

Third United Nations Conference on the Law of the Sea

1973-1982

Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-

A/CONF.62/C.3/L.24

Belgium, Bulgaria, Denmark, German Democratic Republic, Germany, Federal Republic of, Greece, Netherlands, Poland and United Kingdom of Great Britain and Northern Ireland: draft articles on the prevention, reduction and control of marine pollution

Extract from the Official Records of the Third United Nations Conference on the Law of the Sea, Volume IV (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Third Session)

DOCUMENT A/CONF.62/C.3/L.24

Belgium, Bulgaria, Denmark, German Democratic Republic, Germany, Federal Republic of, Greece, Netherlands, Poland and United Kingdom of Great Britain and Northern Ireland: draft articles on the prevention, reduction and control of marine pollution

[Original: English]
[21 March 1975]

Note. These draft articles do not necessarily represent the full or final position of any of the sponsors and are without prejudice to declared national positions. In addition, the sponsors maintain their formal and informal proposals already submitted to the Third Committee.

Article 1

Land-based sources

1. States, acting in particular through the appropriate international organizations, shall establish international regulations to prevent, reduce and control pollution of the marine environment from land-based sources.

2. States shall establish national regulations to prevent, reduce and control such pollution.

3. Measures taken pursuant to this article shall take into account available scientific evidence, other relevant factors and the work of competent international bodies.

4. States shall ensure compliance with the regulations established pursuant to this article.

Article 2

Sea-bed exploration and exploitation

With respect to marine pollution arising in connexion with sea-bed activities and installations under the jurisdiction of the coastal State pursuant to chapter . . . of this Convention:

1. States, acting in particular through the competent international organizations, shall establish as soon as possible, international regulations designed to prevent, reduce and control pollution.

2. Coastal States may also establish additional or more stringent regulations for this purpose and shall endeavour to co-operate through regional arrangements in that regard.

3. Coastal States shall ensure compliance with the regulations established pursuant to this article.

Article 3

Ships

Regulations

1. States, acting through the competent international organization, shall establish as soon as possible, and to the extent that they are not already in existence, international regulations to prevent, reduce and control pollution from ships.

2. States which have reasonable grounds for believing that a particular area of the sea is an area where, for recognized technical reasons in relation to its ocean-

graphical and ecological conditions, its utilization, and the particular character of its traffic, the adoption of special mandatory methods for the prevention of pollution from ships is required, may apply to the competent international organization for the area to be recognized as a special area. Any such application shall be supported by scientific and technical evidence and shall, where appropriate, include plans for establishing sufficient and suitable land-based reception facilities.

3. States, acting through the competent international organization, shall establish as soon as possible and to the extent that they are not already in existence, international regulations to prevent, reduce and control pollution from ships in any special area recognized as such under paragraph 2 above. Such regulations shall be consistent with any international regulations referred to in paragraph 1 above.

4. States shall enact national regulators to give effect to the international regulations referred to in paragraphs 1 and 3 above.

5. Flag States may enact national regulations additional to or more stringent than the said international regulations for ships registered in their territory or flying their flag.

Flag state enforcement

6. Flag States shall provide for the effective enforcement of the regulations referred to in paragraphs 4 and 5 above, irrespective of where any violation may have occurred.

7. A flag State shall, at the documented request of any State, investigate any violation alleged to have been committed by its ships. If satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, the flag State shall cause such proceedings to be taken as soon as possible, in accordance with its law. The flag State shall promptly inform the requesting State of the action taken and of its outcome.

8. The penalties specified under the flag State legislation for its own ships shall be adequate in severity to discourage violations, and shall be equally severe irrespective of where the violations occurred.

Port State inspection

9. A State (hereafter referred to as a "port State") which is a party to the Convention or other instrument containing the international regulations referred to in paragraph 1 or 3 above, where it has reasonable grounds for believing that a ship which is for the time being voluntarily in one of its ports or at one of its offshore terminals has, within the preceding six months, discharged in violation of any of the regulations referred to in paragraph 4 above, may undertake an immediate and thorough investigation of the violation. Where the port State receives information from another State which is a party to the Convention or other instrument containing the said international regulations or from the competent international organization that there are such reasonable grounds as respects such a ship, the port State shall undertake such an investigation.

