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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

Addendum

Annex 1

WG.2 Papers No. 10 and No. 10/Add.1

"Global and Regional Co-operation

(a) States^{1/} shall co-operate on a global basis and as appropriate on a regional basis, directly or through competent international organizations, global or regional, to formulate and elaborate treaties, rules, standards and procedures consistent with this Convention, for the prevention of marine pollution, taking into account characteristic regional features.

OR

(a) States^{2/} shall co-operate on a global basis and as appropriate on a regional basis, directly or through competent international organizations, global or regional, to formulate and elaborate treaties, rules, standards and procedures consistent with this Convention, for the prevention of marine pollution, taking into account characteristic regional features and economic factors.

(b) A State which becomes aware of cases in which the marine environment is in imminent danger of being damaged or has been damaged by pollution shall immediately notify other States likely to be affected by such damage, as well as the competent international organizations.

1/ 2/ The view was expressed that the word "States" should be followed by "whether Parties to this Convention or not." In this respect, some other delegations were of the opinion that only those States which are Parties to the Convention are bound by the obligations of this article and shall enjoy its rights.

(c) In the cases referred to in paragraph (b) above, States in the area affected, in accordance with their capabilities, and the competent international organizations, shall co-operate, to the extent possible, in eliminating the effects of pollution and preventing or minimizing damage.

(d) States shall co-operate directly or through competent international organizations for the purpose of promoting studies undertaking programmes of scientific research and encouraging the exchange of information and data acquired about pollution of the marine environment. They shall actively support and contribute to international programmes to acquire knowledge for the assessment of pollutant sources, pathways, exposures, risks and remedies.

(e) In the light of the information and data so acquired, States shall co-operate directly or through competent international organizations in working out appropriate scientific criteria for the formulation and elaboration of rules and standards for the prevention of marine pollution."

WG.2 Paper No. 12

"Technical Assistance

1. States shall, directly or through competent international organizations:
 - (a) Promote programmes of scientific, educational, technical and other assistance to developing countries for the preservation of the marine environment and the prevention of marine pollution. Such assistance shall include, inter alia, the training of scientific and technical personnel and the facilitation of their participation in the international programmes referred to in paragraph [(d) of WG.2/Paper No. 10/Add.1], the supply of necessary equipment, advice and facilities for research, education and other programmes for the prevention of marine pollution or the minimization of its effects.
 - (b) Provide appropriate assistance, in particular to developing countries, for the minimization of the effects of major incidents which may cause serious pollution in the marine environment.
 - (c) For the purposes of paragraph (b), promote and develop contingency plans for responding to such major incidents and to requests for assistance in dealing with them.
2. Developing States shall, for purposes of the prevention of marine pollution or the minimization of its effects, be granted preference in:
 - (a) the allocation of appropriate funds and technical assistance facilities of international organizations, and
 - (b) the utilization of their specialized services."

WG.2 Paper No. 13

"Monitoring

1. States shall employ suitable systems of observation, measurement, evaluation and analysis to determine the risk or effect of pollution on the marine environment, especially pollution likely to arise from activities which they permit or in which they engage.
2. States shall disseminate, as soon as possible, the data and information obtained on the risks and effects of pollution on the marine environment to States likely to be affected and to the international organizations concerned, with a request to disseminate such data and information."

WG.2 Paper No. 11

A text dealing with the consideration of economic factors in determining whether States have discharged their obligations under this Convention in respect of land-based sources of marine pollution was considered essential by some delegations but inappropriate by others. The following is offered as a possible text:

"In determining whether a State has discharged its obligations under this Convention in respect to land-based sources of marine pollution, due regard must be paid to all relevant factors including in particular the economic and financial ability of a State to provide the resources necessary for the discharge of such obligations and the stage of economic development of the State."

WG.2 Paper No. 14

The following text was drafted with the intention that it would be given further consideration at a later date:

"In case of violations of the obligations under the present Convention resulting in pollution of the marine environment, the State responsible for these violations shall immediately take steps, to the extent practicable, to put an end to them and to the effects thereof."

WG.2 Paper No. 15

Standards

The following alternative texts have been grouped in sections under provisional headings for purposes of identification and comparison.

Section I. Standards for land-based sources of marine pollution^{1/}

- A. "States shall individually establish national standards and, acting through the appropriate international and regional organizations^{2/}, endeavour to establish and adopt international standards for prevention of pollution of the marine environment from land-based sources, taking into account available scientific evidence, other relevant factors and the work of competent international bodies."

OR

- B. "States shall take appropriate measures to prevent land-based marine pollution."

