

# PACIFIC ISLANDS HANDBOOK OF INTERNATIONAL MARINE POLLUTION CONVENTIONS

The consolidated texts of the main marine pollution  
conventions of the world and the region.

Published by:  
Secretariat of the Pacific Regional Environment Programme (SPREP)  
in conjunction with  
United Nations Environment Programme (UNEP) and  
International Maritime Organization (IMO)  
under the auspices of:  
the Pacific Ocean Pollution Prevention Programme (PACPOL)



## **SPREP Library Cataloguing-in-Publication Data**

Pacific Islands Handbook of International  
Marine Pollution Conventions  
. - Apia; Nairobi : SPREP; UNEP, 2000.

ii, 389 p. ; 29 cm. - (SPREP/UNEP Publication  
Series on Environmental Law and Policy; No.2).

ISBN: 978-982-04-0511-0

1. Environmental law - Oceania. 2. Treaties -  
Oceania. I. South Pacific Regional Environment  
Programme (SPREP). II. United Nations Environment  
Programme (UNEP). III. Series.

341.7099

First Edition: 2000  
Revised: 2014

Published by:  
Secretariat of the Pacific Regional Environment Programme (SPREP) in conjunction with  
United Nations Environment Programme (UNEP) and International Maritime Organization (IMO),  
under the auspices of the Pacific Ocean Pollution Prevention Programme (PACPOL).

[www.sprep.org](http://www.sprep.org)

# **PACIFIC ISLANDS HANDBOOK OF INTERNATIONAL MARINE POLLUTION CONVENTIONS**

**(The consolidated texts of the main marine pollution conventions  
of the world and the region)**

*Compiled by:*

*Clare Cory<sup>1</sup>  
Lal Kurukulasuriya<sup>2</sup>  
Steve Raaymakers<sup>3</sup>*

<sup>1</sup>General Legal Counsel  
NSW Fisheries  
Locked Bag 9, Pyrmont, NSW, 2009  
Australia

<sup>2</sup>Chief – Regional Environmental Law Programme  
Regional Office for Asia and the Pacific  
United Nations Environment Programme  
Bangkok, Thailand

<sup>3</sup>Marine Pollution Adviser  
South Pacific Regional Environment Programme  
PO Box 240, Apia, Samoa

*Revised (2014) by:*

Scott Willson  
Marine Pollution Advisor  
Secretariat of the Pacific Regional Environment Programme  
PO Box 240, Apia, Samoa

*SPREP/UNEP Environmental Law Publications Advisory Committee:  
Mr. Tamari'i Tutangata, Director, South Pacific Regional Environment Programme  
Mr. Donald Kaniaru, Director, UNEP Environmental Law and Institutions Programme Activity  
Centre*

## Table of Contents

Introduction to the Revised Edition.....	5
Message.....	6
Foreword.....	7
Part I. International Marine Pollution Conventions.....	8
Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (London Convention) 2003 Edition.....	9
Annex I.....	18
Annex II.....	20
Annex III.....	21
1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (96 Protocol).....	23
Annex 1 - Wastes or other matter that may be considered for dumping.....	37
Annex 2 - Assessment of wastes or other matter that may be considered for dumping.....	38
Annex 3 - Arbitral procedure.....	42
International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 and 1997 Protocols (MARPOL 73/78).....	45
Annex Chapter I - Conciliation.....	52
Chapter II - Arbitration.....	54
Protocol Relating To Intervention On The High Seas In Cases Of Pollution By Substances Other Than Oil, 1973*.....	57
Annex - List of substances established by the Marine Environment Protection Committee of the Organization in accordance with paragraph 2(a) of Article 1*.....	61
International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990 (OPRC 90).....	63
Annex - Reimbursement Of Costs Of Assistance.....	74
ORPC-HNS Protocol On Preparedness, Response and Co-Operation To Pollution Incidents By Hazardous and Noxious Substances, 2000.....	75
Annex - Reimbursement Of Costs Of Assistance.....	84
International Convention On Civil Liability For Oil Pollution Damage 1992 <sup>1</sup> .....	85
Annex - Certificate Of Insurance Or Other Financial Security In Respect Of Civil Liability For Oil Pollution Damage.....	99
Resolution - Adoption Of The Limitation Amounts In The Protocol Of 1992 To Amend The International Convention On Civil Liability For Oil Pollution Damage, 1969.....	100
Annex - Adoption Of The Limitation Amounts In The Protocol Of 1992 To Amend The International Convention On Civil Liability For Oil Pollution Damage, 1969.....	101
International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 <sup>4</sup> .....	102
Resolution - Adoption Of Amendments Of The Limits Of Compensation In The Protocol Of 1992 To Amend The International Convention On The Establishment Of An International Fund For Compensation For Oil Pollution Damage, 1971.....	123
Annex - Amendments Of The Limits Of Compensation In The Protocol Of 1992 To Amend The International Convention On The Establishment Of An International Fund For Compensation For Oil Pollution Damage, 1971.....	124
Protocol Of 2003 To The International Convention On The Establishment Of An International Fund For Compensation For Oil Pollution Damage, 1992 <sup>7</sup> .....	125
International Convention On Liability And Compensation For Damage In Connection With The Carriage Of Hazardous And Noxious Substances By Sea, 2010 (2010 HNS Convention) <sup>1,2</sup> .....	138
Annex I - Certificate Of Insurance Or Other Financial Security In Respect Of Liability For Damage Caused By Hazardous And Noxious Substances (HNS).....	172
Annex II - Regulations For The Calculation Of Annual Contributions To The General Account.....	174
United Nations Convention on the Law of the Sea, 1982 (UNCLOS) - Chapters 1 & 12.....	176
Part XII Protection and Preservation of the marine environment.....	178
Part II..... Pacific Islands Regional Marine Pollution Conventions.....	193
Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, 1986 (NOUMEA Convention).....	194
Annex on Arbitration.....	207
PROTOCOL FOR THE PREVENTION OF POLLUTION OF THE SOUTH PACIFIC REGION BY DUMPING.....	210
ANNEX I WASTES OR OTHER MATTER THAT MAY BE CONSIDERED FOR DUMPING.....	218
ANNEX II ASSESSMENT OF WASTES OR OTHER MATTER THAT MAY BE CONSIDERED FOR DUMPING GENERAL.....	219
PROTOCOL CONCERNING CO-OPERATION IN COMBATING POLLUTION EMERGENCIES IN THE SOUTH PACIFIC REGION.....	223

## Introduction to the Revised Edition

In 2000, *Pacific Islands Handbook Of International Marine Pollution Conventions* was Published by the Secretariat of the Pacific Regional Environment Programme (SPREP), in conjunction with the United Nations Environment Programme (UNEP) and the International Maritime Organization (IMO). This handbook was compiled under the auspices of the Pacific Ocean Pollution Prevention Programme (PACPOL).

This publication, which contains the texts of selected marine pollution conventions, agreements and protocols of relevance to countries in the Pacific islands region is the third on Environmental Law and Policy. SPREP updated the *Pacific Islands Handbook Of International Marine Pollution Conventions* in 2014. Although this edition holds a number of IMO conventions, SPREP has not included MARPOL. If any country requires assistance in relation to any MARPOL issues they should contract SPREP at [sprep@sprep.org](mailto:sprep@sprep.org).

Outside of this edition, SPREP aims to assist the Pacific island countries with the relevant information and guidance required in relation to the assessment of dumping of materials at sea. The guidance offers no judgment on the type of method best suited to any particular country, but identifies some of the options available for consideration. These guidelines deal only with aspects under the purview of the London Convention 1972 and the 1996 Protocol. Pacific islands countries are to be aware that environmental impacts may result from the disposal of materials at sea. These guidelines have been segregated and can be found on the SPREP website ([www.sprep.org](http://www.sprep.org)) under Waste Management and Pollution Control, Marine and Terrestrial Pollution.

Scott Willson  
Marine Pollution Advisor  
SPREP  
February 2014

## Message

This publication, which contains the texts of selected marine pollution conventions, agreements and protocols of relevance to countries in the Pacific islands region is the second in the SPREP/UNEP Series on Environmental Law and Policy. The publication, along with the first in the Series which contains the texts of major global and regional environmental conventions, agreements and protocols, is aimed at serving an important aspect of the information needs of countries in the region. Access to the texts of international conventions contained in this publication by a wide cross section of stakeholders, including government officials, members of the scientific, academic communities and the judiciary, the private sector, non-government organisations and the public is essential for taking appropriate measures at national and regional levels to translate global and regional accords into action. It is also an essential tool for enhancing public awareness and promoting the progressive development and implementation of environmental law, including marine pollution law.

Forging global and regional consensus on addressing environment and development issues through international accords, constitutes a major area of focus of the United Nations Environment Programme's (UNEP) mandate and Programme of Work, as affirmed in successive UNEP Governing Council decisions. An equally important area of focus lies in assisting countries, especially developing countries in their efforts to translate sustainable development policies and international conventions into action through country-relevant legislative and institutional measures. Enhancement of public awareness and participation in protecting the environment and utilizing natural resources in a sustainable way is an equally significant objective. The dissemination of information in the field of international environmental law, through publications such as these is therefore central to fulfilling UNEP's mission in the Asia-Pacific region.

