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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

WORKING PAPER

DRAFT ARTICLES ON THE PROTECTION OF THE
MARINE ENVIRONMENT AGAINST POLLUTION

Submitted by Norway

Article I

States have the obligation to protect and preserve the marine environment in accordance with the provisions of this convention.*/

Article II

Definition of Marine Pollution

In the present Convention pollution means the introduction by man, directly or indirectly, into the marine environment, which alone or together with other substances or energy, may result in such deleterious effects as harm to living resources, hazards to human health, hindrance to marine activities, including fishing, impairment of quality for use of sea water and reduction of amenities.

Article III

General obligations of States

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

*/ Text taken from doc. A/AC.138/SC.III/L.39.

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:

- (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; 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:

- (a) In respect of land-based sources of pollution of the marine environment, take into account such international standards as may be elaborated.
- (b) In respect of marine-based sources of pollution of the marine environment, conform to generally accepted international standards.

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.*

5. States shall take all reasonable measures to abate existing marine pollution.

Article IV

1. States shall enact and enforce the necessary regulations on inter alia:

* / Text taken from doc. A/AC.138/SC.III/L.39.

- (a) any industrial or other activity which may result in pollution of the marine environment;
- (b) production, distribution or use of materials or substances which may cause such pollution;
- (c) the disposal of waste into the marine environment;
- (d) the compensation to be accorded to victims of such pollution;
- (e) the steps to be taken in case of occurrences or accidents involving pollution of the marine environment.

2. Every State shall ensure that environmental aspects, and in particular the steps which are necessary for the prevention of marine pollution, are taken into account as a matter of the utmost importance in all planning or works done by the State or within its jurisdiction; insofar as such planning or works may affect the marine environment.

Article V

General Obligation of Co-operation

States shall co-operate with other States and with competent international or regional organizations in order to take all possible measures to prevent, control and minimize marine pollution on global, regional and national levels, and to harmonize their efforts to this end.

Article VI

Elaboration of agreed Rules, Standards and Procedures for the Prevention of Marine Pollution

1. States shall co-operate with other States and competent international and regional organizations with regard to the elaboration and implementation of agreed rules, standards and procedures for the prevention of marine pollution on global, regional and national levels.
2. Such co-operation shall, inter alia, endeavour to establish international guidelines and criteria to provide the policy framework for control measures.
3. A comprehensive plan for the protection of the marine environment should be elaborated as soon as possible and be amended and revised whenever it is deemed necessary. The plan shall provide for the identification of critical pollutants and their pathways and sources, determination of exposure to these pollutants and assessment of the risks they pose. The plan shall lay down the measures which should be taken on the global, regional or national level to prevent, control and minimize the risk of marine pollution by such pollutants.

The plan may, inter alia, provide for standards and guidelines for the methods of production, storage, transportation, use and destruction of materials and substances that create risks of pollution of the marine environment and standards and guidelines for the prevention or reduction of discharge of harmful products or wastes into the marine environment, including measures for the destruction, storage and alteration of harmful waste to avoid the risk of pollution.

The plan shall to the extent possible establish and evaluate the regional and local variations in the effects of pollution. The plan shall take into account such variables including the ecology of the specific sea areas, economic and social conditions of the surrounding states, amenities, recreational facilities and other uses of the seas.

Article VII

Discharge of toxic and other harmful Substances

1. The discharge of toxic substances or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems.
2. States shall use the best practicable means available to minimize the release to the environment of toxic or dangerous substances, especially if they are persistent substances such as heavy metals and organochloric compounds, until it has been demonstrated that their release will not give rise to unacceptable risks.

Article VIII

Pollution from Land-based Sources

1. All States are under an obligation to control, prevent and reduce such activities within their territory, which directly or indirectly may lead to or contribute to pollution of the marine environment.
2. To the extent that the territory of another State or the high seas may be affected by the discharge, deposit or emission of substances or articles in any significant quantity from the territory of a State, such discharge, deposit or emission shall be subject to registration and licensing by the State in which the activity is performed. A licence shall not be granted unless the authorities have found, with a reasonable degree of certainty, that the discharge, deposit or emission can take place without substantial damage to person, property or natural resources in the territory of another State or on the high seas.

3. The rules of paragraphs 1 and 2 of this Article shall also apply to activities which are capable of causing pollution of the air as the primary effect, if such air pollution may lead to pollution of the sea as a secondary consequence.

4. States shall exercise due diligence in the control of the types and quantities of waste which are disposed of through discharge systems, or in any other manner into inland water or into the sea; in order to prevent unjustified damage to person, property or natural resources in the territory of another State or on the high seas.

Article IX

Pollution from Vessels

Every State shall establish and revise the necessary regulations and take all appropriate steps to ensure that all vessels flying its flag or other craft under its registry take all appropriate measures and comply with such rules which are required to avoid pollution. States shall ensure that vessels under their registration comply with internationally agreed rules and standards, inter alia those drawn up by the Intergovernmental Maritime Consultative Organization, relating to ship design, construction, equipment, operation, maintenance and other relevant factors.

Article X

Pollution resulting from the Exploration and Exploitation of the Sea-bed and Subsoil

1. The exploration and exploitation of the sea-bed and subsoil, within as well as beyond the limits of national jurisdiction, shall only be undertaken under the supervision of a State or the appropriate international authority, and in accordance with such safety regulations which are necessary to avoid pollution of the marine environment.

