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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

Malta: Draft articles on the preservation of the marine environment
(including, inter alia, the prevention of pollution)

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

A draft preamble has been omitted, since its contents will depend upon the contents of the substantive articles approved by the Committee.

Article 1

Definitions

1. The marine environment comprises the surface of the sea, the air space above, the water column and the sea-bed beyond the high tide mark including the biosystems therein or dependent thereon.
2. Ocean space comprises the surface of the sea, the water column and the sea-bed beyond internal waters.
3. Conservation of the marine environment means the aggregate of measures - national and international - that render possible the maintenance of the quality in all its aspects of the marine environment and the preservation of its ecological balance. 1/

1/ The term conservation has been preferred to the term preservation. Conservation suggests that a measure of economic development is possible without substantially impairing the marine environment.

4. Pollution of the marine environment means the introduction by man, directly or indirectly, of substances or energy into the marine environment (including estuaries) resulting in such deleterious effects as harm to living resources, hazard to human health, hindrance to marine activities (including fishing), impairment of the quality for use of sea water and reduction of amenities.

Article 2

General

1. Considering that the marine environment constitutes a complex of closely interlinked ecological systems vital to life and that all States have a common interest in the maintenance of its quality, States, whether Parties to this Convention or not, have the obligation:

(a) Not to use their technological capability in a manner that may cause significant and extensive change in the natural state of the marine environment beyond their jurisdiction without obtaining the consent of the international community in accordance with the present Convention;

(b) To take effective measures to prevent the pollution of the marine environment beyond their jurisdiction caused by human activities of whatever nature in their land territory, internal waters or air space above;

(c) To take and to enforce all reasonable regulatory measures for the abatement of pollution within the marine environment under their jurisdiction which may be expected to cause injury to the interests of other States or to those of the international community;

(d) To take reasonable regulatory measures to prevent their nationals, vessels bearing their flag or activities under their sponsorship from creating in the marine environment pollution causing injury to the interests of other States or to those of the international community;

(e) To co-operate with the competent international institutions in the adoption and enforcement of international standards and regulations for the prevention of pollution in the marine environment beyond national jurisdiction.

2. Non-compliance with the obligations under paragraphs (a), (b), (c) and (d) shall make the offending party legally responsible when substantial injury is caused to the interests of other States or to those of the international community.

3. The appropriate organ of the International Ocean Space Institutions may bring to the attention of the International Maritime Court for adjudication and for determination of damages all events that have caused significant change in the natural state of the marine environment or significant pollution in ocean space beyond national jurisdiction.

Article 3

Ocean space under national jurisdiction

1. Foreign vessels traversing ocean space under national jurisdiction shall comply with reasonable non-discriminatory rules and regulations enacted by the coastal State in conformity with these articles and other rules of international law; in particular, they shall comply with such rules and regulations conforming to international standards relating to transport, navigation and the prevention of pollution.
2. The coastal State shall not normally exercise its powers with regard to the abatement of pollution in a manner that hampers or obstructs the passage of vessels through ocean space under national jurisdiction.
3. Disputes on the reasonableness or otherwise of the rules and regulations enacted by the coastal State shall be arbitrated or adjudicated by the International Maritime Court.

Article 4

In the event of grave and imminent danger from serious and extensive pollution or threat of serious and extensive pollution, a coastal State may take such measures beyond its jurisdiction as may be necessary to prevent, abate or eliminate such danger after notifying the competent international institutions.

Article 5

1. A coastal State has the obligation to take and enforce in ocean space under its jurisdiction special precautions in the construction, siting and maintenance of pipelines, nuclear reactors, industrial installations and installations containing radioactive materials, petroleum or other substances which may cause serious deleterious effects to human health, to the living resources or to the quality of the marine environment. All such installations shall conform to such international standards as may be established. No such installations shall be constructed in areas subject to frequent natural destructive phenomena which could cause them serious damage.
2. Non-compliance with the obligation contained in the preceding article may be brought to the attention of the International Ocean Space Institutions by a Contracting Party. The offending party shall be legally liable for damages, to be assessed by the International Maritime Court, when omission to take the special precautions referred to in the preceding paragraph results in substantial injury to the interests of other States or to those of the international community.