UNEP's environmental law programme in the Asia-Pacific region continues to expand and grow. The programme currently includes technical advice to over ten Asia-Pacific countries and several sub-regional activities on various aspects of environmental law. These include symposia for judges on environmental law, regional forums for promoting partnership between government and the private sector on environmental compliance and enforcement as well as workshops on strengthening national legal and institutional measures for environmental management and the implementation of environmental conventions. I wish to acknowledge with much appreciation the continued support and assistance that the UNEP Regional Office for Asia and the Pacific (ROAP) has received in the development and implementation of these activities from Mr. Donald Kaniaru, Acting Director, Division of Environmental Policy Implementation and Chief, Legal, Economic and Other Instruments Unit.

ROAP looks forward to continued partnership with the Pacific Island States in the areas such as environment law, policy and management, environmental assessment, and State of the Environment (SoE) reporting. I once again welcome UNEP's collaboration with the South Pacific Regional Environment Programme (SPREP) under its Director, Tamari'i Tutangata, and the many advantages such a partnership brings, as is evident in the development and dissemination of publications under this Series. This publication, like the first in the Series on general environmental conventions, is also to be distributed extensively free-of-charge in the region to parliamentarians, judicial officers, government officials, universities, libraries and others interested in the field of marine pollution. It represents a valuable reference and resource book, giving interested parties access to the texts of the main international marine pollution conventions in a single volume.

Nirmal Andrews  
Regional Director and Representative  
UNEP/ROAP  
2000

## Foreword

The South Pacific Regional Environment Programme (SPREP), established in 1982 with UNEP as one of its founding organisations, is now an autonomous intergovernmental organisation responsible for environmental matters in the Pacific islands region. Its members are the governments and administrations of twenty-two Pacific island countries and territories and four developed countries with direct interests in the region. SPREP's third Action Plan 1997-2000 outlines five programme areas of priority for the region, consistent with the 1994 Barbados Programme of Action for the Sustainable Development of Small Island Developing States: (1) Conservation of Biodiversity and Natural Resources; (2) Climate Change and Integrated Coastal Management; (3) Waste Management, Pollution Prevention and Emergencies; (4) Environmental Management, Planning and Institutional Strengthening; and (5) Environmental Education, Information and Training.

Within the Waste Management, Pollution Prevention and Emergencies area, SPREP through its Marine Pollution Adviser Mr Steve Raaymakers, has developed and is implementing a comprehensive programme to address marine pollution from shipping and other maritime activities. This programme is called PACPOL – the Pacific Ocean Pollution Prevention Programme. PACPOL has been developed in direct response to the needs and priorities of SPREP member countries, and seeks to develop national and regional capacity to effectively reduce marine pollution. This includes assisting countries to adopt and implement the regional and international legal regime for marine pollution, as provided by the conventions and protocols contained in this publication. An important objective of PACPOL is to implement, within the Pacific islands region, the International Maritime Organization's (IMO) global regime aimed at safer ships and cleaner seas. The IMO is a major supporter of PACPOL, along with the Government of Canada through the Canada – South Pacific Ocean Development Program Phase II (C-SPOD), and the Commonwealth Secretariat.

Pacific Island countries are blessed with extensive resource-abundant marine areas and large exclusive economic zones. The standard of living that we expect and the growing need for international trade to achieve our developmental goals means that shipping is particularly crucial in our isolated Pacific island states. What we expect in our shops primarily comes by ship and in the case of many outlying islands there is simply no other form of access. Therefore the proper regulation of marine pollution from ships becomes equally as crucial and I hope this publication drives home this issue. I note, with pleasure, that Kiribati has become the most recent member of the IMO (156th) and that several states have already ratified the ORPC Convention, though less enthusiasm has been shown for the 1992 revisions of the Civil Liability and Fund Conventions.

The inherently global dimension to issues relating to marine pollution has largely driven domestic legal responses and this is so more than any other area of environmental law. For example the transnational trade in oil has required a global response to oil pollution from ships. Effective responses to manage the marine environment are conditional upon uniform and consistent domestic legislation. Some countries such as Australia and Papua New Guinea have separate acts to implement specific conventions such as the London Dumping Convention, while other countries have sought to broadly regulate all marine pollution. SPREP recognises the need to provide legal and institutional strengthening to Pacific island countries in a way that allows its member countries to better develop their own capacity once they have been given the tools to use. This book is one such tool.

The strengthened partnership in environmental law between SPREP and UNEP headquarters in Nairobi, as well as UNEP's Regional Office for Asia and the Pacific in Bangkok continues to deliver cost-effective and non-duplicative programmes of technical advice and cooperation in the field of environmental law and policy, responding specifically to the particular needs and circumstances of countries in the region. Mr. Donald Kaniaru, Director of UNEP's Environmental Law and Institutions Programme Activity Centre (ELIPAC) and Mr Lal Kurukulasuriya of UNEP's Regional Office for Asia and the Pacific continue to bring their extensive experience, enthusiasm and insight into the environmental law and capacity building dimensions of all joint activities.

I should like to express my appreciation for the work done by Ms Clare Cory (consultant to SPREP), Mr Steve Raaymakers, Mr Donald Kaniaru and Mr Lal Kurukulasuriya for compiling this important publication and also Mr Raaymakers for editing the final document and initiating and managing the project, as yet another valuable output of PACPOL. I sincerely hope that this freely available publication will be extensively used by all those engaged in marine pollution law and policy in Pacific island countries.

Tamari'i Tutangata  
Director  
SPREP  
2000

## **Part I. International Marine Pollution Conventions**



## **Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (London Convention) 2003 Edition.**

THE CONTRACTING PARTIES TO THIS CONVENTION,

RECOGNIZING that the marine environment and the living organisms which it supports are of vital importance to humanity, and all people have an interest in assuring that it is so managed that its quality and resources are not impaired;

RECOGNIZING that the capacity of the sea to assimilate wastes and render them harmless, and its ability to regenerate natural resources, is not unlimited;

RECOGNIZING that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction;

RECALLING resolution 2749(XXV) of the General Assembly of the United Nations on the principles governing the sea-bed and the ocean floor and the subsoil thereof, beyond the limits of national jurisdiction;

NOTING that marine pollution originates in many sources, such as dumping and discharges through the atmosphere, rivers, estuaries, outfalls and pipelines, and that it is important that States use the best practicable means to prevent such pollution and develop products and processes which will reduce the amount of harmful wastes to be disposed of;

BEING CONVINCED that international action to control the pollution of the sea by dumping can and must be taken without delay but that this action should not preclude discussion of measures to control other sources of marine pollution as soon as possible; and

WISHING to improve protection of the marine environment by encouraging States with a common interest in particular geographical areas to enter into appropriate agreements supplementary to this Convention;

HAVE AGREED as follows:

### **Article I**

Contracting Parties shall individually and collectively promote the effective control of all sources of pollution of the marine environment, and pledge themselves especially to take all practicable steps to prevent the pollution of the sea by the dumping of waste and other matter that is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

## Article II

Contracting Parties shall, as provided for in the following articles, take effective measures individually, according to their scientific, technical and economic capabilities, and collectively, to prevent marine pollution caused by dumping and shall harmonize their policies in this regard.

## Article III

For the purposes of this Convention:

1 (a) Dumping means:

(i) any deliberate disposal at sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;

(ii) any deliberate disposal at sea of vessels, aircraft, platforms or other man-made structures at sea.

(b) Dumping does not include:

(i) the disposal at sea of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or structures;

(ii) placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Convention.

(c) The disposal of wastes or other matter directly arising from, or related to the exploration, exploitation and associated off-shore processing of sea-bed mineral resources will not be covered by the provisions of this Convention.

2 Vessels and aircraft means waterborne or airborne craft of any type whatsoever. This expression includes air cushioned craft and floating craft, whether self-propelled or not.

3 Sea means all marine waters other than the internal waters of States.

4 Wastes or other matter means material and substance of any kind, form or description.

5 Special permit means permission granted specifically on application in advance and in accordance with [annex II](#) and [annex III](#).

6 General permit means permission granted in advance and in accordance with [annex III](#).

7 The Organization means the Organization designated by the Contracting Parties in accordance with article XIV(2).

## Article IV

1 In accordance with the provisions of this Convention, Contracting Parties shall prohibit the dumping of any wastes or other matter in whatever form or condition except as otherwise specified below:

- (a) the dumping of wastes or other matter listed in [annex I](#) is prohibited;
- (b) the dumping of wastes or other matter listed in [annex II](#) requires a prior special permit;
- (c) the dumping of all other wastes or matter requires a prior general permit.

2 Any permit shall be issued only after careful consideration of all the factors set forth in [annex III](#), including prior studies of the characteristics of the dumping site, as set forth in sections B and C of that annex.

3 No provision of this Convention is to be interpreted as preventing a Contracting Party from prohibiting, insofar as that Party is concerned, the dumping of wastes or other matter not mentioned in [annex I](#). That Party shall notify such measures to the Organization.

