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IMCO

INTERNATIONAL CONFERENCE ON MARINE POLLUTION, 1973

SUMMARY RECORD OF THE SEVENTH PLENARY MEETING

held at Church House, Westminster, London, S.W.1,
on Monday, 29 October 1973 at 10.10 a.m.

President: Mr. S. BHAVE (India)
Secretary-General: Mr. Colin GOAD (Secretary-General of IMCO)
Executive Secretary: Mr. A. SAVELIEV (IMCO Secretariat)

A list of participants is given in MP/CONF/INF.1/Rev.3

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AGENDA ITEM 7 - CONSIDERATION OF A DRAFT INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS, 1973 (MP/CONF/WP.3, MP/CONF/WP.4)

Annex III to the Convention (MP/CONF/WP.4)(concluded)

The PRESIDENT submitted to the Conference the text of Annex III as approved by the Drafting Committee.

Annex III to the Convention (MP/CONF/WP.4) was adopted unanimously, without comment.

Annex II to the Convention (MP/CONF/WP.3)

Mr. LAKEY (USA), Chairman of Committee I.I, stated that the Drafting Committee had approved the following corrections to the document under consideration:

Page 6, sub-paragraph (b). First line, the words "into the sea" deleted.

Page 10, paragraph 13, sub-paragraph (a), the first line amended to read:

"The Contracting Governments of States the coastlines of which border on any given ...";

At the end of the second line the word "time" added;

In the third line, "sub-paragraph" replaced by "Regulation", and "Regulation" by "Annex".

Mr. SASAMURA (IMCO Secretariat) added that, to bring the wording of Annex II into line with that of Annex I, the following corrections should also be made:

Page 11, Regulation 6:

In the first line of sub-paragraph (a), after the word "discharge", the phrase "into the sea" to be added, and in the second line the words "from a ship" to be deleted.

Sub-paragraph (b): The word "escape" to be replaced by the words "discharge into the sea";

Sub-paragraph (b)(i): The words "leakage" and "escape" to be replaced by the word "discharge";

Sub-paragraph (c): In the first line, the word "substances" to be replaced by the words "noxious liquid substances or mixtures".

Regulation 7:

Paragraph 1: In the first line, the words "shall take appropriate steps" to be replaced by the word "undertakes".

Footnote:

At the end of the second line, a full stop to be placed after the words "Annex I", and the rest of the sentence to be deleted.

Page 12, Regulation 8, paragraph 1: The phrase "whose duties shall include the inspection of ship-board operations" to be deleted.

Page 14, in the first line of paragraph 5:

After the word "authorized" the words "or appointed" to be inserted.

Page 17, paragraph 8, penultimate line: "or" substituted for "and".

Page 19, Regulation 10, heading: "Surveys" substituted for "Survey".

Page 22.

Paragraph 4: In the second line, "or (3)" to be deleted.

Paragraph 5: In the fifth line, the word "if" inserted between the words "or" and "intermediate".

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After the words ("Signature of duly authorized official ..." the words "issuing the Certificate") to be deleted in the three places where they occurred. The words "(Seal or stamp of issuing Authority ..." replaced by the words "(Seal or stamp of the Authority ...)" in the three places where they occurred.

Mr. DUCLAUX (France) pointed out a correction which had been forgotten in the English text: On page 22, the words "and Cancellation" in the heading of Regulation 12 should be deleted. The following corrections, applicable only to the French text, should also be made: On page 9, and everywhere it occurred, the word "Autorité" should be written with an initial capital letter; on page 11, in paragraphs (a) and (b) the words "rejet des substances" should be replaced by the words "rejet à la mer de substances"; on page 21, in Regulation 11, whenever the word "Certificat" occurred, it should be written with an initial capital; on page 22, in paragraph (4) at the end of the first line, the word "précédentes" should be replaced by the words "du paragraphe 2".

Mr. STEEN (Sweden) proposed replacing, in paragraphs 8 and 9 (page 2) the word "proper" by the word "area".

He also proposed that on page 9, paragraph 9(b), the words "and washing" should be added after "discharge", since Administrations should also be able to check tank washings for a possible content of Category C substances.

Mr. YANKOV (Bulgaria) agreed with the Swedish representative that it would be desirable to substitute the words "the Baltic Sea Area" for the words "the Baltic Sea proper" in Regulation 1, paragraph (8); but, as far as the Black Sea was concerned, he would prefer the words "the Black Sea proper" to be retained.