Article 6

Ocean space beyond national jurisdiction

1. The introduction of substances, whether solid or liquid or gaseous, or of energy into ocean space beyond national jurisdiction or in the air space above, whether for disposal or for other purposes, in quantities that may reasonably be expected to produce significant deleterious effects to human health, to the living resources or to the quality of marine environment shall be subject to control and regulation by the Institutions established in accordance with article ... of this Convention.
2. Nuclear and thermonuclear explosions of whatever nature are prohibited in ocean space beyond national jurisdiction without the express authorization of the Institutions established in accordance with article ... of this Convention.
3. The use of nuclear energy for peaceful purposes, including hydrogen fusion processes, in ocean space beyond national jurisdiction shall be subject to control and regulation by the Institutions established in accordance with article ... of this Convention. Before adopting regulations the Institutions shall consult with the International Atomic Energy Agency.
4. The storage or disposal of radioactive wastes in ocean space beyond national jurisdiction shall be subject to control and regulation by the Institutions established in accordance with article ... of this Convention. Before adopting regulations the Institutions shall consult with the International Atomic Energy Agency.
5. The Institutions established in accordance with article ... of this Convention, in co-operation with the International Atomic Energy Agency, shall maintain a register of the release of radioactive solids and liquids in ocean space beyond national jurisdiction. The register shall be open for inspection by any Contracting Party.
6. The Institutions, in co-operation with Contracting Parties, shall monitor ocean space for pollution and shall endeavour to ascertain the effects of potentially polluting or harmful substances in the marine environment.

Article 7

International Ocean Space Institutions

(Establishment and personality, etc.)

The purpose of the International Ocean Space Institutions are:

To safeguard the quality of the marine environment for all mankind so that it can be transmitted unimpaired to future generations;

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Article 8

Conservation of the marine environment

1. The Institutions may accept from any State the transfer to their administration of rocks, reefs, low-tide elevations or islands having less than 10,000 permanent inhabitants.
2. The Institutions have the obligation to take, in so far as possible, strict and effective measures for the conservation of the fauna, flora and marine environment of the rocks, reefs, low-tide elevations and islands transferred to their administration.
3. Rocks, reefs, low-tide elevations and islands transferred to the administration of the Institutions shall be used only for international community purposes, such as nature parks or preserves, marine parks, scientific stations etc.
4. The Institutions shall not accept the transfer to their administration of inhabited islands without consulting the freely expressed wishes of the inhabitants and without being satisfied that there exists among the inhabitants no significant opposition to the transfer of administration.
5. The Institutions shall not accept the transfer to their administration of inhabited islands when it might entail a substantial financial responsibility or when it might involve the Institutions in a political dispute with a member.

Article 9

Assembly

(Procedure, functions and powers)

The Assembly shall approve such standards and rules of a general and non-discriminating character relating to the conservation of the marine environment and the prevention of pollution as may be recommended by the Council.

Article 10

(Voting, etc.)

Council

(Composition and procedure)

Functions and powers

1. In order to ensure prompt and effective action by the Institutions, its members confer upon the Council primary responsibility for... the ecological integrity of ocean space beyond national jurisdiction....

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2. The Council shall consider and submit to the Assembly with its recommendations such standards and rules of a general and non-discriminatory character, in accordance with the present Convention, relating to conservation of the marine environment and the prevention of pollution as it may consider necessary to ensure the beneficial use and ecological integrity of the marine environment beyond national jurisdiction.

3. The standards and rules referred to in the preceding paragraph shall be obligatory for all users of ocean space beyond national jurisdiction two years after their adoption by the Assembly.

4. Violation of the rules referred to in paragraph 1 entails legal responsibility when injury is caused to the rights and interests of others. Persistent violators may be excluded from the use of ocean space beyond national jurisdiction.

Article 11

Maintenance of the ecological integrity of ocean space beyond national jurisdiction

The Council, or a body designated by the Council, may investigate any event, situation, practice or action which might cause significant and extensive change in the natural state of the marine environment or which might seriously impair the ecological integrity of ocean space beyond national jurisdiction.

