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Results of consideration of proposals and amendments relating to the preservation of the marine environment

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume III (Documents of the Conference, First and Second Sessions)*

"1. The coastal State shall, within the zone which is adjacent to its territorial sea and which may not extend beyond . . . nautical miles from the baselines from which the breadth of the territorial sea is measured, have the right to authorize and regulate dumping of wastes and other matter

with due regard to internationally agreed regulations on such dumping.

"2. Dumping of wastes and other matter in accordance with paragraph 1 of this article shall be without prejudice to other States or international navigation."

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The purpose of this paper is to present in a single document the common texts which have resulted from the work of the informal meetings on item 12 and the efforts of the drafting and negotiating group. Additional common texts which may be prepared after this date will be reproduced in addenda to the present document. The informal meetings will thus be able to consider the results of the work with reference to a comprehensive single document.

A reference in parentheses in each case indicates the basic texts and amendments thereto, which constituted the background elements of the draft treaty articles reproduced in this paper.

The presentation of the common texts follows the order of their consideration by the informal meetings except where the drafting and negotiating group expressed a different opinion on the matter.

I. Draft article on basic obligations (see A/9021 and Corr.1 and 3, vol. I, p. 86, WG.2/Paper No. 3; and CRP/MP/2)

"States have the obligation to protect and preserve the marine environment, (in accordance with the provisions of these articles.)"⁷

II. Draft article on the right of States to exploit their own natural resources (see A/9021 and Corr.1 and 3, vol. I, p. 89, WG.2/Paper No. 7; and CRP/MP/4)

"Nothing in this Convention shall derogate from the sovereign right of a State to exploit its own natural resources pursuant to its environmental policies and programmes for economic development and in accordance with its duty to protect and preserve the marine environment."⁸

III. Draft article on particular obligations (see A/9021 and Corr.1 and 3, vol. I, pp. 86-88, WG.2/Paper No. 8/ Add.2; and CRP/MP/3, and Corr.1 and Add.1)⁹

"1. States shall take all necessary measures to prevent, reduce and control pollution of the marine environment from any source using for this purpose the best practicable means at their disposal and in accordance with their capabilities, individually or jointly, as appropriate, and they shall endeavour to harmonize their policies in this connexion.

"2. States shall fulfil these obligations in accordance with their national environmental policies and their duty to protect and preserve the marine environment."¹⁰

"3. Alternative I

"States shall take all necessary measures to ensure that activities under their jurisdiction or control do not cause damage¹¹ to areas beyond their national jurisdiction including damage¹¹ to other States and their environment by pollution of the marine environment.

" Alternative II

"States shall adopt all necessary measures requiring that activities under their jurisdiction or control are so conducted that such activities do not cause damage¹¹ to areas beyond their national jurisdiction including damage¹¹ to other States and their environment by pollution of the marine environment.

" Alternative III

"In particular, States shall take all necessary measures to ensure that marine pollution¹² arising from activities under their jurisdiction or control does not spread outside their jurisdiction.

"4. The measures taken pursuant to these articles shall deal with all sources whatsoever of pollution of the marine environment. These measures shall include, *inter alia*:

"(a) those designed to minimize to the fullest possible extent^{13,14} the release of toxic and harmful¹⁵ substances, especially those which are persistent:

"(i) From land-based sources;

"(ii) From or through the atmosphere;

"(iii) By dumping;

"(b) those designed to minimize to the fullest possible extent^{13,14} pollution from vessels,¹⁶ in particular for preventing accidents and dealing with emergencies, ensuring the

¹⁰It was decided to record this text here for future study. Some delegations opposed this article.

¹¹In the view of some delegations the word "damage" as used in these formulations includes "hazard".

¹²Some delegations were of the view that a definition of marine pollution was necessary and suggested the following definition:

"Pollution of the marine environment means: the introduction by man, directly or indirectly, of substances or energy into the marine environment (including estuaries) resulting in such deleterious effects as harm to living resources, hazards to human health, hindrance to marine activities including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities."

¹³It was suggested that the words "to the fullest possible extent" be deleted.

¹⁴It was suggested that the words "to the fullest possible extent" be removed from subparagraphs (a), (b), (c) and (d) and inserted as appropriate in the introduction of paragraph 4.

¹⁵The view was expressed that the words "toxic and harmful" be replaced by the words "harmful or noxious".

