

Session of Edinburgh – 1969

Measures Concerning Accidental Pollutions of the Seas

(Twelfth Commission, Rapporteur : Mr Juraj Andrassy)

(The French text is authoritative. The English text is a translation.)

A. PREVENTION OF ACCIDENTS

The Institute of International Law,

Conscious of the importance of the prevention of pollution of the seas,

Considering in particular the need to prevent any pollution caused by accidents occurring to ships which carry polluting materials,

Recognizing that it is in the interest of the international community and indeed of any State likely to be affected by the pollution of the seas that such accidents should be prevented,

Considering that appropriate measures to prevent such accidents as far as possible should be taken on a joint basis either by a multilateral agreement or through the action of an authorized body or, in the absence of such procedures, by the individual States concerned.

Adopts the following articles which might inspire the conduct of States in this matter :

I

All States must take appropriate measures to prevent pollution of the seas either individually or jointly under international agreements to be concluded, without ignoring the principle of freedom of the seas.

In the following articles are set forth the duties and rights of States to prevent pollutions caused by ships which carry polluting materials.

II

The measures referred to in Article I shall relate to the design and equipment of the ships, to the navigation instruments, to the qualifications of the officers and members of the crews, and to other significant factors.

They may also include traffic regulations in areas where such regulations are necessary and in particular provisions concerning the routes to be followed, the maximum speeds and the compulsory pilotage procedures.

III

States should co-operate in order to determine on a joint basis either by an international agreement or through an authorized body acting in accordance with its Statutes :

- a) the requirements set out in Article II,
- b) the State responsible for implementing each of these requirements.

IV

Nothing in Article III can be interpreted as preventing a State from enacting such measures within its competence as may be necessary to meet the obligations under Article I, pending the establishment of the rules contemplated by Article III, or in case the rules thus established should cover only part of the objectives mentioned in this Resolution.

V

Measures adopted under the preceding provisions :

- a) must remain within the strict limits of their final aim and lead to no discrimination in their implementation between means which may equivalently meet the safety requirements of navigation, and
- b) must be reported to the navigation authorities.

VI

States have the right to prohibit any ship that does not conform to the standards set up in accordance with the preceding articles for the design and equipment of the ships, for the navigation instruments, and for the qualifications of the officers and members of the crews, from crossing their territorial seas and contiguous zones and from reaching their ports.

VII

Any dispute concerning the application and interpretation of the preceding articles should be settled by a peaceful means agreed upon by the Parties. In the absence of such an agreement, or in the event of a failure of the means agreed upon, each Party might unilaterally resort to the means provided for to this end within the Intergovernmental Maritime Consultative Organization. If such means do not succeed or are lacking, the Parties might resort to means agreed upon between themselves beforehand for the peaceful settlement of disputes. Finally, in the event of a failure or in the absence of such means, each Party should be entitled to refer the matter to the International Court of Justice by unilateral request.

B. MEASURES FOLLOWING AN ACCIDENT

The Institute of International Law,

Recognizing the need for clear and uniform rules of the exercise of the right to take efficient measures in order to prevent, mitigate or eliminate the danger of pollution of the seas by polluting materials arising from an accident,

Expresses the opinion that the State threatened by such danger is entitled to take appropriate measures proportionate to the likely danger,

Pays a tribute to the work undertaken within the Inter-Governmental Maritime Consultative Organization with a view to drafting a Convention to this end,

Hopes that this task may be carried out as soon as possible with the participation of all States whose flags are flying on the seas.

Wishes to contribute to this work by setting forth the formulas which, in its opinion, express most accurately the main points of the Convention contemplated :

I

Any State facing grave and imminent danger to its coastline or related interests from pollution or threat of pollution of the sea, following upon an accident on the high seas, or acts related to such an accident, which may be expected to result in major consequences, may take such measures as may be necessary to prevent, mitigate or eliminate such danger.

II

Except for tankers, no measures shall be taken against warships or other ships owned or operated by a State and used only on government non-commercial service at the time considered.

III

Measures taken in accordance with Article I shall be proportionate to the damage which threatens the State concerned.

Such measures shall not go beyond what is reasonably necessary to achieve the aim mentioned in Article I.

They shall cease as soon as that aim has been achieved or as soon as it has become obvious that it cannot be achieved. They shall not unnecessarily interfere with the rights and interests of the flag State, third States and of any persons, physical or corporate, concerned.

In considering whether the measures are proportionate to the damage, account shall in particular be taken of :

- a) the extent and probability of imminent damage if such measures are not taken ;
- b) the likelihood of such measures being effective ;
- c) the extent of the damage which may be caused by such measures.

IV

Before taking any measures, a coastal State shall proceed to consultations with other States affected by the maritime accident, particularly with the flag State or States.

The coastal State also shall notify without delay the proposed measures to any persons, physical or corporate, known to have interests which can reasonably be expected to be affected by such measures. It shall take into account any views which those persons may submit.

In cases of urgency requiring measures to be taken immediately, the coastal State may take such measures as may be rendered necessary by the urgency of the situation, without prior notification or consultations with other States affected by the maritime accident.

Measures which have been taken shall be notified without delay to the States and to the known physical or corporate persons concerned.

V

It is desirable that a system of consultation with independent experts whom the coastal States may consult before taking the above mentioned measures should be set up.

VI

Any State which has taken measures in contravention of the preceding provisions and has thus caused damage to others must pay compensation.

VII

Any controversy concerning the interpretation or application of the preceding provisions shall be settled by a peaceful means. The system to be provided for shall be such that in the event of a failure of the means used any Party may unilaterally resort to an arbitration or judicial procedure which can be carried on and brought to a successful issue even if the other Party abstains from taking part in it.

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(12 September 1969)