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<T1>IV. OCEANS

<T2>2. Marine Pollution

<T3>C. *Ocean Dumping*

Climate change-related issues, namely ocean fertilization and transboundary carbon sequestration, continued to dominate negotiations on the international regime on ocean dumping in 2008. Other issues that were tackled in 2008 include compliance, technical guidance, and future activities.

This review is based on the report (Doc. LC 30/16, 9 December 2008) of the thirtieth Consultative Meeting of the Parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (London Convention) and of the third Meeting of Contracting Parties to the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (London Protocol). Both meetings were held in parallel from 27 to 31 October 2008 at the International Maritime Organization (IMO) headquarters in London, United Kingdom, in pursuance of the ‘two dumping agreements – one family’ approach.

<S1>(1) Climate Change-Related Issues

<S2>(A) *Ocean fertilization*

In 2007, the parties to the ocean dumping regime started consideration of the large-scale ocean fertilization projects, with a view to ensuring adequate regulation of these operations. Negotiations led to the endorsement of a Statement of Concern that insufficient knowledge on the effectiveness and potential environmental impacts of ocean fertilization aimed at sequestering carbon dioxide could not justify large-scale operations (18 YbIEL 244 (2007)). Subsequently, the United Nations General Assembly encouraged States to support the further study to enhance understanding of ocean iron fertilization, in its resolution 62/215 on ‘Oceans and the law of the sea’ (22 December 2007).

In 2008, the matter was taken up by the ninth Conference of the Parties (COP) to the Convention on Biological Diversity (CBD), which convened on 19-30 May in Bonn, Germany. As part of the negotiations on a decision on climate change and biodiversity, certain parties called for a moratorium on *in situ* ocean fertilization. High-level consultations eventually supported a precautionary approach to the matter (Earth Negotiations Bulletin, Vol. 9 Number 452, <<http://www.iisd.ca/vol09/enb09452e.html>>). As a result, in the decision, the CBD COP urged Parties and other Governments to act in accordance with the decision of the London Convention, and recognized the current absence of reliable data covering all relevant aspects of ocean fertilization. On this basis, the COP requested:

<Q>in accordance with the precautionary approach, to ensure that ocean fertilization activities do not take place until there is an adequate scientific basis on which to justify such activities, including assessing associated risks, and a global, transparent and effective control and regulatory mechanism is in place for these activities; with the exception of small scale scientific research studies within coastal waters.
(<<http://www.cbd.int/doc/meetings/cop/cop-09/official/cop-09-29-en.doc>>)<Q>

The CBD COP also decided to seek the view of governments and, in consultation with the IMO, other relevant organizations, and indigenous and local communities, to compile and synthesize available scientific information on potential impacts of direct human-induced ocean fertilization on marine biodiversity (Decision IX/16 ‘Biodiversity and Climate Change’,

Doc. UNEP/CBD/COP/DEC/IX/16, 9 October 2008, available at <<http://www.cbd.int/decisions/list.shtml?meeting=COP-09>>).

Later in 2008, the parties to the international ocean dumping regime adopted a non-binding resolution, according to which, given the present state of knowledge, ocean fertilization activities other than legitimate scientific research, should not be allowed. They observed that ocean fertilization should be considered contrary to the aims of the Convention and Protocol and does not currently qualify for any exemption from the definition of dumping in Article III.1(b) of the Convention and Article 1.4.2 of the Protocol. Parties further agreed that scientific research proposals should be assessed on a case-by-case basis using an assessment framework to be developed by the Scientific Groups under the London Convention and Protocol, including tools for determining whether the proposed activity is contrary to the aims of the Convention and Protocol. Furthermore, parties agreed that until specific guidance was available, utmost caution and the best available guidance should be used to evaluate scientific research proposals, to ensure protection of the marine environment consistent with the Convention and Protocol (Resolution LC-LP.1(2008)).

During the discussions, Australia proposed an amendment to the London Protocol to ensure that legitimate non-commercial scientific research could occur, provided that it was effectively regulated and met an impact threshold test appropriate for research activities. The amendment was considered necessary to equip the Protocol as a global, transparent, and effective control and regulatory mechanism on ocean fertilization. Vanuatu, by contrast, expressed opposition to large-scale ocean fertilization experiments, due to the ‘catastrophic’ potential consequences on ocean ecosystems. It was eventually agreed to further consider a potential legally binding resolution or an amendment to the London Protocol on ocean fertilization in 2009.

<S2>(B) Carbon sequestration into sub-seabed geological formations

With regards to carbon sequestration into transboundary sub-seabed geological formations, the meeting of parties agreed that the export of CO₂ streams from the jurisdiction of one party to that of another country (whether party or not) was prohibited by Article 6 of the London Protocol (which prohibits parties from allowing ‘the export of wastes or other matter to other countries for dumping or incineration at sea’). No consensus, however, was reached on the possible application of Article 6 to the transfer of CO₂ streams into the high seas. Furthermore, unintended transboundary migration of disposed CO₂ streams within sub-seabed geological formations was not considered export, but the question of deliberate migration was not solved. Protocol parties therefore discussed whether an amendment to Article 6 was necessary in order to permit these movements, or whether an interpretative resolution to the same end would suffice. The proposal was justified by the concern that the current wording of Article 6 could be in conflict with ongoing initiatives on carbon storage and capture, and would impede large-scale, cost-effective projects for those countries that did not have adequate storage sites within their territorial waters or exclusive economic zones.