## Article V

1 The provisions of article IV shall not apply when it is necessary to secure the safety of human life or of vessels, aircraft, platforms or other man-made structures at sea in cases of force majeure caused by stress of weather, or in any case which constitutes a danger to human life or a real threat to vessels, aircraft, platforms or other man-made structures at sea, if dumping appears to be the only way of averting the threat and if there is every probability that the damage consequent upon such dumping will be less than would otherwise occur. Such dumping shall be so conducted as to minimize the likelihood of damage to human or marine life and shall be reported forthwith to the Organization.

2 A Contracting Party may issue a special permit as an exception to article IV(1)(a), in emergencies, posing unacceptable risk relating to human health and admitting no other feasible solution. Before doing so the Party shall consult any other country or countries that are likely to be affected and the Organization which, after consulting other Parties, and international organizations as appropriate, shall, in accordance with article XIV promptly recommend to the Party the most appropriate procedures to adopt. The Party shall follow these recommendations to the maximum extent feasible consistent with the time within which action must be taken and with the general obligation to avoid damage to the marine environment and shall inform the Organization of the action it takes. The Parties pledge themselves to assist one another in such situations.

3 Any Contracting Party may waive its rights under paragraph (2) at the time of, or subsequent to ratification of, or accession to this Convention.

## Article VI

1 Each Contracting Party shall designate an appropriate authority or authorities to:

- (a) issue special permits which shall be required prior to, and for, the dumping of matter listed in [annex II](#) and in the circumstances provided for in article V(2);

(b) issue general permits which shall be required prior to, and for, the dumping of all other matter;

(c) keep records of the nature and quantities of all matter permitted to be dumped and the location, time and method of dumping;

(d) monitor individually, or in collaboration with other Parties and competent international organizations, the condition of the seas for the purposes of this Convention.

2 The appropriate authority or authorities of a Contracting Party shall issue prior special or general permits in accordance with paragraph (1) in respect of matter intended for dumping:

(a) loaded in its territory;

(b) loaded by a vessel or aircraft registered in its territory or flying its flag, when the loading occurs in the territory of a State not party to this Convention.

3 In issuing permits under subparagraphs (1)(a) and (b) above, the appropriate authority or authorities shall comply with [annex III](#), together with such additional criteria, measures and requirements as they may consider relevant.

4 Each Contracting Party, directly or through a Secretariat established under a regional agreement, shall report to the Organization, and where appropriate to other Parties, the information specified in subparagraphs (c) and (d) of paragraph (1) above, and the criteria, measures and requirements it adopts in accordance with paragraph (3) above. The procedure to be followed and the nature of such reports shall be agreed by the Parties in consultation.

## **Article VII**

1 Each Contracting Party shall apply the measures required to implement the present Convention to all:

(a) vessels and aircraft registered in its territory or flying its flag;

(b) vessels and aircraft loading in its territory or territorial seas, matter which is to be dumped;

(c) vessels and aircraft and fixed or floating platforms under its jurisdiction believed to be engaged in dumping.

2 Each Party shall take in its territory appropriate measures to prevent and punish conduct in contravention of the provisions of this Convention.

3 The Parties agree to co-operate in the development of procedures for the effective application of this Convention particularly on the high seas, including procedures for the reporting of vessels and aircraft observed dumping in contravention of the Convention.

4 This Convention shall not apply to those vessels and aircraft entitled to sovereign immunity under international law. However, each Party shall ensure by the adoption of appropriate measures that such vessels and aircraft owned or operated by it act in a manner consistent with the object and purpose of this Convention, and shall inform the Organization accordingly.

5 Nothing in this Convention shall affect the right of each Party to adopt other measures, in accordance with the principles of international law, to prevent dumping at sea.

### **Article VIII**

In order to further the objectives of this Convention, the Contracting Parties with common interests to protect in the marine environment in a given geographical area shall endeavour, taking into account characteristic regional features, to enter into regional agreements consistent with this Convention for the prevention of pollution, especially by dumping. The Contracting Parties to the present Convention shall endeavour to act consistently with the objectives and provisions of such regional agreements, which shall be notified to them by the Organization. Contracting Parties shall seek to co-operate with the Parties to regional agreements in order to develop harmonized procedures to be followed by Contracting Parties to the different conventions concerned. Special attention shall be given to co-operation in the field of monitoring and scientific research.

### **Article IX**

The Contracting Parties shall promote, through collaboration within the Organization and other international bodies, support for those Parties which request it for:

- (a) the training of scientific and technical personnel;
- (b) the supply of necessary equipment and facilities for research and monitoring;
- (c) the disposal and treatment of waste and other measures to prevent or mitigate pollution caused by dumping;

preferably within the countries concerned, so furthering the aims and purposes of this Convention.

### **Article X**

In accordance with the principles of international law regarding State responsibility for damage to the environment of other States or to any other area of the environment, caused by dumping of wastes and other matter of all kinds, the Contracting Parties undertake to develop procedures for the assessment of liability and the settlement of disputes regarding dumping.

### **Article XI**

The Contracting Parties shall at their first consultative meeting consider procedures for the settlement of disputes concerning the interpretation and application of this Convention.

### **Article XII**

The Contracting Parties pledge themselves to promote, within the competent specialized agencies and other international bodies, measures to protect the marine environment against pollution caused by:

- (a) hydrocarbons, including oil and their wastes;
- (b) other noxious or hazardous matter transported by vessels for purposes other than dumping;

- (c) wastes generated in the course of operation of vessels, aircraft, platforms and other man-made structures at sea;
- (d) radioactive pollutants from all sources, including vessels;
- (e) agents of chemical and biological warfare;
- (f) wastes or other matter directly arising from, or related to the exploration, exploitation and associated offshore processing of sea-bed mineral resources.

The Parties will also promote, within the appropriate international organization, the codification of signals to be used by vessels engaged in dumping.

### **Article XIII**

Nothing in this Convention shall prejudice the codification and development of the law of the sea by the United Nations Conference on the Law of the Sea convened pursuant to resolution 2750 C(XXV) of the General Assembly of the United Nations nor the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction. The Contracting Parties agree to consult at a meeting to be convened by the Organization after the Law of the Sea Conference, and in any case not later than 1976, with a view to defining the nature and extent of the right and the responsibility of a coastal State to apply the Convention in a zone adjacent to its coast.

### **Article XIV**

1 The Government of the United Kingdom of Great Britain and Northern Ireland as a depositary shall call a meeting of the Contracting Parties not later than three months after the entry into force of this Convention to decide on organizational matters.

2 The Contracting Parties shall designate a competent Organization existing at the time of that meeting to be responsible for Secretariat duties in relation to this Convention. Any Party to this Convention not being a member of this Organization shall make an appropriate contribution to the expenses incurred by the Organization in performing these duties.

3 The Secretariat duties of the Organization shall include:

- (a) the convening of consultative meetings of the Contracting Parties not less frequently than once every two years and of special meetings of the Parties at any time on the request of two thirds of the Parties;
- (b) preparing and assisting, in consultation with the Contracting Parties and appropriate international organizations, in the development and implementation of procedures referred to in subparagraph (4)(e) of this article;
- (c) considering enquiries by, and information from the Contracting Parties, consulting with them and with the appropriate international organizations, and providing recommendations to the Parties on questions related to, but not specifically covered by the Convention;
- (d) conveying to the Parties concerned all notifications received by the Organization in accordance with articles IV(3), V(1) and (2), VI(4), XV, XX and XXI.

Prior to the designation of the Organization these functions shall, as necessary, be performed by the depositary, who for this purpose shall be the Government of the United Kingdom of Great Britain and Northern Ireland.

4 Consultative or special meetings of the Contracting Parties shall keep under continuing review the implementation of this Convention and may, inter alia:

- (a) review and adopt amendments to this Convention and its annexes in accordance with article XV;
- (b) invite the appropriate scientific body or bodies to collaborate with and to advise the Parties or the Organization on any scientific or technical aspect relevant to this Convention, including particularly the content of the annexes;
- (c) receive and consider reports made pursuant to article VI(4);
- (d) promote co-operation with and between regional organizations concerned with the prevention of marine pollution
- (e) develop or adopt, in consultation with appropriate international organizations, procedures referred to in article V(2), including basic criteria for determining exceptional and emergency situations, and procedures for consultative advice and the safe disposal of matter in such circumstances, including the designation of appropriate dumping areas, and recommend accordingly;
- (f) consider any additional action that may be required.

5 The Contracting Parties at their first consultative meeting shall establish rules of procedure as necessary.

## **Article XV**

1 (a) At meetings of the Contracting Parties called in accordance with article XIV amendments to this Convention may be adopted by a two-thirds majority of those present. An amendment shall enter into force for the Parties which have accepted it on the sixtieth day after two thirds of the Parties shall have deposited an instrument of acceptance of the amendment with the Organization. Thereafter the amendment shall enter into force for any other Party 30 days after that Party deposits its instrument of acceptance of the amendment.

(b) The Organization shall inform all Contracting Parties of any request made for a special meeting under article XIV and of any amendments adopted at meetings of the Parties and of the date on which each such amendment enters into force for each Party.

