



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

Summary of proposed amendments to Article 4

Prepared by the Secretariat

1. Complete new texts of Article 4

Canada - proposal contained in MP/CONF/8 and MP/CONF/8/Corr.1 is reproduced at Annex I

Sub-amendments:

Mexico: Insert an additional sub-paragraph after the third sub-paragraph to read:

"Proceedings taken by a Contracting State on the basis of paragraph (3) of this Article shall be suspended if the Administration of the ship causes proceedings to be taken."

Netherlands

Proposal contained in MP/CONF/8/6 is reproduced at Annex II

Japan

Proposal contained in MP/CONF/8/17 is reproduced at Annex III

2. Proposed amendments to Alternative IUSSR

Paragraph 1(a). The word "and" to be retained and the word "or" to be deleted.

3. Proposed amendments to Alternative II:Spain

- (a) Insert a new paragraph at the beginning of the Article as follows:
"Contracting States shall prohibit the discharge to the marine environment of harmful substances in contravention of the present Convention."
- (b) Amend lines 1 and 2 of paragraph (1) to read:
"Any violation of the provisions of the present Convention shall be punishable under the law of the Administration of the Ship concerned wherever.....".
- (c) Amend lines 1 and 2 of paragraph (2) to read:
"Any violation of the provisions of the present Convention within the respective limits specified in the Annexes thereto shall be punishable under the.....".
- (d) Delete the last sentence of paragraph (4).

France

In paragraph (1) of Alternative II delete "cause such proceedings to be taken as soon as possible." in the last line and substitute "refer the matter to its own legal authorities for proceedings purposes".

Mexico and other countries

In line 2 of paragraph (2) replace the words "within the territorial seas" by "within the jurisdiction" (MP/CONF/C.1/WP.14).

Sub-amendmentsUnited Kingdom

In line 2 of MP/CONF/C.1/WP.14 after "jurisdiction of a Contracting State" insert "in accordance with international law".

Norway

Amend last line of paragraph (1) to read:

"... violation, it shall submit the matter to its competent authorities for the purpose of prosecution. These authorities shall take their decision in the same manner as in the case of any ordinary offence under the law of the State".

Greece

Divide paragraph (2) into two parts so that it is clear that control of matters of ship's design and manning should be exercised only by the Administration.

ANNEX I

Proposed by Canada
(MP/CONF/8)

Article 4Violations

- (1) Any violation of the requirements of this Convention by a ship, its owner or master, or by any person on board, shall be prohibited under the law of the Administration of that ship irrespective of where such violation may occur. If the Administration is informed of such a violation and is satisfied that sufficient evidence is available in accordance with its own law to enable proceedings to be brought against the ship, its owner or master, or other person on board in respect of the alleged violation, it shall cause such proceedings to be taken as soon as possible. The Administration shall promptly inform the Organization and the State which reported the violation to it of any action taken in response to the report.
- (2) Any violation of the requirements of this Convention by a ship, its owner or master, or by any person on board, shall be prohibited under the law of a contracting State when such violation occurs within the waters under the jurisdiction of that State. Whenever such a violation occurs, that State shall either;
 - (A) Cause proceedings to be taken against that ship, its owner or master, or other person on board in respect of such violation; or
 - (B) Furnish to the Administration of the ship such evidence as may be in its possession that the ship, its owner or master, or other person on board, has committed such a violation.
- (3) Subject to paragraph 4 of this Article, any contracting State may cause proceedings to be taken against any ship not entitled to fly its flag, its owner or master, or other person on board, in respect of any violation of the requirements of this Convention by such ship, owner, master or person wherever the violation occurred, when the ship is found within its ports or off-shore terminals. Such proceedings must be commenced no later than three years after the date on which the violation occurred.

Proceedings shall not be taken by a contracting State under the provisions of paragraph 3 of this Article in respect of a violation of the requirements of this Convention which occur within the waters under the jurisdiction of another State unless expressly requested by that other State.

Whenever one contracting State has commenced proceedings in respect of a violation of the requirements of this Convention, no other proceedings in respect of the same violation may be commenced by any other contracting State except in the case of the Administration of the ship. A contracting State other than the Administration of the ship which causes such proceedings to be taken shall promptly inform the Organization and the Administration of the Ship.