Section II. Standards for sea-bed sources of marine pollution^{3/}

- A. "States, acting through the competent international organizations, shall establish, as soon as possible, international standards for the prevention of pollution of the marine environment arising from the exploration and exploitation of the international sea-bed area."

OR

- B. 1. "States, acting through the competent international organizations, shall establish, as soon as possible, international standards for the prevention of pollution of the marine environment arising from the exploration and exploitation of the international sea-bed area."
2. "States shall establish national standards for the prevention of pollution of the marine environment arising from the exploration and exploitation of the sea-bed area over which they exercise sovereign rights^{4/} for the purpose of exploring and exploiting the natural resources, and, acting through the appropriate international organizations, shall endeavour to establish minimum international standards for that area."

^{1/} The view was expressed by some delegations that the issues dealt with by the texts in Sections I and II are already covered by paragraph (2) contained in WG.2/Paper No. 10 and in Article 2, paragraph 3 (a) of A/AC.138/L.39.

^{2/} The view was expressed that States may individually adopt international standards without acting through the appropriate international and regional organizations.

^{3/} See footnote 1.

^{4/} It was considered by some delegations that the words "sea-bed area over which they exercise sovereign rights" should be changed to "the continental shelf".

OR

- C. "International standards for the prevention of pollution of the marine environment from the exploration and exploitation of sea-bed resources, and from the other activities referred to in Chapter, Article (e.g. offshore installations), shall be established by the Authority or IMCO,^{5/ 6/} as appropriate. The Authority shall have primary responsibility for establishing, as soon as possible and to the extent they are not already in existence, such international standards with respect to sea-bed activities, in accordance with the procedures specified in Chapter, Article Coastal States may apply higher standards with respect to the activities referred to in Chapter, Article (e.g. exploration and exploitation of sea-bed resources and offshore installations)."

OR

- D. "The Authority established by Chapter of this Convention shall establish, as soon as possible, international standards for the prevention of pollution arising from activities in the marine environment. States shall ensure that activities in the marine environment under their jurisdiction comply with any such standards. States may also, acting directly or through appropriate international organizations, elaborate supplementary standards for the prevention of such pollutions."^{7/}

OR

- E. "States acting through (the international authority to be established under this Convention) shall establish, as soon as possible, international standards for the prevention of pollution of the marine environment arising from the exploration and exploitation of the sea-bed. States shall apply these standards as provided for in (Article 2, paragraph 3 (b) of A/AC.138/SC.III/L.39). States may also act, directly or through appropriate regional organizations, to elaborate supplementary standards with respect to the prevention of such pollution."

^{5/} Some delegations were of the opinion that the reference to IMCO in this text was inappropriate and unnecessary.

^{6/} The delegation sponsoring this article noted that while IMCO could not have competence to establish standards for sea-bed exploration and exploitation, it could usefully consider other issues, e.g., those affecting navigation in the vicinity of offshore economic installations.

^{7/} The view was expressed that since Section II dealt specifically with pollution from sea-bed exploration and exploitation, this more general text might properly belong elsewhere in the draft articles.

OR

- F. "States acting, individually or through the competent international or regional organizations, shall establish and adopt, as soon as possible, standards with respect to pollution arising from the exploration and exploitation of the sea-bed area over which they exercise sovereign rights for the exploration and exploitation of sea-bed resources. Such standards shall in no case be lower than those agreed internationally."

Section III. Standards for vessel-source pollution ^{8/}

- A. "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." ^{9/ 10/ 11/}

OR

- B. "States, acting through the competent international organization [primarily IMCO] shall establish, as soon as possible and to the extent that they are not already in existence, international standards for the prevention of pollution from vessels. States shall ensure that vessels under their registration comply

^{8/} The view was expressed by some delegations that the texts in this Section were not necessary in the light of the contents of Article 5.4 (a) (WG.2/Paper No. 10) but that if it should be decided to include a draft article along these lines, alternative text C was preferable. It was the additional view of some of these delegations, that if it should be agreed that these texts were unnecessary, the inclusion of the following article would be appropriate so as to give clearer expression to the reference in Article 5.4 (a) to the competent international organization or organizations: "The competent international organization or organizations referred to in Article 5.4 (a) should be in respect of vessel-source pollution."

^{9/} Delegations supporting this alternative expressed the view that the international standards should include special standards for special areas and problems, taking into account particular ecological circumstances. These delegations noted in addition that States may also, acting through regional agreements, establish supplementary or special standards applicable to the parties to such agreements.

^{10/} Some delegations reminded the Working Group that reference should be made to more than one international organization since IMCO was not the only authority dealing with vessel-source pollution. These delegations considered that the text was unnecessary, but if a draft article along these lines were to be included, it should be stated that the standards established internationally should be without prejudice to the coastal States' rights to establish their own standards.

