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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

UNITED STATES DRAFT ARTICLES ON THE
PROTECTION OF THE MARINE ENVIRONMENT
AND THE PREVENTION OF MARINE POLLUTION

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Section A: Obligations to Protect the Marine Environment

Article I: General Obligation

Article II: Particular Obligations

Two articles on these subjects were discussed during the March/April meeting of the Sea-Bed Committee. We take note of those drafts and the footnotes and will, of course, participate in the later consideration of them in the Working Group and the Sub-Committee.

Section B: Competence to Establish Standards to
Protect the Marine Environment

Article III: International Standards in General

1. The Authority established by Chapter _____ of this Convention shall have primary responsibility for establishing, as soon as possible and to the extent they are not in existence, international standards with respect to the sea-beds.
2. The Intergovernmental Maritime Consultative Organization shall have primary responsibility for establishing, as soon as possible and to the extent they are not in existence, international standards with respect to vessels.
3. Such standards may include special standards for special areas and problems, taking into account particular ecological circumstances.
4. These organizations shall co-operate with each other, other international organizations in the field, and the United Nations Environment Programme.

Article IV: The Right and Duty to Implement Standards

States shall adopt laws and regulations implementing international standards in respect of marine based sources of pollution of the marine environment or may adopt and implement higher standards:

- (a) in the exercise of their rights in the [Coastal Sea-Bed Economic Area] with respect to the activities set forth in Chapter _____, Article _____ of this Convention;
- (b) for vessels entering their ports and offshore facilities;
- (c) for their nationals, natural or juridical, and vessels registered in their territory or flying their flag.

Section C: General Competence to Enforce Standards
to Protect the Marine Environment

Article V: Enforcement Instrumentalities

For the purposes of this Chapter, a State shall act through duly authorized government vessels, aircraft, or officials. Any State may, by agreement, authorize one or more other States to act for it in taking pollution enforcement measures and shall so inform other States through IMCO, or directly.

Article VI: Enforcement in the [Coastal Sea-Bed Economic Area]

1. In the exercise of its rights in the [Coastal Sea-Bed Economic Area] pursuant to Chapter _____, the coastal State shall enforce the standards applicable in accordance with the provisions of this Chapter to the activities set forth in Chapter _____, Article _____ of this Convention.

2. The Authority established in Chapter _____, may inspect, in accordance with Article _____, the activities specified in paragraph one of this Article, in co-operation with the coastal State, to ensure that the activities are being conducted in compliance with the Standards applicable in accordance with the provisions of this Chapter.

Article VII: Ordinary Enforcement Against Vessels

1. A State shall enforce standards applicable in accordance with the provisions of this Chapter to vessels registered in its territory or flying its flag (such State is hereinafter referred to as the "flag State").

2. A State may enforce standards applicable in accordance with the provisions of this Chapter to:

- (a) vessels using its ports or offshore facilities irrespective of where the violation occurred, provided, however, that such proceedings are commenced no later than [three years] after such violation occurred (such State is hereinafter referred to as the "port State");
- (b) vessels in its territorial sea for violations therein, except as otherwise provided in this Convention.

Section D: Co-operative Enforcement Measures
Against Vessels

Article VIII: The Right to Monitor

A vessel within or beyond the territorial sea shall upon request by any duly authorized government vessel, aircraft or official in the vicinity which has reason to suspect a violation of the applicable international standards, give information specifying its name, State of registry, next scheduled ports of call, and any other information required to be given by the applicable international standards.

Article IX: Denial of Port Entry

Any State may inform a vessel at any time that it will be denied entry to its ports for non-compliance with any of its environmental requirements or its refusal to allow an immediate on-board inspection to determine the source of possible pollution. Any State may, by agreement, authorize one or more other States to act for it in this respect and shall so inform other States through IMCO, or directly.

Article X: The Duty to Notify

If a State has reason to suspect a violation of the applicable international standards, it shall notify the flag State or the State of one of the next ports of call or both, of the alleged violation and forward the available evidence.

Article XI: Port State Duties

Upon receipt of such notification of the alleged violation, the port State shall undertake, upon arrival of the vessel if within six months of the alleged violation, an immediate and thorough investigation. The port State shall promptly inform the flag State and the notifying State of the results of the investigation and its actions, including a statement as to whether it intends to institute proceedings and the result of any such proceedings.

Article XII: Flag State Duties

Upon receipt of notification if within six months of an alleged violation, the flag State shall undertake an immediate and thorough investigation. If the result of its or a port State's investigation indicates that a violation has occurred, the flag State shall institute proceedings against the vessel, its operator, its master, or its owner, provided that it shall not be required to do so if proceedings have already taken place in respect of that violation. The flag State shall inform the notifying State and any other State which could institute proceedings of its decisions and actions.

