



IMCO

INTERNATIONAL CONFERENCE ON
MARINE POLLUTION, 1973
Committee I
Agenda item 3

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

Proposal on Article 7

Submitted by Canada

ARTICLE 7 - Reports on Incidents Involving Harmful Substances

An essential element for the draft Convention is a provision which elaborates a realistic and meaningful reporting system. The present draft Article 7 contains the basic principles that are requisite; however, certain changes, mainly of a drafting nature, need to be effected if such a system is to be achieved.

Presentation

The attached draft text considerably reduces the length of the Article and provides for a special mandatory Annex on Reporting. Obligations generally incumbent upon a State are to be properly found in the Article itself while those other obligations, of a more personal nature, incumbent upon individuals rather than States, have been placed in the Annex. Such an arrangement is in accord with treaty drafting practice.

Furthermore, specific reference to Annexes has been deleted without changing matters of substance. This has been done so as to improve the quality of drafting and to permit the Annex on Reporting to be independent in scope of any other Annex.

Prevailing Circumstances

So as to remove any possible ambiguity, and any interpretation which could make the provision over-stringent, and so as to clarify the text, there needs to be expressly provided a phrase that takes into account the fact that, under the prevailing circumstances it may not always be possible for a report to be made in accordance with the provisions of the Convention. Such an express provision would give effect to footnote 34.

Duty to Report

In the event that the desired information is unobtainable, for whatever reason, from ship source, then such information must originate from ashore. Clearly, there are persons other than on board ship who are knowledgeable about the nature of cargo carried. Sometimes such other person may be the owner, sometimes it may be the charterer, or the manager or operator of the ship. In any given case, the person best suited to report may be any one or more of such persons. So as to obviate any delays in the system and to permit the appropriate contingency personnel to get on with the remedial action, the general duty to report, in lieu of the master, should be placed upon all such persons bearing in mind that the duty can only be performed "insofar as possible".

Quantification

Any limitation that restricts reporting to those incidents involving only "significant spillages" or "x tons" can only derogate from the effectiveness of the system. To correctly assess the effect that a particular quantity of cargo has upon the marine environment requires a highly specialized scientific expertise which is not to be found in those persons on board ship upon whom is placed the duty to report. A small quantity of crude oil discharged near a recreational area, or in an area of high ecological sensitivity, or a small

quantity of some harmful chemical, may be quite significant whereas the same quantities of the same substances discharged elsewhere may be quite insignificant. The effects of such a discharge depends upon such factors as wind, tide, current, temperature, presence of ice and so on.

So as to prevent the reporting system from breaking down into a meaningless provision, except perhaps in the case where such massive quantities are spilled that it becomes obvious even to a layman that the spillage is significant, it is necessary for the reporting system to encompass all spillages, leaving the assessment of the degree of seriousness to be determined by the appropriate personnel ashore. This way will assist contingency operations and prevent unnecessary pollution damage, it will assist the research of marine scientists and will further assist in the detection of offences.

Deliberate and Unlawful Discharges

Any provision on reporting that fails to take account of deliberate discharges of harmful substances into the sea, when such discharges offend against the convention, gives tacit acceptance of an already bad situation. The unlawful discharge could be made by a person other than the one who has a duty to report, and that such a circumstance should be permitted to extinguish the duty to report is to condone complicity in the unlawful act and has no legal foundation.

Other Reporting Systems

The reporting of incidents involving pollution falls outside the scope of Chapter V of the SOLAS Convention. If such an incident also involves safety hazards, and this will be up to those on board the ship to determine, then the SOLAS reporting system automatically becomes applicable.

For pollution incidents that do not involve safety hazards there needs to be a separate but parallel reporting system which is clearly understood by those who have to use it, as distinct from other reporting systems used for other matters.

Attached to this paper is a draft text which preserves the essential qualities of Article 7 of the draft Convention but which also incorporates all the foregoing principles. The Government of Canada is pleased to submit to the Conference this Note and its attachment for consideration and in the hope that it will form the basis for useful discussion on the subject of reporting.

Article 7

Reports on Incidents Involving Harmful Substances

- (1) For the purposes of the present Article an "incident" means an event involving the actual or probable discharge into the sea of a harmful substance, or effluent containing a harmful substance.
- (2) A report of an incident shall be made without delay and insofar as possible in accordance with the provisions of Annex "IA".
- (3) Each Contracting State shall
 - (a) make all arrangements necessary for an appropriate officer or agency to receive and process all reports on incidents; and
 - (b) advise the Organization with complete details of such arrangements for circulation to other Contracting States and Member States.
- (4) Whenever a Contracting State receives a report under the provisions of the present Article, that State shall relay the report without delay to
 - (a) the Administration of the ship involved; and
 - (b) any other State which may be affected.

Annex "IA"

Regulations Concerning Reports on
Incidents Involving Harmful Substances

Regulation 1

Duty to Report

- (1) The master of a ship involved in an incident, or other person having charge of the ship, shall report the particulars of such incident without delay and insofar as possible in accordance with the provisions of this Annex.
- (2) In the event of the ship referred to in paragraph (1) of this Regulation being abandoned, or in the event of a report from such ship being incomplete or unobtainable, the owner, charterer, manager or operator of the ship, or their agents shall, insofar as possible, assume the obligations placed upon the master under the provisions of this Annex.

Regulation 2

Method of Reporting

- (1) Each report shall be made by radio whenever possible, but in any case by the fastest channels available at the time the report is made.
- (2) Reports made by radio shall be by way of 'urgent' broadcast.
- (3) Reports made other than by radio shall be directed to the appropriate officer or agency specified in paragraph (4) of Article 7.

Regulation 3

When to Make Reports

The report shall be made whenever an incident involves:

- (a) a discharge permitted under the present convention by virtue of the fact that
 - (i) it is for the purpose of securing the safety of the ship or saving life at sea, or
 - (ii) it results from damage to the ship or its equipment, or

- (iii) it is for the purpose of combatting a specific pollution incident; or
- (b) a discharge other than as permitted under the present convention; or
- (c) a discharge into the sea of any package, cargo container or portable tank containing harmful substances or the contents thereof.

Regulation 4

Contents of Report

- (1) Each report shall contain, in general:
 - (a) the time and date of the occurrence of the incident;
 - (b) the position of the ship when the incident occurred;
 - (c) the wind and sea conditions prevailing at the time of the incident; and
 - (d) details respecting the state of the ship.
- (2) Each report shall contain, in particular:
 - (a) a clear indication or description of the harmful substances carried on board the ship including the correct technical names (not trade names) of such substances;
 - (b) a statement or estimate of the quantities and concentrations of harmful substances
 - (i) discharged or likely to be discharged into the sea, and
 - (ii) carried on board the ship; and where relevant
 - (c) a description of the packaging and identifying marks; and if possible
 - (d) the name of the consignor, consignee or manufacturer.
- (3) Each report shall clearly indicate whether the harmful substance discharged, or likely to be discharged is oil, a noxious liquid substance, a noxious solid substance or a noxious gaseous substance and whether such substance was or is carried in bulk or contained in packaged form, cargo containers, or in portable tanks.

(4) Each report shall contain any other information which may be deemed relevant and requested by a recipient of the report or which the person sending the report deems appropriate.

Regulation 5

Supplementary Report

Any person who is obliged under the provisions of this Annex to send a report shall when possible

- (a) supplement the initial report, as necessary, to communicate information concerning further developments; and
 - (b) comply as fully as possible with requests from affected States for additional information concerning the incident.
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