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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

Note by the Chairman of Working Group 2 addressed
to the Chairman of Sub-Committee III

I have the honour to inform you that at the current session the Working Group on Marine Pollution (Working Group 2 of Sub-Committee III) held 15 meetings, from 14 March to 5 April 1973.

In accordance with its terms of reference, the Working Group began discussion of the four proposals on preservation of the marine environment, including the prevention of marine pollution, formally submitted to Sub-Committee III at the current session (documents A/AC.138/SC.III/L.27, 28, 32 and 33). The discussion covered the following subjects contained in those proposals:

General obligation to preserve and protect the marine environment;

General obligation of States to adopt measures to prevent pollution of the marine environment, irrespective of the source of pollution;

Obligation of States to prevent damage from marine pollution;

Particular obligations of States to adopt specific measures in connexion with certain sources of marine pollution, and the relation between such measures and generally accepted international standards;

International co-operation and technical assistance.

The Working Group also considered the right of States to exploit their own resources in conformity with the obligation to preserve and protect the marine environment, and other relevant subjects contained in the proposals under discussion.

In the light of the discussion of the above-mentioned subjects, the Working Group authorized me, as Chairman, to convene informal consultations between the

sponsors of the proposals and other delegations, with a view to the drafting of joint working papers for subsequent consideration by the Working Group. These consultations were open to participation by all delegations.

In the course of 12 meetings, from 19 March to 3 April 1973, the informal consultations produced a number of working papers, the texts of which are annexed to this note for information. These texts were drafted on the basis of the above-mentioned proposals and of comments and suggestions by delegations in the Working Group.

At the meeting of 4 April 1973, the Working Group took note of the texts drafted in the course of the informal consultations and decided to consider and discuss them at the next session of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor. Towards the end of the current session, the Working Group began a preliminary discussion of some working papers on standards for the control of pollution from ships (documents A/AC.138/SC.III/L.36 and 37).

The Working Group authorized me to inform you and Sub-Committee III, by means of a note, of the progress achieved by Working Group 2 in carrying out its mandate.

(Signed) José L. VALLARTA

Annex

Texts contained in the informal Working Papers prepared for
Working Group 2 by the informal consultations among authors
of proposals submitted to Sub-Committee III and other
delegations

I

WG.2/Paper No. 3 (Text of a Draft Article on Basic Obligations)

States have the obligation to protect and preserve the marine environment,
in accordance with the provisions of these articles.*

* The reference to "the provisions of these articles" is intended to reflect the fact that the Working Group will wish to specify in subsequent articles the scope, qualifications and limitations of this general obligation. For example, the Working Group may wish to specify that nothing in these articles shall be deemed to impose a duty on a State to prevent pollution that only affects areas or resources under its jurisdiction.

II

WG.2/Paper No. 8/Add.2 (Result of discussion
on Particular Obligations)

Text of a Draft Article

"1. States shall take all necessary measures to prevent pollution of the marine environment from any source, 1/ using for this purpose the best practicable means in accordance with their capabilities, 2/ individually or jointly, as appropriate. In particular, States shall take measures to ensure that activities under their jurisdiction or control 3/ do not cause damage 4/

1/ It was understood that an elaboration of the meaning of marine pollution could be inserted in the above text after "from any source", if there was to be no special section or article on definitions, containing such an elaboration.

2/ A query was raised as to the meaning of "capabilities" in the above context and the suggestion made that further clarification was needed.

3/ Some delegations considered that "or control" should be retained while others felt it should be deleted. Some delegations thought that the meaning of "control" in this context should be clarified. It was stressed that the above sentence relates to a State's control over activities and not to areas of control.

4/ This use of the word is not intended to prejudice the question of liability.