Mr. STEEN (Sweden) withdrew his proposal regarding the Black Sea.

The PRESIDENT asked the Conference to decide whether the phrases provisionally placed within square brackets in the text of Regulation 6 should be retained or not.

Mr. WISWALL (Liberia) recalled that the Liberian representative on Committee II had pointed out that it would in fact be impossible to prove that the Master "was acting within the scope of his employment". He therefore proposed that the phrase within square brackets at the end of paragraph (b)(ii) should be deleted.

He had no particular views, however, with regard to the words within square brackets at the beginning of the paragraph.

Mr. VAN DOORN (Netherlands) supported the Liberian proposal.

Mr. MAKOVSKY (USSR) also supported the proposal and stressed that in any event the responsibility of the Master had no connexion with the intentional character of the action under consideration.

Mr. DUCLAUX (France) considered that the two phrases between square brackets could not be dissociated, and should be considered together. He could agree to the deletion of the second phrase, provided that the first phrase was retained.

Mr. ALVAREZ de TOLEDO (Spain), Mr. KOSMATOS (Greece), and Mr. DAVIS (Canada), supported the French proposal.

The PRESIDENT, on the proposal of Mr. YANKOV (Bulgaria), put to the vote the text of Regulation 6, sub-paragraph (b)(ii), with the amendments proposed by the Liberian representative and by the French representative - namely, the retention of the phrase within the first set of square brackets and the deletion of the phrase within the second set of square brackets.

Sub-paragraph (b)(ii), thus amended, was adopted unanimously.

Mr. BREUER (Federal Republic of Germany) drew attention to Regulation 7, which provided in paragraph (1), that Governments "should take appropriate steps to ensure the provision of reception facilities", and in paragraph (2), that governments should "determine" the types of those facilities. Certain substances, however, were so dangerous that even when discharged into such facilities, there would be no way of removing their harmful properties. It should therefore be made permissible for Governments to conclude that, after having taken appropriate measures, it was impossible for them to provide reception facilities for such substances. The proposed new version ("... undertake to ensure the provision of reception facilities") was better than the previous version ("take appropriate steps to ensure the provision of reception facilities"); but since in any event there were doubts as to whether governments would be able to respect the provision in all cases, his country would abstain from voting on the matter.

Mr. VANCHISWAR (India) shared the doubts expressed by the representative of the Federal Republic of Germany and thought that it would be better, in those circumstances, to retain the original wording: "... shall take appropriate steps to ensure the provision ...".

Mr. SJADZALI (Indonesia) supported the Indian proposal to retain the original version of the first line of paragraph (1) of Regulation 7.

Mr. DUCLAUX (France) recalled that since 1954, governments had been urged to provide reception facilities, but in a large number of cases such facilities were still lacking. It was for that reason that Committee II and the Drafting Committee had considered it essential, in the present instance, to require a very firm undertaking from governments.

The Indian proposal to retain the original version of paragraph (1) of Regulation 7 (MP/CONF/WP.3, page 11) was rejected by 17 votes to 16, with 20 abstentions.

Mr. VANCHISWAR (India) explained that he had proposed the retention of the original version of paragraph (1) of Regulation 7 because, in his country at least, ports were under the control of autonomous bodies, and his Government would find it difficult to ensure the installation of the required facilities by direct means.

Mr. ARCHER (UK) also feared that the new text ("... shall undertake to ensure the provision ...") might prove an obstacle to adhesion or rapid ratification on the part of governments. In addition, the object of the new text had been to bring the text of Annex II into line with that of Annex I.

As the results of the voting revealed that the Conference was almost equally divided on the question, it should be given the opportunity to revert to the subject and, if need be, go back on its decision when it had considered Annex I.

Mr. YANKOV (Bulgaria) said that, as the Indian amendment had been rejected, it would henceforth be impossible to change the wording of paragraph 1 of Regulation 7.

Mr. BREUER (Federal Republic of Germany) shared the opinion of the United Kingdom representative: the Conference should be able to re-open the discussion after considering Annex I.

Mr. SASAMURA (INCO Secretariat) said that the Drafting Committee had, in fact, replaced the phrase "doivent prendre toutes mesures appropriées" by "s'engagent à faire assurer la mise en place", so as to bring Annex II into line with Annex I; but the second phrase had not been thoroughly examined in the framework of Annex II.

