



## IMCO

INTERNATIONAL CONFERENCE ON  
MARINE POLLUTION, 1973

Agenda item 7

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

#### Comments and proposals on a draft text of the Convention

#### Submitted by the Oil Companies International Marine Forum

ARTICLES 4, 5 and 6.

OCIMF believes that all acts contravening the Convention (and not merely unlawful discharges) should be subject to enforcement action. It therefore supports the concept of Alternate II of Article 4 of the Draft Convention. OCIMF, however, recognizing that it is in the best interests of all that the provisions of the Convention should be as widely enforceable as possible, believes it essential that the Convention should give a similar level of enforceable protection to all its contracting States. The requirements specified in paragraphs (1) and (2) of the draft Alternate II of Article 4, whilst in themselves essential, are not adequate in this respect for the following reasons:-

- (a) There are often substantial difficulties in the way of contracting Flag State's collection of evidence adequate to support proceedings in the case of a violation by a ship of its Flag trading in far-away waters. Such evidence is rarely complete without an inspection of

the ship and its documents and the taking of statements from appropriate members of the ship's complement. It is clearly a very much more meaningful collection of evidence if it can be carried out with only short delay after the commission of the alleged offence. The geographical inaccessibility of the ship from the Flag State and the limited availability of inspecting officers can seriously inhibit the bringing of successful proceedings by the Flag State.

- (b) Unlawful discharges in waters adjacent to a contracting State but outside its territorial waters by a ship not of its flag, may threaten that State's shores and be a subject of rightful concern to that State. The State, although perhaps in possession of prima facie evidence of a violation, has no right to inspect the ship and would need to rely upon the Flag State to acquire any necessary further evidence and to prosecute if and when that evidence was complete.
- (c) Even if an unlawful discharge should occur in a contracting State's territorial waters by a ship not of its flag, the State may not be able to inspect the ship to acquire evidence unless it happens to enter a port of the State or the State succeeds in apprehending the ship whilst still in its jurisdictional waters. Such apprehension or attempted apprehension is often fraught with danger and is an unnecessary action against a ship in innocent trade on a specific voyage.

These difficulties, OCIMF believes, should, and can, be overcome by the extension of certain powers of jurisdiction to contracting States whose ports are entered by ships suspected of violation (Port States). Footnote 9 to the Draft Articles envisages such a concept but in OCIMF's belief the proposals and reservations of Footnote 9 need further development if optimum and equitable levels of enforcement are to be achieved.

The following considerations appear to be relevant in the formulation of a prescription of such wider jurisdictional powers:

- (1) Port States, in being allocated rights, would also have to accept duties in acting, as they should be, on behalf of other States and the community. These duties should not be over onerous.
  - (2) The general jurisdictional priority of Flag States should continue to be recognized insofar as it is compatible with the new concept. Otherwise there could be a diminution in the responsibility and authority of Flag Administration which would be unfortunate in many respects in the proper control of international shipping.
  - (3) Safeguards are required against multiple prosecution or alternatively, multiple prosecution to be limited to Flag State and in one other State in defined limited circumstances. In which latter case due regard should be paid to any penalties already imposed for the same offence.
  - (4) Penalties imposed by a contracting State on a ship, not of its flag, for offences outside that State's territorial waters should be limited to financial ones.
  - (5) Ships should not be detained beyond that necessary for the acquisition of the required evidence and if a bond is required for the ship's release, the bond should not exceed the maximum fine applicable under the inspecting State's law for the offence alleged.
  - (6) In the case of detection of unlawful discharge by the ad hoc routine inspection in port of a tanker's retained residues and documentation but without the sighting or other evidence of the unlawful discharge, defences of a technical nature are often available to the ship. The enforcement proceedings therefore frequently would require technical expertise and the involvement of the tanker's management. It is for consideration whether it would be unduly onerous for inspecting Port States to undertake the duty of such enforcement and therefore whether all evidence of such suspected violation be remitted to the Flag State for action.
-