¹⁶Some delegations considered that the words "arising from their operations" should follow the word "vessels".

⁷The words in parentheses are to be reconsidered in the light of the suggestions recorded in document CRP/MP/2, when the other articles dealing with item 12 have been completed.

⁸Some delegations thought it necessary to include a provision reserving the rights of States to exploit their own resources pursuant to their environment policies. Some delegations opposed the inclusion of this article in this Convention.

⁹Paragraph 3 of this article as it appears in document A/9021 and Corr.1 and 3, vol. I, p. 88, was deferred for later consideration in connexion with the item on standards, jurisdiction and enforcement. The view was expressed that such a paragraph should be included in this article.

safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation¹⁷ and manning of vessels;

“(c) those designed to minimize to the fullest possible extent^{13,14} pollution from installations and devices used in the exploration or exploitation of the natural resources of the sea-bed and subsoil, in particular for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices;

“(d) those designed to minimize to the fullest possible extent^{13,14} pollution from all other installations and devices operating in the marine environment, in particular for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices.

“5. In taking measures to prevent pollution of the marine environment States shall have due regard to the legitimate uses of the marine environment, which are not incompatible with the provisions of this Convention¹⁸ and shall refrain from unjustifiable interference with such uses.”

IV. *Draft article concerning the obligation not to transfer pollution from one area to another* (see A/9021 and Corr.1 and 3, vol. I, p. 88, WG.2/Paper No. 9; and CRP/MP/4)

“In taking measures to prevent or control marine pollution States shall guard against the effect of merely transferring, directly or indirectly, damage or hazard from one area to another or from one type of pollution to another.”

V. *Draft article on global and regional co-operation* (see A/9021 and Corr.1 and 3, vol. I, p. 91, WG.2/Papers Nos. 10 and Add.I; and CRP/MP/5)

“(a)¹⁹;

“(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 it deems likely to be affected by such damage, as well as the competent international organizations;

“(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 the damage. Towards that end, States shall jointly promote and develop contingency plans for responding to pollution incidents in the marine environment;

“(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 endeavour to participate actively in regional and international programmes to acquire knowledge for the as-

essment of the nature and extent of pollution and the pathways and risks of, exposures to and the remedies for pollution;

“(e) In the light of the information and data acquired pursuant to paragraph (d) above, States shall co-operate directly or through competent international organizations in working out appropriate scientific criteria for the formulation and elaboration of rules, standards and recommended practices and procedures for the prevention of marine pollution;

“(f)¹⁹.”

VI. *Draft article on technical assistance* (see A/9021 and Corr.1 and 3, vol. I, p. 92, WG.2/Paper No. 12; and CRP/MP/6)

“1. States shall, directly or through competent international or regional 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*:

“(i) Training of scientific and technical personnel;

“(ii) Facilitation of their participation in relevant international programmes;

“(iii) Supply of necessary equipment and facilities;

“(iv) Enhancing the capacity of developing countries to manufacture such equipment;

“(v) Development of facilities for and advice on research, monitoring, educational and other programmes;

“(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.

“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;

“(b) The utilization of their specialized services.”

VII. *Alternative A*

Draft article on the relevance of economic factors in considering whether States have discharged their obligations (see A/9021 and Corr.1 and 3, vol. I, pp. 92 and 93, WG.2/Paper No. 11)

“In considering whether a State has discharged its obligations under this Convention in respect of preventing, reducing and controlling 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.”

Alternative B

Draft article concerning economic factors in respect of land-based sources of marine pollution (see A/9021 and Corr.1 and 3, vol. I, pp. 92 and 93, WG.2/Paper No. 11)

“In considering 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.”

Alternative C

Delete this draft article.

¹⁷A view was expressed that the inclusion of the word “operation” was inappropriate in this subparagraph.

¹⁸Some delegations considered that the words “which are not incompatible with the provisions of this Convention” were not necessary. The delegation supporting the inclusion of these words expressed the view that this question could be reconsidered in the Drafting Committee in the light of other provisions of this Convention as a whole.

¹⁹Paragraphs (a) and (f) of this draft article were deferred for later consideration in connexion with the item on standards, jurisdiction and enforcement. For the text of paragraph (a), see A/9021 and Corr.1 and 3, vol. I, p.91; for the text of paragraph (f), see CRP/MP/5.