The penalties specified under the law of a contracting State pursuant to this Article shall be adequate in severity to discourage violations and the penalty specified under the law of that State in respect of any one particular violation shall remain the same irrespective of where such violation may occur.

ANNEX II

Proposed by Netherlands
(MP/CONF/8/6)

Article 4

- (1) Violation of any of the requirements of the present Convention shall be prohibited under the law of the Administration of the ship concerned, wherever the violation occurs.
- (2) Discharge of harmful substances or effluent containing these substances in contravention of the provisions of the Regulations shall, moreover, be prohibited under the law of any other Contracting State, wherever the violation occurs, subject to the provisions of Article 4 bis.
- (3) The penalties provided for under the law of a Contracting State in respect of any violation of the requirements of the present Convention shall be adequate in severity to discourage such violation. The penalties provided for in respect of violations outside the territorial sea of a Contracting State shall be no less severe than the penalties provided for in respect of the same infringement within its territorial sea.

Article 4 bis

- (1) A Contracting State may cause proceedings to be taken when a ship to which the present Convention applies enters its ports or off-shore terminals, in respect of an act prohibited under paragraph (2) of Article 4, committed by that ship, or its [owner or] master. A report of such proceedings shall be sent to the Administration of the ship.
- (2) For the purpose of the preceding paragraph the proceedings instituted by a Contracting State, not being the State of the Administration of the ship concerned,
 - (a) have to be commenced no later than [three] years after the act has been committed;
 - (b) shall not lead to the imposition of penalties other than fines, unless the Contracting State concerned and the State of the Administration agree otherwise.

- (3) Whenever one Contracting State has commenced proceedings, no other proceedings in respect of the same act may be instituted by any other Contracting State except for a Contracting State which has prosecutorial priority pursuant to paragraph (4) of this Article. In case a Contracting State having prosecutorial priority commences proceedings, the proceedings instituted by another Contracting State are suspended.
- (4) The prosecutorial priorities among the Contracting States are as follows:
 - (a) In case a Regulation requires for special precautions to be observed within a certain distance from the nearest land and the alleged violation of the requirement has been committed within the distance stipulated, the coastal State of such nearest land has prosecutorial priority over the Contracting States mentioned in the following sub-paragraphs.
 - (b) In case the alleged violation occurred within [100] nautical miles from the nearest land, the coastal State of such nearest land has prosecutorial priority over the Contracting States mentioned in the following sub-paragraphs.
 - (c) The State of the Administration of the ship concerned has prosecutorial priority over the Contracting States mentioned in the following sub-paragraphs.
 - (d) Any other Contracting State after consultation with the State of the Administration of the ship concerned.
- (5) A Contracting State which has commenced proceedings may transfer the prosecution to the Administration of the ship concerned. In that case the State of the Administration has, in relation to any other Contracting State, the same prosecutorial priority as the Contracting State from which it has taken over the prosecution.

ANNEX III

Proposed by Japan
(MP/CONF/8/17)

Article 4

Penalties

(1) Any discharge, wherever it occurs, by a ship of harmful substances or effluent containing these substances in contravention of the provisions of the Regulations:

- (a) shall be an offence punishable under the law of the Administration of that ship; and
- (b) may be an offence punishable under the law of any other Contracting State.

(2) The penalties provided under the law of a Contracting State in respect of the unlawful discharge of harmful substances or effluent containing these substances shall be adequate in severity to discourage any such unlawful discharge. The penalties provided for in respect of unlawful discharge outside the territorial seas of a Contracting State shall be no less severe than the penalties provided for under its law in respect of the same infringement within its territorial seas.

(3) Whenever a Contracting State has commenced proceedings in accordance with this Article, no other proceedings in respect of the same alleged contravention may be commenced by any other Contracting State except for the Administration of the ship and any State within whose territorial seas the contravention occurred. However, the penalty which was imposed by one Contracting State shall be taken into account by the Contracting State within whose territorial seas the contravention occurred, when it takes proceedings in respect of the same contravention.