2 Amendments to the annexes will be based on scientific or technical considerations. Amendments to the annexes approved by a two-thirds majority of those present at a meeting called in accordance with article XIV shall enter into force for each Contracting Party immediately on notification of its acceptance to the Organization and 100 days after approval by the meeting for all other Parties except for those which before the end of the 100 days make a declaration that they are not able to accept the amendment at that time. Parties should endeavour to signify their acceptance of an amendment to the Organization as soon as possible after approval at a meeting. A Party may

at any time substitute an acceptance for a previous declaration of objection and the amendment previously objected to shall thereupon enter into force for that Party.

3 An acceptance or declaration of objection under this article shall be made by the deposit of an instrument with the Organization. The Organization shall notify all Contracting Parties of the receipt of such instruments.

4 Prior to the designation of the Organization, the secretarial functions herein attributed to it shall be performed temporarily by the Government of the United Kingdom of Great Britain and Northern Ireland, as one of the depositaries of this Convention.

## **Article XVI**

This Convention shall be open for signature by any State at London, Mexico City, Moscow and Washington from 29 December 1972 until 31 December 1973.

## **Article XVII**

This Convention shall be subject to ratification. The instruments of ratification shall be deposited with the Governments of Mexico, the Russian Federation,\* the United Kingdom of Great Britain and Northern Ireland, and the United States of America.

## **Article XVIII**

After 31 December 1973, this Convention shall be open for accession by any State. The instruments of accession shall be deposited with the Governments of Mexico, the Russian Federation,{ the United Kingdom of Great Britain and Northern Ireland, and the United States of America.

## **Article XIX**

1 This Convention shall enter into force on the thirtieth day following the date of deposit of the fifteenth instrument of ratification or accession.

2 For each Contracting Party ratifying or acceding to the Convention after the deposit of the fifteenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such Party of its instrument of ratification or accession.

## **Article XX**

The depositaries shall inform Contracting Parties:

(a) of signatures to this Convention and of the deposit of instruments of ratification, accession or withdrawal, in accordance with articles XVI, XVII, XVIII and XXI, and

(b) of the date on which this Convention will enter into force, in accordance with article XIX.



## **Article XXI**

Any Contracting Party may withdraw from this Convention by giving six months' notice in writing to a depositary, which shall promptly inform all Parties of such notice.

## **Article XXII**

The original of this Convention of which the English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Governments of Mexico, the Russian Federation,\* the United Kingdom of Great Britain and Northern Ireland and the United States of America who shall send certified copies thereof to all States.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

\* DONE in quadruplicate at London, Mexico City, Moscow and Washington, this twenty-ninth day of December, 1972.

\* On 26 December 1991 the Russian Federation continued the membership of the Union of Soviet Socialist Republics.

\*On 26 December 1991 the Russian Federation continued the membership of the Union of Soviet Socialist Republics.

\* Signatures omitted.

## Annex I

- 1 Organohalogen compounds.
- 2 Mercury and mercury compounds.
- 3 Cadmium and cadmium compounds.
- 4 Persistent plastics and other persistent synthetic materials, for example, netting and ropes, which may float or may remain in suspension in the sea in such a manner as to interfere materially with fishing, navigation or other legitimate uses of the sea.
- 5 Crude oil and its wastes, refined petroleum products, petroleum, distillate residues, and any mixtures containing any of these, taken on board for the purpose of dumping.
- 6 Radioactive wastes or other radioactive matter.
- 7 Materials in whatever form (e.g., solids, liquids, semi-liquids, gases or in a living state) produced for biological and chemical warfare.
- 8 With the exception of paragraph 6 above, the preceding paragraphs of this annex do not apply to substances which are rapidly rendered harmless by physical, chemical or biological processes in the sea provided they do not:
  - (i) make edible marine organisms unpalatable, or
  - (ii) endanger human health or that of domestic animals.

The consultative procedure provided for under article XIV should be followed by a Party if there is doubt about the harmlessness of the substance.

9 Except for industrial waste as defined in paragraph 11 below, this annex does not apply to wastes or other materials (e.g., sewage sludge and dredged material) containing the matters referred to in paragraphs 1–5 above as trace contaminants. Such wastes shall be subject to the provisions of [annexes II](#) and [III](#) as appropriate.

Paragraph 6 does not apply to wastes or other materials (e.g., sewage sludge and dredged material) containing de minimis (exempt) levels of radioactivity as defined by the IAEA and adopted by the Contracting Parties. Unless otherwise prohibited by [annex I](#), such wastes shall be subject to the provisions of [annexes II](#) and [III](#) as appropriate.

- 10 (a) Incineration at sea of industrial waste, as defined in paragraph 11 below, and sewage sludge is prohibited.
  - (b) The incineration at sea of any other wastes or other matter requires the issue of a special permit. 11
  - (c) In the issue of special permits for incineration at sea Contracting Parties shall apply regulations as are developed under this Convention.\*

\* Regulations for the control of incineration of wastes and other matter at sea, as adopted in 1978, have not been reproduced in this publication.

(d) For the purpose of this annex:

(i) Marine incineration facility means a vessel, platform, or other man-made structure operating for the purpose of incineration at sea.

(ii) Incineration at sea means the deliberate combustion of wastes or other matter on marine incineration facilities for the purpose of their thermal destruction. Activities incidental to the normal operation of vessels, platforms or other man-made structures are excluded from the scope of this definition.

11 Industrial waste as from 1 January 1996.

For the purposes of this annex:

*Industrial waste* means waste materials generated by manufacturing or processing operations and does not apply to:

(a) dredged material;

(b) sewage sludge;

(c) fish waste, or organic materials resulting from industrial fish processing operations;

(d) vessels and platforms or other man-made structures at sea, provided that material capable of creating floating debris or otherwise contributing to pollution of the marine environment has been removed to the maximum extent;

(e) uncontaminated inert geological materials the chemical constituents of which are unlikely to be released into the marine environment;

(f) uncontaminated organic materials of natural origin.

Dumping of wastes and other matter specified in subparagraphs (a)–(f) above shall be subject to all other provisions of [annex I](#), and to the provisions of [annexes II](#) and [III](#).

This paragraph shall not apply to the radioactive wastes or any other radioactive matter referred to in paragraph 6 of this annex.

12 Within 25 years from the date on which the amendment to paragraph 6 enters into force and at each 25-year interval thereafter, the Contracting Parties shall complete a scientific study relating to all radioactive wastes and other radioactive matter other than high level wastes or matter, taking into account such other factors as the Contracting Parties consider appropriate, and shall review the position of such substances on [annex I](#) in accordance with the procedures set forth in article XV

## Annex II

The following substances and materials requiring special care are listed for the purposes of article VI(1)(a).

A Wastes containing significant amounts of the matters listed below:

arsenic	}	and their compounds
beryllium		
chromium		
copper		
lead		
nickel		
vanadium		
zinc		
organosilicon compounds		
cyanides		

fluorides

pesticides and their by-products not covered in [annex I](#).

B Containers, scrap metal and other bulky wastes liable to sink to the sea bottom which may present a serious obstacle to fishing or navigation.

C In the issue of special permits for the incineration of substances and materials listed in this annex, the Contracting Parties shall apply the Regulations for the control of incineration of wastes and other matter at sea set forth in the addendum to annex I\* and take full account of the Technical guidelines on the control of incineration of wastes and other matter at sea adopted by the Contracting Parties in consultation, to the extent specified in these Regulations and Guidelines.

D Materials which, though of a non-toxic nature, may become harmful due to the quantities in which they are dumped, or which are liable to seriously reduce amenities.

\* Regulations for the control of incineration of wastes and other matter at sea, as adopted in 1978, have not been reproduced in this publication.

## Annex III

Provisions to be considered in establishing criteria governing the issue of permits for the dumping of matter at sea, taking into account article IV(2), include:

### A Characteristics and composition of the matter

- 1 Total amount and average composition of matter dumped (e.g., per year).
- 2 Form, e.g., solid, sludge, liquid, or gaseous.
- 3 Properties: physical (e.g., solubility and density), chemical and biochemical (e.g., oxygen demand, nutrients) and biological (e.g., presence of viruses, bacteria, yeasts, parasites).
- 4 Toxicity.
- 5 Persistence: physical, chemical and biological.
- 6 Accumulation and biotransformation in biological materials or sediments.
- 7 Susceptibility to physical, chemical and biochemical changes and interaction in the aquatic environment with other dissolved organic and inorganic materials.
- 8 Probability of production of taints or other changes reducing marketability of resources (fish, shellfish, etc.).
- 9 In issuing a permit for dumping, Contracting Parties should consider whether an adequate scientific basis exists concerning characteristics and composition of the matter to be dumped to assess the impact of the matter on marine life and on human health.

### B Characteristics of dumping site and method of deposit

- 1 Location (e.g., co-ordinates of the dumping area, depth and distance from the coast), location in relation to other areas (e.g., amenity areas, spawning, nursery and fishing areas and exploitable resources).
- 2 Rate of disposal per specific period (e.g., quantity per day, per week, per month).
- 3 Methods of packaging and containment, if any.
- 4 Initial dilution achieved by proposed method of release.
- 5 Dispersal characteristics (e.g., effects of currents, tides and wind on horizontal transport and vertical mixing).
- 6 Water characteristics (e.g., temperature, pH, salinity, stratification, oxygen indices of pollution-dissolved oxygen (DO), chemical oxygen demand (COD), biochemical oxygen demand (BOD), nitrogen present in organic and mineral form including ammonia, suspended matter, other nutrients and productivity).

