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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

PREVENTION OF POLLUTION FROM SHIPS

Canada: working paper

The following excerpts (articles 4 and 8) from the draft international convention for the prevention of pollution from ships, 1973, prepared at the Preparatory Meeting for the International Conference on Marine Pollution, 1973, held in London from 12 February to 2 March 1973, are brought to the attention of all delegations by the delegation of Canada with a view to ensuring full co-ordination of the work of the United Nations Conference on the Law of the Sea and the Inter-governmental Maritime Consultative Organization (IMCO) Conference on Marine Pollution, to be held in London in October 1973.

It is the view of the delegation of Canada that this draft convention and in particular article 4, reproduced below, raises basic law of the sea issues. Foot-notes 9 and 10 to the two alternative texts of article 4 reflect the view of Canada and a number of delegations at the London meeting that the existing rule of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended, giving exclusive jurisdiction to flag States to prosecute violations of rules governing the discharge of harmful substances beyond the limits of the territorial sea, should be changed to allow either prosecutions against a ship by any contracting State when the ship enters its ports or offshore terminals, wherever the violation occurs, or prosecutions against a ship by any contracting State when the ship enters its ports or offshore terminals for violations occurring within waters beyond the territorial seas of the contracting State over which it exercises jurisdiction for the purpose of preventing pollution.

Article 8 of the draft Convention also raises law of the sea issues of the same importance.

Excerpts from draft international convention for the  
prevention of pollution from ships, 1973 (IMCO  
document PCMP/8/3 of 7 March 1973)

Alternative I<sup>9/</sup>

Article 4

Penalties

(1) Any discharge of harmful substances or effluent containing these substances in contravention of the provisions of the Regulations shall be prohibited under:

(a) the law of the Administration of the ship;

/and/ /or/

(b) the law of any other Contracting State when the discharge occurs within its territorial seas. 10/

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9/ Some delegations suggested that an additional paragraph be added to article 4, whichever alternative is accepted, as follows:

"Any Contracting State may cause proceedings to be taken when any ship to which the present Convention applies enters its ports or off-shore terminals, in respect of any violation by that ship, or its owner or master, of the requirements of the Convention, wherever the violation occurred, provided, however, that such proceedings are commenced no later than /three/ years after the violation occurred. Whenever one Contracting State has commenced such proceedings, no other proceedings in respect of the same violation may be commenced by any other Contracting State except for the Administration of the ship or any State within whose territorial sea 10/ the violation occurred. A report of any such proceedings shall be sent to the Administration of the ship."

It was suggested that the period of time indicated in square brackets "/three/" should be related to the period indicated in Regulation 23 of annex I. Other delegations took the view that the concept contained in the present foot-note could only be accepted subject to one or more of the following additional qualifications:

(a) the violation occurred within /50/ nautical miles from the nearest land of the State exercising jurisdiction under this provision;

(b) the Administration reserves the right to take over the prosecutions for any violation which has occurred outside the territorial seas 10/ of a Contracting State;

(c) the proceedings could take place only with the consent of the Administration.

(Foot-notes continued on following page)

(2) The penalties provided under the law of a Contracting State in respect of unlawful discharge of harmful substances or effluent containing these substances shall be adequate in severity to discourage any such unlawful discharge. The penalties provided for in respect of unlawful discharge outside the territorial seas 10/ of a Contracting State shall be no less severe than the penalties provided for under the law in respect of the same infringement within its territorial seas. 10/

Alternative II<sup>9/</sup>

Article 4

Violation

(1) Any violation of the requirements of the present Convention shall be prohibited under the law of the Administration of the ship concerned wherever the violation occurs. If the Administration is informed of such a violation and is satisfied that sufficient evidence is available in the form required by its law to enable proceedings to be brought in respect of the alleged violation, it shall cause such proceedings 11/ to be taken as soon as possible.

(2) Any violation of the requirements of the present Convention within the territorial seas 10/ of any Contracting State shall be prohibited under the law of that State. Whenever such a violation occurs, that State shall either:

(a) cause proceedings to be taken with respect to such violation, or

(b) furnish to the Administration of the ship such information and evidence as may be in its possession that a violation has occurred.

(3) Where information or evidence with respect to any violation of the Convention by a ship is furnished to the Administration of that ship, the Administration shall promptly inform the State which has furnished the information or evidence and the organization, of the action taken.

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9/ (continued)

One delegation suggested that for (c) above, tacit consent would be sufficient.

10/ Some delegations expressed a preference for a term other than "territorial seas" such as "waters under its jurisdiction", "areas under national jurisdiction" or "within the limits of national jurisdiction".

11/ Some delegations were of the opinion that this provision is too stringent, since it obliges Administrations to take proceedings which would have problems with regard to their national system of law according to which the proceeding authority is free to decide whether or not a proceeding is opportune. A less strictly formulated provision would therefore increase the acceptability of the whole article.

(4) The penalties provided for under the law of a Contracting State in respect of any violation of the requirements of the present Convention shall be adequate in severity to discourage any such violation. The penalties provided for in respect of violation outside the territorial seas 10/ of a Contracting State shall be no less severe than the penalties provided for under the law in respect of the same infringement within its territorial seas. 10/

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#### Article 8

##### Powers of Contracting States<sup>36/</sup>

1/(1) Nothing in the present Convention shall be construed as derogating from the powers of any Contracting State to take stricter measures within its jurisdiction in respect of any matter to which the Convention relates or as extending the jurisdiction of any Contracting State. 37/

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- 36/ (i) Some delegations proposed the deletion of paragraph (1) as this matter is already covered by the existing international law.
- (ii) Several delegations proposed the deletion of paragraph (2) as such a provision would restrict the right of a Contracting State to impose more stringent regulations within its jurisdiction.
- (iii) Some delegations proposed the deletion of article 8 entirely, as such provisions do not appear in other technical conventions.
- (iv) Final decision on this article would affect the texts of certain Regulations in annexes, e.g. Regulation 9 of annex I.

37/ Some delegations suggested that this paragraph should read as follows: "Nothing in the present Convention shall be construed as derogating from the rights of coastal States within the limits of their national jurisdiction, including the right to adopt stricter measures in respect of any matter to which the Convention relates."

/...

(2) A Contracting State shall not within its jurisdiction /in respect of ships to which the Convention applies other than its own ships/ 38/ impose regulations in respect of pollution control regarding ship design /and manning/ 39/ which are not in accordance with the provisions of the Regulations. / 40/

A second aspect of the work of the IMCO International Conference on Marine Pollution 1973, which in the view of the delegation of Canada raises basic law of the sea issues, is that of the possible revision of the International Convention referring to Intervention on the High Seas in cases of Oil Pollution Casualties, concerning the right of intervention on the high seas.

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38/ Some delegations suggested the deletion of the square brackets.

39/ Some delegations suggested the deletion of the square brackets around "and manning", while other delegations suggested the deletion of the words "and manning".

40/ Some delegations considered that the right of a Contracting State to impose more stringent regulations should be limited to operational matters.