Mr. DUCLAUX (France) said he was afraid that if the Conference was continually to be moving from one Annex to another, it would not make much progress. With regard to Annex II, the decision on the matter discussed should be considered as final.

He wished to reassure the Indian representative: in the French version, at least, the text took due account of the possible independence of port authorities and made it quite clear that it would not necessarily be governments which had to install the facilities nor to bear the costs involved.

Mr. DAVIS (Canada) said that, like the United Kingdom representative, he thought that the Conference should be able to return to the question after studying the text of Annex I.

The PRESIDENT reminded the Conference that, as the Indian amendment had been rejected, in order to re-open the discussion, a proposal to that effect would have to be submitted in due and proper form and it would have to be adopted by a two-thirds majority.

However, the Conference might give a decision on Annex II as a whole, with the exception of the clause at issue, while reserving its right to re-open the matter after considering Annex I.

Mr. YANKOV (Bulgaria) was of the opinion that the latter procedure might set a dangerous precedent. It would be better to follow the Rules of Procedure - namely to take a decision on the text of Annex II in its entirety, and then to revert to the wording of Regulation 7 in the event that, after Annex I had been examined, a proposal to that effect was passed by a two-thirds majority.

Mr. FRANCHI (Italy) unreservedly supported the representative of Bulgaria.

Mr. LAKEY (USA), Chairman of Committee III, asked the Conference to note that one last decision remained to be taken on the text of Annex II. Committee III had agreed on the text of Annex II, Regulation 3, paragraph 4 (MP/CONF/WP.3, page 4) before Committee I had examined Article 17, sub-paragraph 3(c) concerning amendments to Appendices. In the light of the agreed contents of Article 17, sub-paragraph 3(c), the footnote to page 1 served no useful purpose, and should be deleted.

It was so decided.

The PRESIDENT concurred in the views put forward by the representative of Bulgaria and called for a vote on Annex II in its entirety as amended, on the understanding that after considering Annex I, the Conference might decide by a two-thirds majority to re-open its consideration of Annex II.

Annex II (MP/CONF/WP.3) was adopted as amended by 47 votes to none with 5 abstentions.

The meeting rose at 12 noon.



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INTERNATIONAL CONFERENCE ON
MARINE POLLUTION, 1973

PROVISIONAL SUMMARY RECORD OF THE SEVENTH PLENARY MEETING

held at Church House, Westminster, London, S.W.1,
on Monday, 29 October 1973 at 10.10 a.m.

President:	Mr. S. BHAVE (India)
Secretary-General:	Mr. Colin GOAD
Executive Secretary:	Mr. A. SAVELIEV

A list of participants is given in MP/CONF/INF.1/Rev.1

N.B. Corrections to be incorporated in the final summary record of the meeting should be submitted in writing (two copies in English or French), preferably on a copy of the provisional summary record, to the Distribution Counter, Bishop Partridge Hall, within three days of the publication of this record.

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AGENDA ITEM 7 - CONSIDERATION OF A DRAFT INTERNATIONAL CONVENTION FOR THE
PREVENTION OF POLLUTION FROM SHIPS, 1973
(MP/CONF/WP.3, MP/CONF/WP.4)

ANNEX III (MP/CONF/WP.4)

The PRESIDENT submitted to the Conference the text of Annex III as approved by the Drafting Committee.

ANNEX III was adopted unanimously, without comment.

ANNEX II (MP/CONF/WP.3)

The PRESIDENT stated that certain corrections should be made in the text of the document under consideration.

Mr. LAKEY (USA) (Chairman, Committee III), stated that the Drafting Committee had approved of the following corrections:

- Page 6, sub-paragraph (b), in the first line delete the words "into the sea";
- Page 10, paragraph 13, sub-paragraph (a):
 - Amend the first line to read:
 - "The Contracting Governments of States the coastlines of which border on any given ..."
 - At the end of the second line add the word "time";
 - In the third line replace "sub-paragraph" by "Regulation", and "Regulation" by "Annex".

Mr. SASAMURA (Secretariat) added that, to bring the wording of Annex II into line with that of Annex I, the following corrections should also be made:

Page 11, Regulation 6:

- In the first line of sub-paragraph (a), after the word "discharge", add the words "into the sea", and in the second line delete the words "from a ship".
- Sub-paragraph (b): replace the word "escape" by the words "discharge into the sea";
- Sub-paragraph (b)(i): replace the words "leakage" and "escape" by the word "discharge";
- Sub-paragraph (c): in the first line, replace the word "substances" by the words "noxious liquid substances or mixtures".