Article XIII: Participation in Investigations

A notifying State may participate in any investigation undertaken pursuant to its notification. A flag State may designate an observer for any investigation involving one of its flag vessels. An expert or experts designated by IMCO shall be permitted to participate in any investigation if so requested by a State concerned and such expert or experts may file a separate report with IMCO.

Section E: Extraordinary Enforcement Measures and
Intervention against Vessels

Article XIV: Coastal State Remedy Against Flag States

If the dispute settlement machinery established in Chapter _____ finds, upon petition by any State, that a particular flag State has unreasonably and persistently failed to enforce the applicable international standards against its flag vessels, the machinery may specify additional enforcement measures which may be taken by coastal States for violations by any vessel of that flag. Such authorization shall be interim in nature and shall be limited to those measures necessary to bring about adequate flag State enforcement. Such authorization shall be rescinded upon a showing by the flag State that it is taking adequate measures.

Article XV: Emergency Coastal State Enforcement Procedures*

Beyond the territorial sea, a coastal State may take such reasonable emergency enforcement measures as may be necessary to prevent, mitigate or eliminate imminent danger of major harmful damage to its coast or related interests from pollution arising from a particular occurrence reasonably believed to be related to a violation of the applicable international standards.

Article XVI: Intervention

(The 1969 Intervention Convention allows coastal States to take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution by oil following upon a maritime casualty or acts related to such casualty, which may reasonably be expected to result in major harmful consequences. Negotiations are presently under way in IMCO to expand the Convention to cover other substances in addition to oil and the issue is on the agenda for the October 1973 Conference on Marine Pollution. Consequently, it may be advisable to await the results of these negotiations before taking action on the issue in the law of the sea negotiations.)

*/ It should be noted that this differs from and is in addition to the measures set out in the Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties.

Section F: General Articles Relating to EnforcementArticle XVII: Release of Vessels

A vessel shall be permitted to continue its voyage and shall not be detained longer than its presence is essential for investigative purposes. It shall be promptly released if the investigation does not reveal a violation of the standards applicable in accordance with the provisions of this Chapter. Where there continues to be reason to believe a violation has occurred, vessels shall be promptly released under reasonable procedures such as bonding except where such release would present an unreasonable threat of harm to the marine environment or where other action is required or authorized by the applicable international standards.

Article XVIII: Penalties

All violations of the applicable international standards shall be prohibited under the law of each State. The penalties provided for such violations shall be applied so as to guarantee fair treatment, shall be adequate in severity to discourage any such violation, and shall, in any case, be at least as severe as those applied by that State for violations in its territorial sea.

Article XIX: Multiple Proceedings

Whenever a State other than the flag State has instituted proceedings against a vessel, its operator, its master, or its owner, no other proceedings in respect of the same violation may be instituted except by the flag State of the vessel or by any other State in whose territorial sea or internal waters the violation has taken place. In assessing penalties, a State shall take into account any penalties assessed by other States in respect of the same violation. This shall not restrict the right of any State or person to institute a suit or claim for damages caused by pollution.

Article XX: Co-operation

States shall afford one another the greatest measure of assistance in carrying out the objectives of this Chapter and in particular in providing evidence and witnesses necessary for investigations and proceedings.

Section G: Other Articles Relating to the Marine Environment

Article XXI: Liability for Unreasonable Measures

A State shall be liable for damage resulting from investigative, enforcement or intervention measures exceeding those reasonably necessary in the light of available information.

Article XXII: State Responsibility

1. A State has the responsibility to take appropriate measures to ensure, in accordance with international law, that activities under its jurisdiction or control do not cause damage to the environment of other States or to the marine environment beyond the limits of national jurisdiction.
2. States shall undertake, as soon as possible, jointly to develop international law regarding liability and compensation for pollution damage including, inter alia, procedures and criteria for the determination of liability, the limits of liability and available defences.*
3. In the absence of other adequate remedies with respect to damage to the environment of other States caused by activities under the jurisdiction or control of a State, that State has the responsibility to provide recourse for foreign states or nationals to a domestic forum empowered:
 - (a) to require the abatement of a continuing source of pollution of the marine environment, and
 - (b) to award compensation for damages.

Article XXIII: Sovereign Immunity

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

Article XXIV: Dispute Settlement

Any dispute with respect to the interpretation or application of the provisions of this Chapter shall, if requested by any party to the dispute, be resolved by the compulsory dispute settlement procedures contained in Chapter _____.

* / The Sub-Committee may wish to consider whether or to what extent the law of the sea negotiations provide the appropriate forum to address the details of this issue.