The Meeting of Contracting Parties eventually agreed to give the political signal that the London Protocol should not constitute a barrier to the transboundary movement of CO₂ streams; discussions should be held inter-sessionally to further explore the option of a possible amendment to Article 6, an interpretative resolution, or a combination of the two. In addition, inter-sessional discussions are to address the relevance of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal in this regard.

The meeting also adopted a format for specific reporting for carbon sequestration into sub-seabed geological formations. The electronic format in use for reporting on dumping activities under the London Convention and Protocol was amended accordingly.

<S1>(2) Compliance

The Compliance Group of the London Protocol met for its first session from 27 to 29 October 2008 and noted that no reports of possible non-compliance had yet been referred to it. The Group thus discussed organizational matters: in particular, it developed a statement on how to deal with a potential conflict of interest for its members to avoid cases in which a Group member might participate in the consideration of a matter involving the country that nominated that member.

The Group also developed a detailed future work program for the period up to and including its second session, according to which, priority will be given to individual cases of possible non-compliance. In addition, it undertook to review the factors contributing to the difficulties in fulfilling the Protocol's reporting obligations, with a view to identifying options to address these issues and considering the applicability of these options to the rate of reporting under the London Convention.

In a related development, the parties adopted an electronic form for the annual reporting on dumping operations at sea, and agreed to review the London Convention and Protocol reporting formats once the OSPAR and HELCOM Commissions and UNEP/Mediterranean Action Plan complete their reporting formats.

<S1>(3) Other Issues

The governing bodies adopted the following technical guidance documents:

- the 'Revised *Generic* Guidelines for the Assessment of Wastes and Other Matter,' replacing the 1997 Guidelines on the same issue;
- the 'Revised *Specific* Guidelines for the Assessment of Inert, Inorganic Geological Material,' replacing the 2000 Guidelines on the same issue;
- the 'Guidance for the Development of Action Lists and Action Levels for Dredged Material';
- the 'Guidelines for the Placement of Artificial Reefs.' It should be noted that although Japan considered that the subject matter of the guidelines fell outside the scope of the London Convention and Protocol, it supported the guidelines as a voluntary reference document providing one of the possible permit processes or methods available;
- the 'Guidance on Managing Spoilt Cargoes,' which are to be forwarded to IMO Marine Environment Protection Committee (MEPC) for its consideration and adoption in 2009. The Guidance contributes to clarifying the 'boundary issues' between the London Convention and Protocol and MARPOL Annex V (Garbage) (17 YbIEL 337 (2006)); and
- the 'Guidance on Best Management Practices for Removal of Anti-Fouling Coatings from Ships, including TBT hull paints,' to be forwarded to MEPC for its consideration and adoption in 2009.

It should be further noted that the parties recommended the establishment of a voluntary London Convention and Protocol Technical Cooperation Trust Fund with a view to better channelling and administering the voluntary contributions for approved technical cooperation

projects. It is expected that the IMO Secretary-General will establish the fund, to be governed under the IMO Financial Regulations and Rules, and it will become operational in 2009.

<S1>(4) Future Activities

Among the issues to be considered in 2009 by the parties to the ocean dumping regime are, as indicated in the previous sections, a potential legally binding resolution or an amendment to the London Protocol on ocean fertilization, and an amendment to the London Protocol or an interpretative resolution with respect to carbon sequestration into transboundary sub-seabed geological formations. Furthermore, activities in 2009 will also include a review of the implementation of the London Convention and Protocol in light of the new Ship Recycling Convention expected to be finalized in 2009. There will also be a review of specific guidelines for the assessment of bulky items primarily comprising iron, steel, concrete, and similarly unharmed materials for which the concern is physical impact, and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping. In addition, the MEPC correspondence group will continue to monitor 'boundary issues' between the London Convention and Protocol and MARPOL, in the context of the review of MARPOL Annex V that will be carried out in 2009.

On the basis of observations provided to the Scientific Groups by Greenpeace International in 2008, the issue of sub-sea discharges of mine tailings may also become a new area of work of the London Convention and Protocol. In 2008, parties discussed the issue as an unregulated one by existing international treaties, and considered it relevant to the international regime on ocean dumping in light of the general obligation embodied in the London Convention and Protocol to protect and preserve the marine environment from all sources of pollution. Against this background, it was agreed that the London Convention and Protocol Secretariat would contact UNEP's Global Plan of Action for the Protection of the Marine Environment from Land-based Activities (UNEP-GPA) to identify possible topics of cooperation, including in particular the detailed assessment and effective control of sub-sea discharges of mine tailings.

It should finally be noted that four new Parties joined the London Protocol, namely Kenya, Sierra Leone, the Marshall Islands, and the Netherlands, bringing the Protocol membership to thirty-six. In this regard, it should be also observed that among the parties that recently joined the London Convention (Sierra Leone and Tanzania in 2008, Bulgaria and Montenegro in 2006), two did not join the Protocol (Tanzania and Montenegro). The Secretariat thus noted that while a shift in momentum from the Convention to the Protocol was expected following the entry into force of the latter, new member countries have instead considered that a choice is possible between joining the Convention or the Protocol. This may thus be another issue that may elicit more in-depth discussion in the future.

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