7 Bottom characteristics (e.g., topography, geochemical and geological characteristics and biological productivity).

8 Existence and effects of other dumpings which have been made in the dumping area (e.g., heavy metal background reading and organic carbon content).

9 In issuing a permit for dumping, Contracting Parties should consider whether an adequate scientific basis exists for assessing the consequences of such dumping, as outlined in this annex, taking into account seasonal variations.

#### C General considerations and conditions

1 Possible effects on amenities (e.g., presence of floating or stranded material, turbidity, objectionable odour, discoloration and foaming).

2 Possible effects on marine life, fish and shellfish culture, fish stocks and fisheries, seaweed harvesting and culture.

3 Possible effects on other uses of the sea (e.g., impairment of water quality for industrial use, underwater corrosion of structures, interference with ship operations from floating materials, interference with fishing or navigation through deposit of waste or solid objects on the sea floor and protection of areas of special importance for scientific or conservation purposes).

4 The practical availability of alternative land-based methods of treatment, disposal or elimination, or of treatment to render the matter less harmful for dumping at sea.

# **1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (96 Protocol).**

THE CONTRACTING PARTIES TO THIS PROTOCOL,

STRESSING the need to protect the marine environment and to promote the sustainable use and conservation of marine resources,

NOTING in this regard the achievements within the framework of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 and especially the evolution towards approaches based on precaution and prevention,

NOTING FURTHER the contribution in this regard by complementary regional and national instruments which aim to protect the marine environment and which take account of specific circumstances and needs of those regions and States,

REAFFIRMING the value of a global approach to these matters and in particular the importance of continuing co-operation and collaboration between Contracting Parties in implementing the Convention and the Protocol,

RECOGNIZING that it may be desirable to adopt, on a national or regional level, more stringent measures with respect to prevention and elimination of pollution of the marine environment from dumping at sea than are provided for in international conventions or other types of agreements with a global scope,

TAKING INTO ACCOUNT relevant international agreements and actions, especially the United Nations Convention on the Law of the Sea, 1982, the Rio Declaration on Environment and Development and Agenda 21,

RECOGNIZING ALSO the interests and capacities of developing States and in particular small island developing States,

BEING CONVINCED that further international action to prevent, reduce and where practicable eliminate pollution of the sea caused by dumping can and must be taken without delay to protect and preserve the marine environment and to manage human activities in such a manner that the marine ecosystem will continue to sustain the legitimate uses of the sea and will continue to meet the needs of present and future generations,

HAVE AGREED as follows:

## **Article 1**

### Definitions

For the purposes of this Protocol:

- 1 *Convention* means the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, as amended.
- 2 *Organization* means the International Maritime Organization.
- 3 *Secretary-General* means the Secretary-General of the Organization.

4.1 *Dumping* means: .

- .1 any deliberate disposal into the sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea; .
- .2 any deliberate disposal into the sea of vessels, aircraft, platforms or other man-made structures at sea; .
- .3 any storage of wastes or other matter in the sea-bed and the subsoil thereof from vessels, aircraft, platforms or other manmade structures at sea; and .
- .4 any abandonment or toppling at site of platforms or other manmade structures at sea, for the sole purpose of deliberate disposal.

4.2 *Dumping* does not include: .

- .1 the disposal into the sea of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or other man-made structures; .
- .2 placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Protocol; and .
- .3 notwithstanding paragraph 4.1.4, abandonment in the sea of matter (e.g., cables, pipelines and marine research devices) placed for a purpose other than the mere disposal thereof.

4.3 The disposal or storage of wastes or other matter directly arising from, or related to the exploration, exploitation and associated off-shore processing of sea-bed mineral resources is not covered by the provisions of this Protocol.

5.1 *Incineration at sea* means the combustion on board a vessel, platform or other man-made structure at sea of wastes or other matter for the purpose of their deliberate disposal by thermal destruction.

5.2 *Incineration at sea* does not include the incineration of wastes or other matter on board a vessel, platform, or other man-made structure at sea if such wastes or other matter were generated during the normal operation of that vessel, platform or other man-made structure at sea.

6 *Vessels and aircraft* means waterborne or airborne craft of any type whatsoever. This expression includes air-cushioned craft and floating craft, whether self-propelled or not.

7 *Sea* means all marine waters other than the internal waters of States, as well as the sea-bed and subsoil thereof; it does not include sub-sea-bed repositories accessed only from land.

8 *Wastes or other matter* means material and substance of any kind, form or description.

9 *Permit* means permission granted in advance and in accordance with relevant measures adopted pursuant to article 4.1.2 or 8.2.



10 *Pollution* means the introduction, directly or indirectly, by human activity, of wastes or other matter into the sea which results or is likely to result in such deleterious effects as harm to living resources and marine ecosystems, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of seawater and reduction of amenities.

## **Article 2**

### Objectives

Contracting Parties shall individually and collectively protect and preserve the marine environment from all sources of pollution and take effective measures, according to their scientific, technical and economic capabilities, to prevent, reduce and where practicable eliminate pollution caused by dumping or incineration at sea of wastes or other matter. Where appropriate, they shall harmonize their policies in this regard.

## **Article 3**

### General obligations

1 In implementing this Protocol, Contracting Parties shall apply a precautionary approach to environmental protection from dumping of wastes or other matter whereby appropriate preventative measures are taken when there is reason to believe that wastes or other matter introduced into the marine environment are likely to cause harm even when there is no conclusive evidence to prove a causal relation between inputs and their effects.

2 Taking into account the approach that the polluter should, in principle, bear the cost of pollution, each Contracting Party shall endeavour to promote practices whereby those it has authorized to engage in dumping or incineration at sea bear the cost of meeting the pollution prevention and control requirements for the authorized activities, having due regard to the public interest.

3 In implementing the provisions of this Protocol, Contracting Parties shall act so as not to transfer, directly or indirectly, damage or likelihood of damage from one part of the environment to another or transform one type of pollution into another. 19

4 No provision of this Protocol shall be interpreted as preventing Contracting Parties from taking, individually or jointly, more stringent measures in accordance with international law with respect to the prevention, reduction and where practicable elimination of pollution.

## **Article 4** Dumping of wastes or other matter

1.1 Contracting Parties shall prohibit the dumping of any wastes or other matter with the exception of those listed in [annex 1](#).

1.2 The dumping of wastes or other matter listed in [annex 1](#) shall require a permit. Contracting Parties shall adopt administrative or legislative measures to ensure that issuance of permits and permit conditions comply with provisions of [annex 2](#). Particular attention shall be paid to opportunities to avoid dumping in favour of environmentally preferable alternatives.

2 No provision of this Protocol shall be interpreted as preventing a Contracting Party from prohibiting, insofar as that Contracting Party is concerned, the dumping of wastes or other matter mentioned in [annex 1](#). That Contracting Party shall notify the Organization of such measures.

## **Article 5**

### Incineration at sea

Parties shall prohibit incineration at sea of wastes or other matter.

## **Article 6**

### Export of wastes or other matter

Contracting Parties shall not allow the export of wastes or other matter to other countries for dumping or incineration at sea.

## **Article 7**

### Internal waters

1 Notwithstanding any other provision of this Protocol, this Protocol shall relate to internal waters only to the extent provided for in paragraphs 2 and 3.

2 Each Contracting Party shall at its discretion either apply the provisions of this Protocol or adopt other effective permitting and regulatory measures to control the deliberate disposal of wastes or other matter in marine internal waters where such disposal would be dumping or incineration at sea within the meaning of article 1, if conducted at sea.

3 Each Contracting Party should provide the Organization with information on legislation and institutional mechanisms regarding implementation, compliance and enforcement in marine internal waters. Contracting Parties should also use their best efforts to provide on a voluntary basis summary reports on the type and nature of the materials dumped in marine internal waters.

## **Article 8**

### Exceptions

1 The provisions of articles 4.1 and 5 shall not apply when it is necessary to secure the safety of human life or of vessels, aircraft, platforms or other man-made structures at sea in cases of force majeure caused by stress of weather, or in any case which constitutes a danger to human life or a real threat to vessels, aircraft, platforms or other man-made structures at sea, if dumping or incineration at sea appears to be the only way of averting the threat and if there is every probability that the damage consequent upon such dumping or incineration at sea will be less than would otherwise occur. Such dumping or incineration at sea shall be conducted so as to minimize the likelihood of damage to human or marine life and shall be reported forthwith to the Organization.

2 A Contracting Party may issue a permit as an exception to articles 4.1 and 5, in emergencies posing an unacceptable threat to human health, safety or the marine environment and admitting of no other feasible solution. Before doing so the Contracting Party shall consult any other country or countries that are likely to be affected and the Organization which, after consulting other Contracting Parties and competent international organizations as appropriate, shall, in accordance with article 18.6 promptly recommend to the Contracting Party the most appropriate procedures to adopt. The Contracting Party shall follow these recommendations to the maximum extent feasible consistent with the time within which action must be taken and with the general obligation to avoid damage to the marine environment and shall inform the Organization of the action it takes. The Contracting Parties pledge themselves to assist one another in such situations.