Regulation 7

Paragraph 1: in the first line, replace the words "shall take appropriate steps" by the word "undertakes".

Footnote: at the end of the second line, place a full stop after the words "Annex I", and delete the rest of the sentence.

- Page 12, Regulation 8, paragraph 1, delete the words: "whose duties shall include the inspection of ship-board operations".
- Page 14, in the first line of paragraph 5: after the word "authorized" add the words "or appointed".
- Page 17, paragraph 8, second-last line, substitute "or" for "and".
- Page 19, Regulation 10, heading, substitute "Surveys" for "Survey".
- Page 22
- Paragraph 4: in the second line delete "or (3)".
- Paragraph 5: in the fifth line insert the word "if" between the words "or" and "intermediate".
- Page 41: After the words ("Signature of duly authorized official ...") delete the words "issuing the Certificate") in the three places where they occur.

Replace the words "(Seal or stamp of issuing Authority ..." by the words "(Seal or stamp of the Authority ...)" in the three places where they occur.

Mr. DUCLAUX (France) pointed out a correction which had been forgotten in the English text: on page 22, the words "and Cancellation" in the heading of Regulation 12 should be deleted. The following corrections, applicable only to the French text, should also be made: on page 9, and everywhere it occurs, the word "Autorité" should be written with an initial capital letter; on page 11, in paragraphs (a) and (b) the words "rejet des substances" should be replaced by the words "rejet à la mer de substances"; on page 21, in Règle 11, whenever the word "Certificat" occurs it should be written with a capital C; on page 22, in paragraph (4) at the end of the first line, the word "précédentes" should be replaced by the words "du paragraphe 2".

Mr. STEEN (Sweden) proposed replacing, in paragraphs 8 and 9, on page 2, the word "proper" by the word "are".

He also proposed that on page 9, paragraph 9(b), the words "and washing" should be added after "discharge", since Administrations should also be able to check tank washings for possible content of substances in Category C.

Mr. YANKOV (Bulgaria) agreed with the Swedish representative that it would be desirable to substitute the words "the Baltic Sea Area" for the words "the Baltic Sea proper" in Regulation 1, paragraph (8), but, as far as the Black Sea was concerned, he would prefer the words "the Black Sea proper" to be retained.

Mr. STEEN (Sweden) withdrew his proposal regarding the Black Sea.

The PRESIDENT drew the Conference's attention to the phrases provisionally contained within square brackets in the text of Regulation 6, and invited it to decide whether or not those phrases should be retained.

Mr. WISWALL (Liberia) recalled that the Liberian representative on Committee II had pointed out that it would in fact be impossible to prove that the Master "was acting within the scope of his employment". He therefore proposed that the phrase within square brackets at the end of paragraph (b)(ii) should be deleted.

He had no particular views, however, with regard to the words within square brackets at the beginning of the paragraph.

Mr. VAN DOORN (Netherlands) supported the Liberian proposal.

Mr. MAKOVSKY (USSR) also supported the proposal and stressed that in any event the responsibility of the Master had no connection with the intentional character of the action under consideration.

Mr. DUCLAUX (France) considered that the two phrases between square brackets could not be dissociated, and should be considered together. He could agree to the deletion of the second phrase, provided that the first phrase was retained.

The French representative's proposal was supported by Mr. ALVAREZ de TOLEDO (Spain), Mr. KOSMATOS (Greece), and Mr. DAVIS (Canada).

On the proposal of Mr. YANKOV (Bulgaria), the PRESIDENT put to the vote the text of Regulation 6, sub-paragraph (b)(ii), with the amendments proposed by the Liberian representative and by the French representative, namely, the retention of the phrase within the first set of square brackets and the deletion of the phrase within the second set of square brackets.

Sub-paragraph (b)(ii), as amended, was adopted unanimously.

Mr. BREUER (Federal Republic of Germany) drew attention to Regulation 7, which provided, in paragraph (1), that Governments "should take appropriate steps to ensure the provision of reception facilities", and, in paragraph (2), that Governments should "determine" the types of those facilities. Certain substances, however, were so dangerous that even when discharged into such facilities, there would be no way of removing their harmful properties. It should therefore be made permissible for Governments to conclude that, after having taken appropriate measures, it was impossible for them to provide reception facilities for such substances. The proposed new version ("... undertake to ensure the provision of reception facilities") was better than the previous version ("take appropriate steps to ensure the provision of reception facilities"), but since in any event there were doubts as to whether Governments would be capable of respecting the provision in all cases, his country would abstain from voting on the matter.