^{11/} The view was expressed that the mention of any existing international organization in those draft articles was prejudicial to consideration of the question of the establishment of an international Authority taking place in another organ of the Committee.

with such internationally-agreed standards relating to ship design, construction, equipment, operation, maintenance, and other relevant factors." 12/ 13/ 14/ 15/

OR

- C. "States acting individually or through the competent international or regional organizations shall establish standards for the prevention of pollution from vessels." 16/

OR

- D. "States shall, acting through the competent international organizations, endeavour to negotiate conventions for the adoption of recommendatory international standards for the prevention of pollution from vessels. For the purpose of navigation through international waters or through waters under the jurisdiction of States, standards established by competent international organizations or by coastal States in the area under their sovereignty or jurisdiction shall not supersede those established by developing States for vessels under their flag. These standards shall take into consideration the special ecological, geographical and economic characteristics of those States." 17/ 18/

OR

- E. "Navigation shall conform to such general and non-discriminatory rules and standards with regard to the prevention of pollution as may be adopted by the Authority established under Chapter of this Convention or as are contained in widely ratified multilateral conventions. States shall ensure that vessels under their flag comply with such standards and rules. In the absence of relevant standards and rules adopted by the Authority or contained in widely ratified international conventions, the coastal State may enact reasonable, non-discriminatory regulations with regard to the abatement of

12/ See footnote 9.

13/ See footnote 10.

14/ Some delegations preferred the inclusion of the phrase "or under their jurisdiction" in the second sentence, following the word "registration".

15/ See footnote 11.

16/ 17/ Some delegations expressed the view that national or regional standards, not established through the competent international organization, are binding only on the State or States which established them.

18/ Some delegations proposed that the phrase "in the area under their sovereignty or jurisdiction" be replaced by "for their territorial waters", and the words "through international waters" be replaced by "on the high seas".

pollution from vessels in the maritime area under its jurisdiction. In addition the coastal State may enact non-discriminatory regulations and rules supplementary to those adopted by the Authority or to those contained in widely ratified international conventions." ^{19/}

OR

F. "The United Nations Environment Programme shall centralize and co-ordinate all information regarding all aspects of the protection and control of pollution to the marine environment. This body, with the assistance of competent organizations such as IMCO, Joint Group of Experts on the Scientific Aspects of Marine Pollution, etc., shall:

- (a) establish a system of monitoring, observation, measurement and evaluation of various aspects of marine pollution;
- (b) recommend international or regional measures to be adopted to protect the marine environment;
- (c) collect and disseminate marine pollution data, reports and other relevant information;
- (d) distribute marine pollution funds and other scientific and technical aid facilities to needy countries.
- (e) " ^{20/}

Section IV. Competence of individual States to establish and adopt standards ^{21/ 22/}

A. "1. Nothing in this Convention may be interpreted as preventing a coastal State from taking such measures as may be necessary to meet the obligation under Article 1 within the limits of its national jurisdiction, including environmental protection zones (maximum limits to be determined) (a) pending the establishment and implementation of internationally agreed measures contemplated by this Convention, or (b) following the establishment or implementation of any internationally agreed measures if such measures fail to meet the objectives of this Convention or if other measures are necessary in the light of local geographical, economic and ecological characteristics.

^{19/} Some delegations proposed that the phrase "in the maritime area under its jurisdiction" be replaced by "in its territorial waters".

^{20/} See footnote 11.

^{21/} The view was expressed by a number of delegations that while the proposals in this Section were put forward above as alternative draft articles, they were not parallel in substance.

^{22/} The view was expressed that questions relating to the establishment of new jurisdictional areas or economic zones had not been resolved and that they were, moreover, part of the mandate of Sub-Committee II and not of Sub-Committee III. It was considered, therefore, that these questions should not be raised in the present draft articles.

2. Measures taken in accordance with this article must remain within the strict limits of the objectives of this Convention and must not be discriminatory in their application, and must not unnecessarily or unreasonably restrict legitimate uses of the marine environment, including navigation.

3. In determining whether special measures taken in accordance with this article are reasonable, States shall take into account international rules, standards and procedures in force as a primary, though not necessarily conclusive, source of evidence." 23/ 24/ 25/ 26/ 27/

OR

B. "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; 28/

23/ The view was expressed that in respect of third flag-vessels a contracting State shall not impose measures, standards and regulations for vessel-source pollution regarding ship design, construction, equipment, manning and maintenance which are not in accordance with the measures, standards and regulations established by the competent international body.