3 Any Contracting Party may waive its rights under paragraph 2 at the time of, or subsequent to ratification of, or accession to this Protocol.

## **Article 9**

### Issuance of permits and reporting

- 1 Each Contracting Party shall designate an appropriate authority or authorities to:
  - .1 issue permits in accordance with this Protocol; .
  - .2 keep records of the nature and quantities of all wastes or other matter for which dumping permits have been issued and where practicable the quantities actually dumped and the location, time and method of dumping; and .
  - .3 monitor individually, or in collaboration with other Contracting Parties and competent international organizations, the condition of the sea for the purposes of this Protocol. 21
- 2 The appropriate authority or authorities of a Contracting Party shall issue permits in accordance with this Protocol in respect of wastes or other matter intended for dumping or, as provided for in article 8.2, incineration at sea:
  - .1 loaded in its territory; and .
  - .2 loaded onto a vessel or aircraft registered in its territory or flying its flag, when the loading occurs in the territory of a State not a Contracting Party to this Protocol.
- 3 In issuing permits, the appropriate authority or authorities shall comply with the requirements of article 4, together with such additional criteria, measures and requirements as they may consider relevant.
- 4 Each Contracting Party, directly or through a secretariat established under a regional agreement, shall report to the Organization and where appropriate to other Contracting Parties:
  - .1 the information specified in paragraphs 1.2 and 1.3; .
  - .2 the administrative and legislative measures taken to implement the provisions of this Protocol, including a summary of enforcement measures; and .
  - .3 the effectiveness of the measures referred to in paragraph 4.2 and any problems encountered in their application.

The information referred to in paragraphs 1.2 and 1.3 shall be submitted on an annual basis. The information referred to in paragraphs 4.2 and 4.3 shall be submitted on a regular basis.

- 5 Reports submitted under paragraphs 4.2 and 4.3 shall be evaluated by an appropriate subsidiary body as determined by the Meeting of Contracting Parties. This body will report its conclusions to an appropriate Meeting or Special Meeting of Contracting Parties.

## **Article 10**

### Application and enforcement

- 1 Each Contracting Party shall apply the measures required to implement this Protocol to all:
  - .1 vessels and aircraft registered in its territory or flying its flag; .

.2 vessels and aircraft loading in its territory the wastes or other matter which are to be dumped or incinerated at sea; and .

.3 vessels, aircraft and platforms or other man-made structures believed to be engaged in dumping or incineration at sea in areas within which it is entitled to exercise jurisdiction in accordance with international law.

2 Each Contracting Party shall take appropriate measures in accordance with international law to prevent and if necessary punish acts contrary to the provisions of this Protocol.

3 Contracting Parties agree to co-operate in the development of procedures for the effective application of this Protocol in areas beyond the jurisdiction of any State, including procedures for the reporting of vessels and aircraft observed dumping or incinerating at sea in contravention of this Protocol.

4 This Protocol shall not apply to those vessels and aircraft entitled to sovereign immunity under international law. However, each Contracting Party shall ensure by the adoption of appropriate measures that such vessels and aircraft owned or operated by it act in a manner consistent with the object and purpose of this Protocol and shall inform the Organization accordingly.

5 A State may, at the time it expresses its consent to be bound by this Protocol, or at any time thereafter, declare that it shall apply the provisions of this Protocol to its vessels and aircraft referred to in paragraph 4, recognizing that only that State may enforce those provisions against such vessels and aircraft.

## **Article 11**

### Compliance procedures

1 No later than two years after the entry into force of this Protocol, the Meeting of Contracting Parties shall establish those procedures and mechanisms necessary to assess and promote compliance with this Protocol. Such procedures and mechanisms shall be developed with a view to allowing for the full and open exchange of information, in a constructive manner.

2 After full consideration of any information submitted pursuant to this Protocol and any recommendations made through procedures or mechanisms established under paragraph 1, the Meeting of Contracting Parties may offer advice, assistance or co-operation to Contracting Parties and non-Contracting Parties.

## **Article 12**

### Regional co-operation

In order to further the objectives of this Protocol, Contracting Parties with common interests to protect the marine environment in a given geographical area shall endeavour, taking into account characteristic regional features, to enhance regional co-operation including the conclusion of regional agreements consistent with this Protocol for the prevention, reduction and where practicable elimination of pollution caused by dumping or incineration at sea of wastes or other matter. Contracting Parties shall seek to co-operate with the parties to regional agreements in order to develop harmonized procedures to be followed by Contracting Parties to the different conventions concerned.

## **Article 13**

## Technical co-operation and assistance

1 Contracting Parties shall, through collaboration within the Organization and in co-ordination with other competent international organizations, promote bilateral and multilateral support for the prevention, reduction and where practicable elimination of pollution caused by dumping as provided for in this Protocol to those Contracting Parties that request it for: .

.1 training of scientific and technical personnel for research, monitoring and enforcement, including as appropriate the supply of necessary equipment and facilities, with a view to strengthening national capabilities; .

.2 advice on implementation of this Protocol; .

.3 information and technical co-operation relating to waste minimization and clean production processes; .

.4 information and technical co-operation relating to the disposal and treatment of waste and other measures to prevent, reduce and where practicable eliminate pollution caused by dumping; and .

.5 access to and transfer of environmentally sound technologies and corresponding know-how, in particular to developing countries and countries in transition to market economies, on favourable terms, including on concessional and preferential terms, as mutually agreed, taking into account the need to protect intellectual property rights as well as the special needs of developing countries and countries in transition to market economies.

2 The Organization shall perform the following functions: .

.1 forward requests from Contracting Parties for technical cooperation to other Contracting Parties, taking into account such factors as technical capabilities; .

.2 co-ordinate requests for assistance with other competent international organizations, as appropriate; and .

.3 subject to the availability of adequate resources, assist developing countries and those in transition to market economies, which have declared their intention to become Contracting Parties to this Protocol, to examine the means necessary to achieve full implementation.

## **Article 14**

### Scientific and technical research

1 Contracting Parties shall take appropriate measures to promote and facilitate scientific and technical research on the prevention, reduction and where practicable elimination of pollution by dumping and other sources of marine pollution relevant to this Protocol. In particular, such research should include observation, measurement, evaluation and analysis of pollution by scientific methods.

2 Contracting Parties shall, to achieve the objectives of this Protocol, promote the availability of relevant information to other Contracting Parties who request it on: .

- .1 scientific and technical activities and measures undertaken in accordance with this Protocol;
- .2 marine scientific and technological programmes and their objectives; and .
- .3 the impacts observed from the monitoring and assessment conducted pursuant to article 9.1.3.

## **Article 15**

### Responsibility and liability

In accordance with the principles of international law regarding State responsibility for damage to the environment of other States or to any other area of the environment, the Contracting Parties undertake to develop procedures regarding liability arising from the dumping or incineration at sea of wastes or other matter.

## **Article 16**

### Settlement of disputes

1 Any disputes regarding the interpretation or application of this Protocol shall be resolved in the first instance through negotiation, mediation or conciliation, or other peaceful means chosen by parties to the dispute.

2 If no resolution is possible within twelve months after one Contracting Party has notified another that a dispute exists between them, the dispute shall be settled, at the request of a party to the dispute, by means of the Arbitral procedure set forth in [annex 3](#), unless the parties to the dispute agree to use one of the procedures listed in paragraph 1 of Article 287 of the 1982 United Nations Convention on the Law of the Sea. The parties to the dispute may so agree, whether or not they are also States Parties to the 1982 United Nations Convention on the Law of the Sea.

3 In the event an agreement to use one of the procedures listed in paragraph 1 of Article 287 of the 1982 United Nations Convention on the Law of the Sea is reached, the provisions set forth in Part XV of that Convention that are related to the chosen procedure would also apply, mutatis mutandis.

4 The twelve month period referred to in paragraph 2 may be extended for another twelve months by mutual consent of the parties concerned.

5 Notwithstanding paragraph 2, any State may, at the time it expresses its consent to be bound by this Protocol, notify the Secretary-General that, when it is a party to a dispute about the interpretation or application of article 3.1 or 3.2, its consent will be required before the dispute may be settled by means of the Arbitral procedure set forth in [annex 3](#).

## **Article 17**

### International co-operation

Contracting Parties shall promote the objectives of this Protocol within the competent international organizations.

## **Article 18**

## Meetings of Contracting Parties

1 Meetings of Contracting Parties or Special Meetings of Contracting Parties shall keep under continuing review the implementation of this Protocol and evaluate its effectiveness with a view to identifying means of strengthening action, where necessary, to prevent, reduce and where practicable eliminate pollution caused by dumping and incineration at sea of wastes or other matter. To these ends, Meetings of Contracting Parties or Special Meetings of Contracting Parties may: .

