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INTERNATIONAL CONFERENCE ON
MARINE POLLUTION, 1973
Agenda item 7

CONSIDERATION OF A DRAFT INTERNATIONAL CONVENTION
FOR PREVENTION OF POLLUTION FROM SHIPS, 1973

Comments and proposals on a draft text
of the Convention

Submitted by the Government of Spain

Attached hereto are the comments of the Government of Spain on the draft text of the International Convention for the Prevention of Pollution from Ships, 1973.

* The original text of comments has been submitted in Spanish and translated into English by the Secretariat.

COMMENTS BY THE SPANISH GOVERNMENT ON THE DRAFT OF THE
INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION
FROM SHIPS, 1973 (Draft ref. PCMP/8/3, 7 March 1973)

I - PREAMBLE - The Spanish Government favours footnote no. 3.

II - ARTICLE 2 - DEFINITIONS

It would seem logical to include with the definitions in this article those of several terms defined throughout the Convention or its Annexes, which at present seem to be out of place, and also that of some term of doubtful meaning - at least as far as the Spanish Government is concerned - which so far does not appear to be defined at all. Consequently the words which should also be defined in article 2 are:

- "noxious substances" - currently in Annex II Regulation 1.5.
- "incident" - currently in Article 7.1 of the Draft Convention.
- "stationary ship" - thus far not defined at all.

The Spanish Government also considers that the words "and processing" in sub-paragraph b) ii) should be deleted.

III - ARTICLE 3 - APPLICATION

1. a) The phrase in square brackets "including the territories to which reference is made in Article 19 (2)" could be deleted.

2. The following re-wording is suggested:

"The present Convention shall not apply to ships entitled to exemption in accordance with International Law. However each Contracting State shall ensure by the adoption of appropriate measures that such ships flying their flag and operating under their authority, act in a manner consistent with the object and purpose of the present Convention, and shall inform the Organisation accordingly."

IV - ARTICLE 4 - PENALTIES

The following re-wording is proposed:

"Prohibitions, jurisdiction and penalties

1. Contracting States shall prohibit the discharge in the marine environment of any harmful substances or effluent containing these substances in contravention of the provisions of the present Convention and shall penalise any acts which violate these requirements. The penalties shall be adequate in severity to discourage any such unlawful discharge.
2. In addition to the jurisdiction of the flag State, a riparian Contracting State shall have the jurisdiction to penalise any acts which violate the requirements of the present Convention, committed in areas adjacent to their banks, within the scope of the Convention."

V - ARTICLE 5 - CERTIFICATES AND SPECIAL RULES ON INSPECTION
OF SHIPS

The following re-wording is proposed:

1. No change.
2. A ship required to hold a certificate in accordance with the provisions of the Regulations is subject while in the territorial sea, ports and off-shore terminals under the jurisdiction of another Contracting State to inspection by officers duly authorized by that State. Any inspection concerning the implementation of the provisions covered by the certificate and carried out by a Contracting State within its territorial sea, ports or off-shore terminals under its jurisdiction, shall be limited to verifying that there is on board a valid

certificate, unless there are clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of that certificate. In that case, or if the ship does not carry a valid certificate, the State carrying out the inspection shall take such steps as will ensure that the ship shall not sail until it can do so without presenting an unreasonable threat of harm to the marine environment. That State may, however, grant such a ship permission to leave its territorial sea, ports or off-shore terminals, for the purpose of proceeding to the nearest repair yard available.

3. Delete.

4. Delete.

VI - ARTICLE 6 - DETECTION OF OFFENCES AGAINST AND ENFORCE -
MENT OF THE CONVENTION

2. The wording given in note 22 is preferred.
5. Of the words between square brackets, retain "shall."
6. Should be divided into two articles, 6 and 6 bis.

VII - NEW ARTICLE 6 bis

1. Paragraph 6 of the present Article 6.
2. When a ship is unjustifiably detained, that ship shall be entitled to indemnification for any loss or damages suffered.

VIII - ARTICLE 7 - REPORTS ON INCIDENTS INVOLVING HARMFUL
SUBSTANCES

1. Move to Article 2 and replace here by Article 12 (Casualties to Ships) which does not seem to be in the right place at present. A paragraph should be included similar to Article 15.2 of the 1972

Oslo Convention for the Prevention of Pollution at Sea by Dumping
from Ships and Aircraft.

IX - ARTICLE 8 - POWERS OF CONTRACTING STATES

1. Substitute for the alternative wording in footnote 37, deleting the word "national."
2. Delete the phrases between square brackets.

X - SUSPENSION IN CASE OF WAR

This should be deleted.

XI - ARTICLE 10 - SETTLEMENT OF DISPUTES

The following clause is proposed:

"Any dispute arising between two or more Contracting States concerning the interpretation or application of the present Convention, which cannot be settled by negotiation, shall be submitted to conciliation and, failing that, to arbitration in accordance with the provisions of the Annex to the present Convention."

XII - ARTICLE 11 - COMMUNICATION OF INFORMATION

Sub-paragraph 1 a) should be simplified and c) deleted.

XIII - ARTICLE 12 - CASUALTIES TO SHIPS

As already stated, this should constitute Article 7.1.