24/ Some delegations considered that, if there were to be such an article, it should apply to territorial waters only and should provide that any rules and standards relating to the prevention of pollution of the marine environment adopted at national and international levels take account of the need to provide for and ensure on the high seas freedom of navigation and of fisheries, and the freedom to conduct research and other normal activities of States. Those delegations further considered that the reference to "environmental protection zones" should be deleted since they could not support such a form of jurisdiction.

25/ In order to provide a clearer expression of the nature of coastal States' rights, some delegations considered that it might be appropriate to develop guidelines indicating the circumstances in which such rights could be exercised.

26/ The view was expressed that this draft article should have been completed by a provision containing a general principle to the effect that rules and regulations enacted by a coastal State should be subject to international judicial review in accordance with the provisions of this Convention.

27/ The view was expressed that a fourth paragraph should be added to this draft article stating that any measures adopted by a State in accordance with this article shall forthwith be communicated to the competent international organization which shall be given a reasonable time in which to request modifications to the measures, if it so decides. Those measures would not enter into force before that time period had elapsed.

28/ For the information of delegations, the referenced article would give to the coastal State rights to: (1) explore and exploit and authorize the exploration and exploitation of the natural resources of the sea-bed and subsoil; (2) authorize and regulate the construction, operation and use of offshore installations affecting its economic interests and drilling for purposes other than exploration and exploitation of resources; and (3) establish reasonable safety zones around such offshore installations.

- (b) for vessels entering their ports and offshore facilities; 29/
- (c) for their nationals, natural or juridical, and vessels registered in their territory or flying their flag. 30/ 31/

OR

- C. "1. Nothing in this Convention may be interpreted as preventing a (coastal) State from taking special measures within the limits of its national jurisdiction and/or sovereignty, in the light of local geographical, ecological and economic characteristics, for the prevention of marine pollution.
2. Measures taken in accordance with this Article must remain within the limits of the objectives of this Convention and must not be discriminatory in their application and must not unnecessarily or unreasonably restrict other legitimate uses of the marine environment, including navigation.
3. Measures adopted by a coastal State to protect its marine environment in areas under its jurisdiction and/or sovereignty shall not be incompatible with the standards established by developing States for vessels under their flag." 32/ 33/

29/ With respect to paragraph (b), see footnote 23.

30/ The view was expressed that this draft article covered only some aspects of marine pollution and that it should apply to marine pollution generally in areas within national jurisdiction (to be determined by the Conference).

31/ Some delegations had doubts as to the inclusion of sub-paragraphs (a) and (b) of this text and considered that the draft article should apply to the competence of the flag-State and to the rights of coastal States, in connexion with their territorial waters, to establish standards taking international standards into account.

32/ See footnote 24.

33/ See footnote 23.

Annex 2

ALTERNATIVE TEXTS TO DOCUMENT A/A.138/SC.III/L.39
AND WORKING GROUP 2 PAPERS No. 10 TO 15

(presented by the)
(delegation of Brazil)

(1) WG.2/Paper No. 3

Delete the note "*The reference to"

(2) WG.2/Paper No. 8/Add.2

"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 and their national environmental policies, individually or jointly, as appropriate. In particular, States shall take measures to ensure that activities under their jurisdiction or control do not cause significant damage to the marine environment of other States.

2. 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."

(3) WG.2/Paper No. 7

(Omit the introductory note)

"Nothing in this Convention shall derogate from the sovereign right of a State to exploit its own resources pursuant to its environmental policies and programmes for economic development."

(4) WG.2/Paper No. 10 and No. 10/Add.1

"(b) A State which becomes aware of cases in which the marine environment is in imminent danger of being significantly damaged or has been significantly damaged by pollution shall immediately notify other States it deems likely to be affected by such damage, as well as the competent international organizations.

(d) States shall co-operate directly or through competent international organizations in the research of causes of marine pollution and in the exchange of information and data acquired about pollution of the marine environment, with a view to working out appropriate scientific criteria for the formulation and elaboration of rules and standards for the prevention of marine pollution."

(e) Delete

(5) WG.2/Paper No. 13

"1. States, in areas under their sovereignty and national jurisdiction, shall employ suitable systems of observation, measurement, evaluation and analysis to determine the risk of pollution on the marine environment.

"2. States shall disseminate the data and information obtained on the risks and effects of pollution on the marine environment to States they deem likely to be affected and to the international organizations concerned, with a request to disseminate such data and information."

(6) WG.2/Paper No. 14

"In case of violations of the obligations under the present Convention, resulting in significant pollution of the marine environment, the State responsible for these violations shall immediately take steps, to the extent practicable, to put an end to them and to the effects thereof."