10. Where a port State has received information of the alleged violation from another State as mentioned in paragraph 9 above or from the competent international organization, it shall promptly notify that State or the organization, as the case may be, and in any case the flag State of the ship concerned, of the results of the investigation.

Port State enforcement

11. A port State which is a party to the Convention or other instrument containing the international regulations referred to in paragraph 1 or 3 above, where it has reasonable grounds for believing that a ship which is for the time being voluntarily in one of its ports or at one of its offshore terminals, has discharged in violation of any of the regulations referred to in paragraph 4 above and that as a result of the violation, damage has been, or is likely to be, caused to the coastline or related interests of that State, may, subject to the following provisions of this article, take proceedings in respect of the violation and, if necessary, arrest the ship concerned to carry out such proceedings.

12. The powers of a port State under paragraph 11 above may also be exercised by that State in a case where a ship has discharged in violation of the said regulations where:

(a) the port State is requested to exercise the said powers by another State which is a party to the Convention or other instrument containing the international regulations referred to in paragraph 1 or 3 above, and

(b) that other State has notified the port State that there are reasonable grounds for believing that, as a result of the violation, damage has been or is likely to be caused to the coastline or related interests of that other State.

13. Where a port State

(a) receives a request under paragraph 12 above; or

(b) takes any proceedings, including the arrest of a ship, in pursuance of paragraph 11 or 12 above,

it shall promptly notify the flag State of that fact furnishing all relevant information with respect to the matter.

14. A port State shall not, in pursuance of this article, take proceedings in respect of any violation other than arresting a ship:

(a) until the expiry of a period of 6 months running from the date on which it gives notice to the flag State in accordance with paragraph 10 or 13 above, whichever is the earlier;

(b) at any time after the expiry of that period if the flag State has previously commenced proceedings in respect of the violation and has not discontinued those proceedings.

Where the flag State decides to take such proceedings within the said period, or decides to discontinue any such proceedings, it shall promptly notify the port State accordingly.

15. Proceedings in respect of any such violation shall not be taken by a port State at any time after the expiry of a period of 3 years from the date on which the violation was committed.

16. Proceedings in respect of the violation shall not be taken by any State, other than the flag State, if proceedings in respect of the same incident have already been taken in pursuance of this article by a port State.

17. The only penalties which may be imposed by a port State in respect of any such violation shall be monetary.

18. Where a port State arrests a ship in pursuance of this article it shall promptly release the ship on a bond or other reasonable security, in an amount not exceeding the maximum penalty for the violation, being given by or on behalf of its owner, but such release shall be refused if the ship cannot proceed to sea without presenting an unreasonable threat of harm to the marine environment. The port State may however grant the ship permission to leave the port or offshore terminal for the purpose of proceeding to the nearest appropriate repair yard available.

19. If, following the arrest of a ship at an offshore terminal, the port State decides that it is necessary to detain the ship, it shall be taken to a safe and suitable port or anchorage.

Coastal State right to require information

20. A State (hereafter referred to as a "coastal State") which is a party to the Convention or other instrument containing the international regulations referred to in paragraph 1 or 3 above, where it has reasonable grounds for believing that a ship has discharged in violation of the regulations referred to in paragraph 4 above and that as a result of the violation damage has been, or is likely to be caused to the coastline or related interests of that State, may require the ship to give information by radio or other signalling methods regarding:

- (i) its name and port of registry,
- (ii) its last and next ports of call, and
- (iii) any other information required to be given by the relevant international regulations, being information relevant to establishing whether the suspected violation has been committed.

21. A flag State shall ensure compliance by its ships with any requirements made by a coastal State under paragraph 20 above.

22. Where a coastal State exercises its powers under paragraph 20 above it shall promptly notify the flag State of the alleged violation and of the information which it has obtained, and may give that information to the next port of call, or one of the next ports of call, of the ship concerned.