/...

to other States,^{5/} including their environment, by pollution of the marine environment. ^{6/}

"2. The measures taken pursuant to these articles shall deal with all sources of pollution of the marine environment, whether land, marine, or any other sources, including rivers, estuaries, the atmosphere, pipelines, outfall structures, vessels, aircraft and sea-bed installations or devices. They shall include inter alia: ^{7/}

(a) In respect of land-based sources of pollution of the marine environment, measures designed to minimize the release of toxic and harmful substances, especially persistent substances, into the marine environment, to the fullest possible extent;

(b) In respect of pollution from vessels, measures relating to the prevention of accidents, the safety of operations at sea, and intentional or other discharges, including measures relating to the design, equipment, operation and maintenance of vessels, especially of those vessels engaged in the carriage of hazardous substances whose release into the marine environment, either accidentally or through normal operation of the vessel, would cause pollution of the marine environment; ^{8/} and

(c) In respect of installations or devices engaged in the exploration and exploitation of the natural resources of the sea-bed and subsoil and other installations or devices operating in the marine environment, measures for the prevention of accidents and the safety of operations at sea, and especially measures related to the design, equipment, operation and maintenance of such installations and devices.

"3. The measures taken pursuant to these articles shall:^{9/}

(a) In respect of land-based sources of pollution of the marine environment, take into account such international standards as may be elaborated;

^{5/} Some delegations were of the opinion that "other States" did not sufficiently indicate the aspect of damage to the international community e.g. to areas of the marine environment not under the jurisdiction of any States, and suggested that a more direct reference would be appropriate.

^{6/} The view was expressed that this last phrase might be unnecessary.

^{7/} Certain delegations noted that they would consult environmental experts regarding the balance and content of the specific enumerations in this paragraph.

^{8/} Some delegations considered that "pollution from aircraft" should be expressly mentioned in this subparagraph.

^{9/} The acceptance of this paragraph by some delegations was conditional upon satisfactory provision being made in subsequent articles concerning the rights of coastal States, the functions of international organizations - including the Authority - , or both.

/...

(b) In respect of marine-based sources of pollution of the marine environment, conform to generally accepted international standards. 10/

"4. In taking measures to prevent pollution of the marine environment, States shall have due regard to the legitimate uses of the marine environment and shall refrain from unjustifiable interference with such uses."

10/ Some delegations reserved their position on the application of the international standards in respect of sources of pollution relating to the development and exploitation of the continental shelf and sea-bed, since international standards in this case are not yet in existence and a regional arrangement to cover such a case with due consideration to geographical and regional conditions might be more directly relevant. Other delegations noted that the establishment of international standards is fundamental but does not preclude the establishment of higher standards on individual or regional basis.

III

WG.2/Paper No. 9 (Result of discussion on Particular Obligations)

In taking measures to prevent marine pollution States shall guard against the effect of merely transferring damage or hazard from one area to another.*

* It was understood that the order of this text in relation to the draft articles on the prevention and control of marine pollution was to be decided later.

IV

WG.2/Paper No. 7 (Result of discussion on first sentence, principle (a), A/AC.138/SC.III/L.27; and fourth preambular paragraph, A/AC.138/SC.III/L.28)

In the event that a provision dealing with States' rights to exploit their own resources pursuant to their environmental policies were to be included in the draft articles, the following wording is offered as a possible text.

/...

"Nothing in this ----- shall derogate from the sovereign right of a State to exploit its own resources pursuant to its environmental policies and in accordance with its duty to protect and preserve the marine environment both in its own interests and in the interests of mankind as a whole." 1/

1/ In discussing proposed measures for the prevention of marine pollution, it was thought necessary to include a provision reserving the rights of States to exploit their own resources pursuant to their environmental policies. Some delegations felt that such a provision should either be a draft article or part of an article, while others felt it would belong, more appropriately, in a preamble. Yet others reserved their position on this matter, some expressing the view that it was irrelevant to the concrete obligation of States to take measures to prevent marine pollution. It was also suggested by some delegations that such a provision should only relate to the exploitation of land-based resources.