Mr. VANCHISWAR (India) shared the doubts expressed by the representative of the Federal Republic of Germany and thought that it would be better, in those circumstances, to retain the original wording: "... shall take appropriate steps to ensure the provision ...".

Mr. SJADZALI (Indonesia) supported the Indian proposal to retain the original version of the first line of paragraph (1) of Regulation 7.

Mr. DUCLAUX (France) recalled that since 1954 Governments had been urged to provide reception facilities, but in a large number of cases such facilities were still lacking. It was for that reason that Committee II and the Drafting Committee had considered it essential, on this occasion, to require a very firm undertaking from Governments.

The Indian proposal to retain the original version of paragraph (1) of Regulation 7 (MP/CONF/WP.3, page 11) was rejected by 17 votes to 16, with 20 abstentions.

Mr. VANCHISWAR (India) explained that he had proposed the retention of the original version of paragraph (1) of Regulation 7 because, in his country at least, ports were under the control of autonomous bodies, and his Government would find it difficult to ensure the installation of the required facilities by direct means.

Mr. ARCHER (United Kingdom) also feared that the new text ("... shall undertake to ensure the provision ...") might prove an obstacle to adhesion or rapid ratification on the part of Governments.

In addition, the object of the new text had been to bring the text of Annex II into line with that of Annex I.

As the results of the voting revealed that the Conference was almost equally divided on the question, it should be given the opportunity to take it up again and, if need be, go back on to its decision, when it had considered Annex I.

Mr. YANKOV (Bulgaria) said that, as the Indian amendment had been rejected, it would henceforth be impossible to change the wording of paragraph 1 of Regulation 7.

Mr. BREUER (Federal Republic of Germany) said he shared the opinion of the United Kingdom representative: the Conference should be able to re-open the discussion after considering Annex I.

Mr. SASAMURA (Secretariat) said that the Drafting Committee had, in fact, replaced the phrase "doivent prendre toutes mesures appropriées" by "s'engagent à faire assurer la mise en place", so as to bring Annex II into line with Annex I, but the second phrase had not been thoroughly examined in the framework of Annex II.

Mr. DUCLAUX (France) said he was afraid that if the Conference was continually to be moving from one Annex to another, it would not make much progress. With regard to Annex II, the decision on the matter discussed should be considered to be final.

He wished to reassure the Indian representative: in the French version, at least, the text took due account of the independence which port authorities would have and made it quite clear that governments would not necessarily have to instal the facilities themselves and that a government would not necessarily have to bear the financial cost.

Mr. DAVIS (Canada) said that, like the United Kingdom representative, he thought that the Conference should be able to return to the question after studying the text of Annex I.

The PRESIDENT reminded the Conference that, as the Indian amendment had been rejected, in order to be able to re-open the discussion it would be necessary to submit a proposal to that effect in due and proper form and for it to receive a two-thirds majority in order to be adopted.

However, the Conference might give a decision on Annex II as a whole, with the exception of the clause at issue, while reserving its right to re-open the matter after considering Annex I.

Mr. YANKOV (Bulgaria) was of the opinion that the latter procedure might set a dangerous precedent. It would be better to keep to the Rules of Procedure, namely to decide on the text of Annex II in its entirety, and then to return to the wording of Regulation 7 in the event that, after Annex I had been examined, a proposal to that effect was passed by a two-thirds majority.

Mr. FRANCHI (Italy) unreservedly supported the representative of Bulgaria.

Mr. LAKLY (USA)(Chairman, Committee III) asked the Conference to note that one last decision remained to be taken on the text of Annex II. Committee III had agreed on the text of Annex II, Regulation 3, paragraph 4 (MP/CONF/WP.3, page 4) before Committee I had examined Article 17, sub-paragraph 3(c) concerning amendments to Appendices. In the light of the agreed contents of Article 17, sub-paragraph 3(c), the footnote to page 1 served no further purpose, and should be deleted.

It was so agreed.

The PRESIDENT concurred in the views put forward by the representative of Bulgaria and called for a vote on Annex II in its entirety as amended, on the understanding that after considering Annex I, the Conference might decide by a two-thirds majority to reopen its consideration of Annex II.

Annex II was adopted as amended by 47 votes to none with 5 abstentions.

The meeting rose at 12 noon.