards, recommendations, procedures, guidelines, criteria, including water quality criteria, and action plans for the purpose of the prevention of pollution of the marine environment.

Article IV

SPECIAL MEASURES

1. Nothing in this Convention may be interpreted as preventing a State from taking such measures as may be necessary to meet the obligation under article I within the limits of its national jurisdiction, including environmental protection zones (maximum limits to be determined) (a) pending the establishment and implementation of internationally agreed measures contemplated by this Convention or, (b) following the establishment or implementation of any internationally agreed measures if such measures fail to meet the objectives of this Convention or if other measures are necessary in the light of local geographical and ecological characteristics.

2. Measures taken in accordance with this article must remain within the strict limits of the objectives of this Convention and must not be discriminatory in their application.

Article V

INTERNATIONAL PROGRAMMES

States should actively support and contribute to international programmes to acquire knowledge for the assessment of pollutant sources, pathways, exposures and risks, and those States in a position to do so should provide educational and technical and other forms of assistance to facilitate broad participation by States in such programmes regardless of their economic and technical advancement.

/...

Article VI

MONITORING

1. States which permit or engage in activities resulting in the release of substances or other matter into the marine environment likely to cause pollution shall take measures, consistent with the rights of other States, to determine the effects of such activities on the marine environment, having particular regard to those harmful effects referred to in article II.

2. Wide dissemination should be given to appropriate data and information respecting activities resulting in the release of substances or other matter into the marine environment, the measures taken to determine harmful effects, and measures or procedures adopted to minimize or eliminate such harmful effects.

Article VII

COMPENSATION FOR DAMAGE

1. States are liable for damage caused in or to areas under the jurisdiction of other States, including the environment of other States, by pollution of the marine environment attributable to them, and they shall co-operate in the development of international law relating to procedures for the assessment of damage, the determination of liability, the payment of compensation and the settlement of related disputes.

2. (a) With respect to damage caused in or to areas under the jurisdiction of a State, including the environment of that State, by pollution of the marine environment which is not attributable to another State, but which has been caused by persons under the jurisdiction of that other State, States undertake to provide recourse with a view to ensuring equitable compensation for the victims of marine pollution caused by persons under their jurisdiction, which will include procedures for the assessment of damage, the determination of liability and the payment of compensation.

(b) Following the exhaustion of local remedies or where no such recourse is available, the State of the damaged party may present to the State having jurisdiction over the person or persons responsible for the damage in question, a claim for the damage caused. If no settlement of the claim is arrived at through negotiations, the States concerned shall submit, at the request of either of them, the claim to arbitration or adjudication in accordance with a procedure to be determined by agreement or by a third party nominated by them.

3. With respect to damage caused in or to areas beyond the limits of national jurisdiction by pollution of the marine environment, States undertake to co-operate in the development of international law relating to procedures for the assessment of damage, the determination of liability, the payment of compensation and the settlement of related disputes.

Article VIII

ABATEMENT

In the case of damage caused by pollution of the marine environment in areas beyond the limits of national jurisdiction, a State or group of States, in co-operation with any competent international organization or agency or otherwise, may present to the State under whose jurisdiction or control the activities causing such pollution were conducted, through diplomatic channels, a request for the termination or restriction of such activities and the restoration of the damaged environment.

Article IX

MINIMIZATION

A State which becomes aware of circumstances where the marine environment is in imminent danger of being damaged or has been damaged by pollution shall notify other States likely to be affected by such damage and these States shall co-operate in taking measures to minimize damage.

Article X

ENFORCEMENT

1. States may enforce measures adopted pursuant to this Convention for the protection and preservation of the marine environment within the limits of their national jurisdiction, including environmental protection zones (maximum limits for the purpose of this Convention to be determined and expressed in this Convention) adjacent to their territorial sea.
2. Where vessels or aircraft registered in one State are in areas within the limits of national jurisdiction of another State, including environmental protection zones, the State of registry shall also have the duty to ensure compliance with the measures adopted pursuant to this Convention for the protection and preservation of the marine environment in such areas.
3. States shall enforce measures adopted pursuant to this Convention for the protection and preservation of the marine environment in respect of (a) vessels and aircraft registered in their territory operating beyond the limits of national jurisdiction, and (b) man-made structures or platforms operating in areas beyond the limits of national jurisdiction over the sea-bed where such structures or platforms are under the authority and control of a State (pursuant to the international sea-bed régime to be established).

Article XI

RIGHT OF INTERVENTION

1. Any State facing grave and imminent danger from pollution or threat of pollution, following upon an incident or acts related to such an incident in areas beyond the limits of national jurisdiction, which may reasonably be expected to result in major consequences, may take such measures as may be necessary to prevent, mitigate or eliminate such danger.

2. Measures taken in accordance with this article shall be proportionate to the damage which threatens the State concerned and shall not go beyond what is reasonably necessary to achieve the objective referred to in paragraph 1.

Article XII

SOVEREIGN IMMUNITY

This Convention shall not apply to those vessels and aircraft entitled to sovereign immunity under international law. However, States shall ensure by the adoption of appropriate measures that such vessels and aircraft owned or operated by them act in a manner consistent with the object and purpose of this Convention.

Article XIII

SETTLEMENT OF DISPUTES

Where any dispute arises relating to the interpretation or application of this Convention, the States concerned shall, if such dispute is not resolved by negotiation, submit the claim to arbitration, at the request of any of them, in accordance with a procedure to be determined by agreement or by a third party nominated by agreement among the States concerned.