- .1 review and adopt amendments to this Protocol in accordance with articles 21 and 22; .
- .2 establish subsidiary bodies, as required, to consider any matter with a view to facilitating the effective implementation of this Protocol; .
- .3 invite appropriate expert bodies to advise the Contracting Parties or the Organization on matters relevant to this Protocol; .
- .4 promote co-operation with competent international organizations concerned with the prevention and control of pollution; .
- .5 consider the information made available pursuant to article 9.4; .
- .6 develop or adopt, in consultation with competent international organizations, procedures referred to in article 8.2, including basic criteria for determining exceptional and emergency situations, and procedures for consultative advice and the safe disposal of matter at sea in such circumstances; .
- .7 consider and adopt resolutions; and .
- .8 consider any additional action that may be required.

2 The Contracting Parties at their first Meeting shall establish rules of procedure as necessary.

## **Article 19**

### Duties of the Organization

1 The Organization shall be responsible for Secretariat duties in relation to this Protocol. Any Contracting Party to this Protocol not being a member of this Organization shall make an appropriate contribution to the expenses incurred by the Organization in performing these duties.

2 Secretariat duties necessary for the administration of this Protocol include: .

- .1 convening Meetings of Contracting Parties once per year, unless otherwise decided by Contracting Parties, and Special Meetings of Contracting Parties at any time at the request of two thirds of the Contracting Parties; .
- .2 providing advice on request on the implementation of this Protocol and on guidance and procedures developed there under;
- .3 considering enquiries by, and information from Contracting Parties, consulting with them and with the competent international organizations, and providing recommendations to Contracting Parties on questions related to, but not specifically covered by, this Protocol;

.4 preparing and assisting, in consultation with Contracting Parties and the competent international organizations, in the development and implementation of procedures referred to in article 18.6;

.5 conveying to the Contracting Parties concerned all notifications received by the Organization in accordance with this Protocol; and

.6 preparing, every two years, a budget and a financial account for the administration of this Protocol which shall be distributed to all Contracting Parties.

3 The Organization shall, subject to the availability of adequate resources, in addition to the requirements set out in article 13.2.3:

.1 collaborate in assessments of the state of the marine environment; and

.2 co-operate with competent international organizations concerned with the prevention and control of pollution.

## **Article 20**

### Annexes

Annexes to this Protocol form an integral part of this Protocol.

## **Article 21**

### Amendment of the Protocol

1 Any Contracting Party may propose amendments to the articles of this Protocol. The text of a proposed amendment shall be communicated to Contracting Parties by the Organization at least six months prior to its consideration at a Meeting of Contracting Parties or a Special Meeting of Contracting Parties.

2 Amendments to the articles of this Protocol shall be adopted by a two thirds majority vote of the Contracting Parties which are present and voting at the Meeting of Contracting Parties or Special Meeting of Contracting Parties designated for this purpose.

3 An amendment shall enter into force for the Contracting Parties which have accepted it on the sixtieth day after two thirds of the Contracting Parties shall have deposited an instrument of acceptance of the amendment with the Organization. Thereafter the amendment shall enter into force for any other Contracting Party on the sixtieth day after the date on which that Contracting Party has deposited its instrument of acceptance of the amendment. 27

4 The Secretary-General shall inform Contracting Parties of any amendments adopted at Meetings of Contracting Parties and of the date on which such amendments enter into force generally and for each Contracting Party.

5 After entry into force of an amendment to this Protocol, any State that becomes a Contracting Party to this Protocol shall become a Contracting Party to this Protocol as amended, unless two thirds of the Contracting Parties present and voting at the Meeting or Special Meeting of Contracting Parties adopting the amendment agree otherwise.

## **Article 22**

### Amendment of the annexes



1 Any Contracting Party may propose amendments to the annexes to this Protocol. The text of a proposed amendment shall be communicated to Contracting Parties by the Organization at least six months prior to its consideration by a Meeting of Contracting Parties or Special Meeting of Contracting Parties.

2 Amendments to the annexes other than [annex 3](#) will be based on scientific or technical considerations and may take into account legal, social and economic factors as appropriate. Such amendments shall be adopted by a two-thirds majority vote of the Contracting Parties present and voting at a Meeting of Contracting Parties or Special Meeting of Contracting Parties designated for this purpose.

3 The Organization shall without delay communicate to Contracting Parties amendments to the annexes that have been adopted at a Meeting of Contracting Parties or Special Meeting of Contracting Parties.

4 Except as provided in paragraph 7, amendments to the annexes shall enter into force for each Contracting Party immediately on notification of its acceptance to the Organization or 100 days after the date of their adoption at a Meeting of Contracting Parties, if that is later, except for those Contracting Parties which before the end of the 100 days make a declaration that they are not able to accept the amendment at that time. A Contracting Party may at any time substitute an acceptance for a previous declaration of objection and the amendment previously objected to shall thereupon enter into force for that Contracting Party.

5 The Secretary-General shall without delay notify Contracting Parties of instruments of acceptance or objection deposited with the Organization.

6 A new annex or an amendment to an annex which is related to an amendment to the articles of this Protocol shall not enter into force until such time as the amendment to the articles of this Protocol enters into force.

7 With regard to amendments to [annex 3](#) concerning the Arbitral procedure and with regard to the adoption and entry into force of new annexes the procedures on amendments to the articles of this Protocol shall apply.

## **Article 23**

Relationship between the Protocol and the Convention

This Protocol will supersede the Convention as between Contracting Parties to this Protocol which are also Parties to the Convention.

## **Article 24**

Signature, ratification, acceptance, approval and accession

1 This Protocol shall be open for signature by any State at the Headquarters of the Organization from 1 April 1997 to 31 March 1998 and shall thereafter remain open for accession by any State.

2 States may become Contracting Parties to this Protocol by:

- .1 signature not subject to ratification, acceptance or approval; or

.2 signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

.3 accession.

3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

## **Article 25**

Entry into force

1 This Protocol shall enter into force on the thirtieth day following the date on which: .

.1 at least 26 States have expressed their consent to be bound by this Protocol in accordance with article 24; and

.2 at least 15 Contracting Parties to the Convention are included in the number of States referred to in paragraph 1.1.

2 For each State that has expressed its consent to be bound by this Protocol in accordance with article 24 following the date referred to in paragraph 1, this Protocol shall enter into force on the thirtieth day after the date on which such State expressed its consent.

## **Article 26**

Transitional period

1 Any State that was not a Contracting Party to the Convention before 31 December 1996 and that expresses its consent to be bound by this Protocol prior to its entry into force or within five years after its entry into force may, at the time it expresses its consent, notify the Secretary-General that, for reasons described in the notification, it will not be able to comply with specific provisions of this Protocol other than those provided in paragraph 2, for a transitional period that shall not exceed that described in paragraph 4. 29.

2 No notification made under paragraph 1 shall affect the obligations of a Contracting Party to this Protocol with respect to incineration at sea or the dumping of radioactive wastes or other radioactive matter.

3 Any Contracting Party to this Protocol that has notified the Secretary-General under paragraph 1 that, for the specified transitional period, it will not be able to comply, in part or in whole, with article 4.1 or article 9 shall nonetheless during that period prohibit the dumping of wastes or other matter for which it has not issued a permit, use its best efforts to adopt administrative or legislative measures to ensure that issuance of permits and permit conditions comply with the provisions of [annex 2](#), and notify the Secretary-General of any permits issued.

4 Any transitional period specified in a notification made under paragraph 1 shall not extend beyond five years after such notification is submitted.

5 Contracting Parties that have made a notification under paragraph 1 shall submit to the first Meeting of Contracting Parties occurring after deposit of their instrument of ratification, acceptance, approval or accession a programme and timetable to achieve full compliance with this Protocol, together with any requests for relevant technical cooperation and assistance in accordance with article 13 of this Protocol.

6 Contracting Parties that have made a notification under paragraph 1 shall establish procedures and mechanisms for the transitional period to implement and monitor submitted programmers designed to achieve full compliance with this Protocol. A report on progress toward compliance shall be submitted by such Contracting Parties to each Meeting of Contracting Parties held during their transitional period for appropriate action.

## **Article 27**

### Withdrawal

1 Any Contracting Party may withdraw from this Protocol at any time after the expiry of two years from the date on which this Protocol enters into force for that Contracting Party.

2 Withdrawal shall be effected by the deposit of an instrument of withdrawal with the Secretary-General.

3 A withdrawal shall take effect one year after receipt by the Secretary- General of the instrument of withdrawal or such longer period as may be specified in that instrument.

## **Article 28**

### Depositary

1 This Protocol shall be deposited with the Secretary-General.

2 In addition to the functions specified in articles 10.5, 16.5, 21.4, 22.5 and 26.5, the Secretary-General shall:

.1 inform all States which have signed this Protocol or acceded thereto of:

.1 each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

.2 the date of entry into force of this Protocol; and

.3 the deposit of any instrument of withdrawal from this Protocol together with the date on which it was received and the date on which the withdrawal takes effect.

.2 transmit certified copies of this Protocol to all States which have signed this Protocol or acceded thereto.

3 As soon as this Protocol enters into force, a certified true copy thereof shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

## **Article 29**

### Authentic texts

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Protocol.\*

DONE AT LONDON, this seventh day of November, one thousand nine hundred and ninety-six.