Article 4

Dumping

1. States, acting through the competent international organization or by general diplomatic conference, shall establish, as soon as possible and to the extent that they are not already in existence, international regulations to prevent, reduce and control pollution of the marine environment by dumping.

2. States shall make provision for ensuring that dumping is not carried out without authorization in accordance with the regulations referred to in paragraph 1 above. States shall not provide for the authorization of dumping on conditions less stringent than those established under the international regulations referred to in paragraph 1 above.

3. Coastal States have, within an area of . . . nautical miles beyond the base line from which the territorial sea is measured, the exclusive right to authorize the dumping of wastes and other matter. For this purpose, coastal States

may establish and enforce laws and regulations in respect of dumping, with due regard to the need to avoid unjustified interference with legitimate uses of the marine environment, including navigation.

Article 5

Responsibility and liability

1. Every State shall take the necessary legislative measures to provide that if persons subject to its jurisdiction, through pollution of the marine environment, cause damage to persons or property there shall be recourse in its courts in accordance with its legal system against such persons for compensation or other relief in respect of such damage.

2. States undertake to develop international law on liability and compensation for damage caused by marine pollution.

Article 6

General provisions

1. The powers of a State under this chapter may only be exercised in respect of a foreign ship or aircraft by officials or by warships or military aircraft, or other ships or aircraft on government service, authorized to that effect.

2. Where measures are taken by a State pursuant to this chapter in respect of a foreign ship, that State shall

immediately inform the consul or diplomatic representative of the flag State or State of registry of the measures taken.

3. A State shall be required to pay compensation for damage or loss resulting from inspection or enforcement measures taken under this chapter exceeding those reasonably necessary in the light of available information and shall provide for recourse in its courts for actions in respect of such damage or loss.

4. In the exercise of its rights and duties under this chapter, a State shall not discriminate in form or in fact against foreign ships or aircraft.

5. The provisions of this chapter shall not apply to any warship, naval auxiliary or other ship or aircraft owned or operated by any State and used, for the time being, only on government non-commercial service. However, each State shall ensure by the adoption of appropriate measures not impairing the operations or operational capabilities of such ships or aircraft owned or operated by it, that such ships or aircraft act in a manner consistent, so far as is reasonable and practicable, with the said provisions.

Article 7

Settlement of disputes

Any dispute concerning the interpretation or application of this chapter shall be settled in accordance with the provisions of chapter . . . of this Convention.

DOCUMENT A/CONF.62/C.3/L.25*

Union of Soviet Socialist Republics: additional draft articles on prevention of pollution of the marine environment

*[Original: Russian/
[25 March 1975]*

Note. The present draft articles do not deal with the points agreed upon during informal meetings of the Third Committee or those set out in document A/CONF.62/C.3/L.24.

Article 1

Obligation to prevent the spread of pollution outside the territorial sea

States shall take all necessary measures to ensure that pollution of the marine environment arising from activities under their jurisdiction or control does not spread to the marine environment outside their territorial sea and does not cause damage to other States and their environment.

Article 2

Prevention of pollution of the marine environment from ships within the territorial sea

1. Coastal States may, within the limits of their territorial sea, establish regulations on prevention of pollution

of the marine environment from ships, in addition to the international regulations. Such regulations shall be established taking into account the international regulations and may not deal with the design, construction, equipment, operation or manning of a foreign ship nor with the transit of foreign ships through straits referred to in articles . . . of this Convention.

2. Without prejudice to the provisions of article 3, the coastal State shall, within the limits of its territorial sea, ensure compliance by all ships with regulations for the prevention of pollution of the marine environment, applicable in accordance with this Convention, and in particular with regulations provided for in paragraph 1 of this article.

Article 3

Prohibition to discharge harmful substances from ships in straits

The flag State shall ensure that no ship registered in its territory or flying its flag discharges in straits referred to in articles . . . of this Convention, any harmful or toxic substances or mixtures containing such substances which such a ship has on board or is transporting, save when it is necessary to do so for the purpose of saving human life at sea.

* Incorporating document A/CONF.62/C.3/L.25/Corr.1 of 4 April 1975.