Article 12

1. Should the Council determine that any event, situation, practice or action endangers the natural state of the marine environment or impairs the ecological integrity of ocean space beyond national jurisdiction, the Council, or the body designated by it, shall make and publish a report containing a statement of the facts.

2. If the event, situation, practice or action referred to in paragraph 1 has occurred in national ocean space, the Council, on reliable scientific advice, shall make such recommendations as may appear necessary to the coastal State or States concerned.

3. If the event, situation, practice or action referred to in paragraph 1 has occurred in ocean space beyond national jurisdiction, the Council shall take such action within its powers as it deems necessary or desirable. This may include monitoring the marine environment, establishing registers of the release of harmful substances or energy, regulation of dangerous practices or technologies and the prohibition or licensing of the disposal of harmful substances in ocean space beyond national jurisdiction.

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Article 13

In the event of imminent danger of serious contamination of extensive areas of ocean space beyond national jurisdiction, the Council, after taking scientific advice, may proclaim a regional or a world ecological emergency.

Article 14

1. During a state of regional or world ecological emergency, States within the region or all States in the world, as the case may be, whether or not members of the Institutions, shall take promptly such action for the preservation of the ecology of ocean space as may be prescribed by the Council or by the body designated by the Council for this purpose.

2. The Council, if necessary, shall ensure compliance with its directions by taking any of the actions mentioned in articles... and.... 2/

Article 15

The International Maritime Court shall be the principal judicial organ of the International Ocean Space Institutions.

Article 16

The competence of the International Maritime Court shall extend to persons, natural or juridical, other than States with respect to matters which have occurred in ocean space beyond national jurisdiction.

Article 17

Any member or associate member of the Institutions may request the advisory opinion of the Court with respect to the reasonableness or non-discriminatory nature of the rules and regulations mentioned in articles 3 and 10.

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Article 18

Scientific and Technological Commission

There is established a Scientific and Technological Commission. The Scientific and Technological Commission shall be the principal scientific advisory organ of the Institutions.

2/ It is believed that the imprudent use of certain contemporary or prospective technologies could have such catastrophic results as imperatively to require the co-operation of States, whether or not members of the Institutions.

Article 19

(Composition, voting, relations with the United Nations
and other bodies etc.)

1. The Scientific and Technological Commission shall promote through concerted action by members and associate members of the Institutions the conservation of the marine environment, its scientific investigation and the development of technologies for the exploration of ocean space and of its resources and for its peaceful use by man.
2. The Commission shall disseminate as widely as possible knowledge concerning the matters referred to in paragraph 1 and shall promote the effective transfer of technology in respect of them.
3. The Commission shall make recommendations to the Council concerning the conservation of the marine environment and shall prepare, as appropriate, international standards, draft regulations or draft conventions thereon.
4. The Commission shall advise the Council on the proclamation of a regional or a world ecological emergency in ocean space and on requests received from States in accordance with article 2 (a) of this Convention.
5. The Commission may advise at their request members or associate members of the Institutions on measures required to abate pollution in ocean space under national jurisdiction.
6. The Commission shall advise the Ocean Management and Development Commission on the scientific, ecological and technological aspects of licensing the exploitation of the natural resources of international ocean space and of the exploration of its non-living resources.
7. The Commission shall be consulted on all matters within its competence by the Ocean Management and Development Commission and particularly on the scientific aspects of the matters referred to in articles... of this Convention. The Commission shall advise the General Secretary on the administration of scientific stations and nature parks or preserves.
8. The Commission shall prepare and submit to the Council for its consideration draft technical, safety and social standards and regulations with regard to vessels, fixed installations or devices lying or floating in or traversing ocean space beyond national jurisdiction.

...

Article 20

The Commission shall submit a biennial report on its activities to the Assembly and shall report periodically to the Council.

Article 21

Regional arrangements or agreements generally conforming to such international standards and regulations as may be established, may be concluded at any time by the States directly concerned.