XIV - ARTICLE 13 - SIGNATURE, RATIFICATION, ACCEPTANCE,

APPROVAL AND ACCESSION

1. It must be made clear where the Convention will remain open for signature, and the period for signature should be increased to 12 months. It should therefore read as follows: "The present Convention shall remain open for signature in London from..... to and shall

thereafter remain open for accession."

2. It should read: "... with the Secretary General of the Organization
This same comment applies to Articles 15.2, 17.2, 18.2 and 3 and 19.1

3. Should be deleted and its contents included in Article 20 dealing
with the duties of the depositary. This comment also applies to Articles
15.4, 16.3, 17.5, 18.2 and 19.4.

XV - ARTICLE 14 - RESERVATIONS

It would be preferable to delete this article and apply the general rules on
reservations in International Law compiled in the 1969 Vienna Convention
on the Law of Treaties.

XVI - ARTICLE 16 - ENTRY INTO FORCE

A new paragraph should be added after 4 establishing entry into force of the
Convention for those which become Parties after its entry into force. The
period should be three months.

XVII - ARTICLE 17 - AMENDMENTS

The Spanish Government shares the opinion expressed in note 55 and
consequently considers that paragraph 3 should be deleted. At most the
proposed procedure only to amend Appendices to Annexes could be retained,
but restricting participation in the drafting and acceptance of such amend-
ments to Contracting States.

Only sub-paragraphs a) and b) of paragraph 4 should be retained, as the
Conference which decides on amendments is sovereign and will decide on
its procedure as it considers fit.

Paragraphs 5 and 6 should also be deleted.

XVIII - ARTICLE 18

1. It would appear from the present wording that the optional Annexes do not form an integral part of the Convention. The following wording is therefore suggested: "The present Convention or its Annexes may be denounced by any Contracting State at any time after the expiry of (five) years from the date on which the Convention or Annex enters into force for that State. Denunciation of Annexes I or II shall imply denunciation of the Convention.
2. This paragraph should be re-worded as follows: "Denunciation shall be effected by notification in writing to the Secretary General of the Organization."
3. According to the wording of the preceding paragraph, this should read: ". . . . after receipt of the notification of denunciation by the Secretary General of the Organization, after the expiry of any other longer period which may be indicated in the notification."

XIX - ARTICLE 19 - Could be deleted.

XX - ARTICLE 20

It would be better to re-draft this Article to include all the duties of the depositary. The following text is proposed:

- "1. The present Convention shall be deposited with the Secretary General of the Organization.
2. The Secretary General of the Organization:
 - A) shall inform all signatory States and all States which accede to the present Convention of:
 - a) any new signature or deposit of an instrument of ratification, approval, acceptance or accession, in accordance with articles 13.1 and 15.2;

- b) the receipt of any declaration of non-acceptance of the optional Annexes, in accordance with Article 15.1;
 - c) the date on which the present Convention or its optional Annexes enter into force, in accordance with Article 16;
 - d) any amendment to the present Convention proposed by Contracting States, any objection to such amendment and the date on which it enters into force, in accordance with Article 17.2;
 - e) any notification of denunciation of the present Convention or its Annexes and the date on which such denunciation takes effect, in accordance with Article 18;
 - f) any notification of extension to a territory of the application of the present Convention or any notification of withdrawal of such extension, in accordance with Article 19;
 - g) any reservation made to the present Convention and any objection to such reservation;
- B) shall transmit certified true copies of the present Convention and its Annexes to all Signatory States and to all States which accede to the present Convention;
- C) shall transmit to the Secretariat of the United Nations, after the Convention or its Annexes enter into force, a certified true copy thereof for registration and publication, in accordance with article 102 of the Charter of the United Nations.

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ANNEX I

Regulation 1 - Paragraph 9 - Delete words in square brackets.

Paragraph 10 - The special areas should be listed here.

Regulation 2 - Paragraph 1 - The term "stationary ships" is not very precise and either another more exact term should be found or else it should be included with the definitions in Regulation 1 or in the Convention itself.

Regulation 9 - Paragraph 1 - sub-paragraph a) ii) reads: "... (50) nautical miles from the nearest land." ... 100 miles ... is suggested.

Paragraph 1 - sub-paragraph b) iv) substitute 12' for (10) for ships of over 400 tons gross tonnage and 6' for smaller ones.

Paragraph 2 - It says here: "... ships while operating ..." and Regulation 12 sub-paragraph 2) a) only establishes regulations for oil tankers. There should be some consistency.

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ANNEX II

Regulation 1 - Paragraph 1, Line 3, line 4. Delete the word "noxious".

Regulation 2 - The provisions of this Annex apply to all ships carrying or containing liquid substances in bulk.

Regulation 3 - 3. Delete square brackets line 7.

Regulation 5 - sub-paragraph 2 c) The maximum quantity of cargo discharged into the sea on each trip shall not exceed 1 cubic metre or (1/3000) of the cargo in cubic metres of the tanker, if the latter volume is the greater.

sub-paragraph 3 c) The maximum quantity of cargo discharged into the sea on each trip shall not exceed 3 cubic metres, or (1/1000) of the cargo in cubic metres of the tanker, if the latter volume is the greater.

Regulation 7 - 2. - Each Contracting State shall determine to which ports, terminals and ship repair ports paragraph 1) of this Regulation shall apply and shall notify the Organization accordingly.