2. Coastal States shall establish and revise the necessary safety regulations and ensure that adequate and appropriate resources are available to deal with pollution incidents resulting from the exploration and exploitation of sea-bed resources within the limits of their national jurisdiction.

Article XI

Dumping

States shall prevent the pollution of the marine environment by dumping of harmful waste into the sea within areas of jurisdiction and on the high seas. To this end they shall implement the rules and regulations laid down in regional and international conventions.

Article XII

Nuclear Material, Oil, Chemicals and other noxious
or hazardous Substances

States shall establish and enforce special regulations on the production, transportation, use and destruction of nuclear material, oil, chemicals and other noxious or hazardous substances, in order to avoid pollution of the sea and damage to person, property or natural resources. For this purpose they shall co-operate with one another and with international organizations, in particular the International Atomic Energy Agency and the Intergovernmental Maritime Consultative Organization, and take account of the guidelines and standards drawn up by such organizations.

Article XIII

Transfer of Pollution

In taking measures to prevent pollution States (as well as international organizations) shall guard against the effect of merely transferring damage or hazard (directly or indirectly) from one area to another (or from one type of pollution to another).^{*/}

Article XIV

Establishment of Detection and
Monitoring Systems

1. States shall, on national, regional and international levels establish detection and monitoring systems for the control of pollutants and for the prevention and punishment of infringements of existing rules and regulations.
2. States shall distribute to other States and to the interested international organizations concerned available data and information concerning activities resulting in the release of substances or other matters endangering the marine environment, the measures taken to determine harmful effects, and measures and procedures adopted to eliminate or minimize such harmful effects.

Article XV

Environment Impact Statement: Consultations

Before any State or a person within its jurisdiction undertakes an activity which may lead to significant alteration of the marine environment the State shall file

^{*/} Text taken, with some additions, from doc. A/AC.138/SC.III/L.39.

an environmental impact statement with the international organization (United Nations agency) concerned. The statement shall provide all necessary information to assess the possibility of damage, and shall be communicated to competent international organizations and to other States whose interests may be affected. If such States or organizations so wish, the first-mentioned State shall consult with them before any alteration of the environment is undertaken, with a view to avoid damage to other interests and to preserve the environment against pollution.

Article XVI

Obligation to exercise effective Jurisdiction

States shall, in accordance with the principles of international law, exercise effective control over areas, persons and ships under their jurisdiction in order to prevent pollution of the marine environment.

Article XVII

Enforcement

1. States shall ensure that their national legislation provides adequate sanctions against infringements of existing regulations on marine pollution.
2. States shall take all appropriate steps to prevent and punish infringements of existing regulations on marine pollution.
3. Flag States shall, when receiving a report that an alleged infringement of rules or regulations to prevent pollution has been committed by a ship under its registry, take all appropriate steps to investigate the matter, to secure the necessary evidence and to prosecute violation.

The same shall apply in relation to complaints and reports received by a State in respect of marine pollution alleged to have been caused by other activities within its jurisdiction, and which is alleged to have harmful effects or which in time may affect the interests of other States or those of the international community.

Article XVIII

Jurisdiction and Powers of Coastal States*/

*/ This article has not yet been drafted.

Article XIX

Right of Intervention^{*/}

Article XX

Liability and Compensation

1. States have the responsibility to ensure that activities under their jurisdiction or control do not cause damage to the marine environment of other States. If activities under the jurisdiction or control of one State cause damage to areas under the jurisdiction of another State, including the environment of another State, the first-mentioned State shall, in accordance with the principles of international law, be internationally liable to the second State and pay compensation accordingly.
2. States have the responsibility to ensure that activities under their jurisdiction or control do not cause damage to the environment of areas beyond the limits of national jurisdiction. States shall co-operate to develop effective procedures for making reparation or paying compensation in respect of damage to the environment of areas beyond the limits of national jurisdiction.

Article XXI

Violations of Obligations under the Convention

1. When it is contended by a State that the conduct of another State is not in accordance with its obligations under the present Convention, or that serious damage may otherwise be caused to the marine environment, the States concerned shall, together with any third State whose interests may be affected, enter into negotiations. The aim of such negotiations shall be to establish the factual situation and to reach a solution in accordance with the rules of the Convention and with the need to protect and preserve the marine environment.
2. In case of violations of the obligations of the present Convention, the State responsible shall immediately take steps to put an end to such violations and, if possible, the effects thereof.

^{*/} The text of this article has not been drafted. As the 1969 Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties will be subject to revision and extension to other forms of marine pollution at the 1973 IMCO Conference on Marine Pollution, it is believed that the drafting of this article should be deferred until after that Conference; in order that the Working Group and Subcommittee III will be able to take account of the results of the IMCO Conference and consider the relationship of the present Convention to the IMCO Convention.

Article XXII

Powers conferred upon States by the provisions of other Conventions

Nothing in the present Article shall be deemed to prevent a State from exercising such powers with regard to protection and preservation of the marine environment which may be conferred upon it by the provisions of other conventions. Nor shall the present Articles be interpreted in such a way as to entail the effect of extending jurisdiction conferred upon States by other conventions to cover the enforcement of other rules than those which are binding according to such other conventions.

Article XXIII

(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).*/

*/ Text taken from doc. A/AC.138/SC.III/L.39.