\* Signatures omitted. 31

## **Annex 1 - Wastes or other matter that may be considered for dumping**

1 The following wastes or other matter are those that may be considered for dumping being mindful of the objectives and general obligations of this Protocol set out in articles 2 and 3:

- .1 dredged material;
- .2 sewage sludge;
- .3 fish waste, or material resulting from industrial fish processing operations;
- .4 vessels and platforms or other man-made structures at sea;
- .5 inert, inorganic geological material;
- .6 organic material of natural origin; and
- .7 bulky items primarily comprising iron, steel, concrete and similarly unarmful 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.

2 The wastes or other matter listed in paragraphs 1.4 and 1.7 may be considered for dumping, provided that material capable of creating floating debris or otherwise contributing to pollution of the marine environment has been removed to the maximum extent and provided that the material dumped poses no serious obstacle to fishing or navigation.

3 Notwithstanding the above, materials listed in paragraphs 1.1 to 1.7 containing levels of radioactivity greater than de minimis (exempt) concentrations as defined by the IAEA and adopted by Contracting Parties, shall not be considered eligible for dumping; provided further that within 25 years of 20 February 1994, and at each 25-year interval thereafter, Contracting Parties shall complete a scientific study relating to all radioactive wastes and other radioactive matter other than high-level wastes or matter, taking into account such other factors as Contracting Parties consider appropriate and shall review the prohibition on dumping of such substances in accordance with the procedures set forth in article 22.

## **Annex 2 - Assessment of wastes or other matter that may be considered for dumping**

### **General**

1 The acceptance of dumping under certain circumstances shall not remove the obligations under this annex to make further attempts to reduce the necessity for dumping.

### **Waste prevention audit**

2 The initial stages in assessing alternatives to dumping should, as appropriate, include an evaluation of:

- .1 types, amounts and relative hazard of wastes generated;
- .2 details of the production process and the sources of wastes within that process; and
- .3 feasibility of the following waste reduction/prevention techniques:
  - .1 product reformulation;
  - .2 clean production technologies;
  - .3 process modification;
  - .4 input substitution; and
  - .5 on-site, closed-loop recycling.

3 In general terms, if the required audit reveals that opportunities exist for waste prevention at source, an applicant is expected to formulate and implement a waste prevention strategy, in collaboration with relevant local and national agencies, which includes specific waste reduction targets and provision for further waste prevention audits to ensure that these targets are being met. Permit issuance or renewal decisions shall assure compliance with any resulting waste reduction and prevention requirements.

4 For dredged material and sewage sludge, the goal of waste management should be to identify and control the sources of contamination. This should be achieved through implementation of waste prevention strategies and requires collaboration between the relevant local and national agencies involved with the control of point and non-point sources of pollution. Until this objective is met, the problems of contaminated dredged material may be addressed by using disposal management techniques at sea or on land.

### **Consideration of waste management options**

5 Applications to dump wastes or other matter shall demonstrate that appropriate consideration has been given to the following hierarchy of waste management options, which implies an order of increasing environmental impact:

- .1 re-use;
- .2 off-site recycling;
- .3 destruction of hazardous constituents;
- .4 treatment to reduce or remove the hazardous constituents; and
- .5 disposal on land, into air and in water.

6 A permit to dump wastes or other matter shall be refused if the permitting authority determines that appropriate opportunities exist to reuse, recycle or treat the waste without undue risks to human health or the environment or disproportionate costs. The practical availability of other means of disposal should be considered in the light of a comparative risk assessment involving both dumping and the alternatives.

### **Chemical, physical and biological properties**

7 A detailed description and characterization of the waste is an essential precondition for the consideration of alternatives and the basis for a decision as to whether a waste may be dumped. If a waste is so poorly characterized that proper assessment cannot be made of its potential impacts on human health and the environment, that waste shall not be dumped.

8 Characterization of the wastes and their constituents shall take into account:

- .1 origin, total amount, form and average composition;
- .2 properties: physical, chemical, biochemical and biological;
- .3 toxicity;
- .4 persistence: physical, chemical and biological; and
- .5 accumulation and biotransformation in biological materials or sediments.

### **Action list**

9 Each Contracting Party shall develop a national Action list to provide a mechanism for screening candidate wastes and their constituents on the basis of their potential effects on human health and the marine environment. In selecting substances for consideration in an Action list, priority shall be given to toxic, persistent and bioaccumulative substances from anthropogenic sources (e.g., cadmium, mercury, organohalogenes, petroleum hydrocarbons, and, whenever relevant, arsenic, lead, copper, zinc, beryllium, chromium, nickel and vanadium, organosilicon compounds, cyanides, fluorides and pesticides or their by-products other than organohalogenes). An Action list can also be used as a trigger mechanism for further waste prevention considerations.

10 An Action list shall specify an upper level and may also specify a lower level. The upper level should be set so as to avoid acute or chronic effects on human health or on sensitive marine organisms representative of the marine ecosystem. Application of an Action list will result in three possible categories of waste:

.1 wastes which contain specified substances, or which cause biological responses, exceeding the relevant upper level shall not be dumped, unless made acceptable for dumping through the use of management techniques or processes;

.2 wastes which contain specified substances, or which cause biological responses, below the relevant lower levels should be considered to be of little environmental concern in relation to dumping; and

.3 wastes which contain specified substances, or which cause biological responses, below the upper level but above the lower level require more detailed assessment before their suitability for dumping can be determined.

### **Dump-site selection**

11 Information required to select a dump-site shall include:

.1 physical, chemical and biological characteristics of the water column and the sea-bed;

.2 location of amenities, values and other uses of the sea in the area under consideration;

.3 assessment of the constituent fluxes associated with dumping in relation to existing fluxes of substances in the marine environment; and

.4 economic and operational feasibility.

### **Assessment of potential effects**

12 Assessment of potential effects should lead to a concise statement of the expected consequences of the sea or land disposal options, i.e., the ‘‘Impact hypothesis’’. It provides a basis for deciding whether to approve or reject the proposed disposal option and for defining environmental monitoring requirements.

13 The assessment for dumping should integrate information on waste characteristics, conditions at the proposed dump-site(s), fluxes, and proposed disposal techniques and specify the potential effects on human health, living resources, amenities and other legitimate uses of the sea. It should define the nature, temporal and spatial scales and duration of expected impacts based on reasonably conservative assumptions.

14 An analysis of each disposal option should be considered in the light of a comparative assessment of the following concerns: human health risks, environmental costs, hazards, (including accidents), economics and exclusion of future uses. If this assessment reveals that adequate information is not available to determine the likely effects of the proposed disposal option then this option should not be considered further. In addition, if the interpretation of the comparative assessment shows the dumping option to be less preferable, a permit for dumping should not be given.

15 Each assessment should conclude with a statement supporting a decision to issue or refuse a permit for dumping.



## **Monitoring**

16 Monitoring is used to verify that permit conditions are met – compliance monitoring – and that the assumptions made during the permit review and site selection process were correct and sufficient to protect the environment and human health – field monitoring. It is essential that such monitoring programmes have clearly defined objectives.

### **Permit and permit conditions**

17 A decision to issue a permit should only be made if all impact evaluations are completed and the monitoring requirements are determined. The provisions of the permit shall ensure, as far as practicable, that environmental disturbance and detriment are minimized and the benefits maximized. Any permit issued shall contain data and information specifying:

- .1 the types and sources of materials to be dumped;
- .2 the location of the dump-site(s);
- .3 the method of dumping; and
- .4 monitoring and reporting requirements.

18 Permits should be reviewed at regular intervals, taking into account the results of monitoring and the objectives of monitoring programmes. Review of monitoring results will indicate whether field programmes need to be continued, revised or terminated and will contribute to informed decisions regarding the continuance, modification or revocation of permits. This provides an important feedback mechanism for the protection of human health and the marine environment.

## **Annex 3 - Arbitral procedure**

### **Article 1**

1 An arbitral tribunal (hereinafter referred to as the tribunal) shall be established upon the request of a Contracting Party addressed to another Contracting Party in application of article 16 of this Protocol. The request for arbitration shall consist of a statement of the case together with any supporting documents.

2 The requesting Contracting Party shall inform the Secretary-General of:

- .1 its request for arbitration; and
- .2 the provisions of this Protocol the interpretation or application of which is, in its opinion, the subject of disagreement.

3 The Secretary-General shall transmit this information to all Contracting States.

### **Article 2**

1 The tribunal shall consist of a single arbitrator if so agreed between the parties to the dispute within 30 days from the date of receipt of the request for arbitration.

2 In the case of the death, disability or default of the arbitrator, the parties to a dispute may agree upon a replacement within 30 days of such death, disability or default.

### **Article 3**

1 Where the parties to a dispute do not agree upon a tribunal in accordance with article 2 of this annex, the tribunal shall consist of three members:

- .1 one arbitrator nominated by each party to the dispute; and
- .2 a third arbitrator who shall be nominated by agreement between the two first named and who shall act as its chairman.

2 If the chairman of a tribunal is not nominated within 30 days of nomination of the second arbitrator, the parties to a dispute shall, upon the request of one party, submit to the Secretary-General within a further period of 30 days an agreed list of qualified persons. The Secretary-General shall select the chairman from such list as soon as possible. He shall not select a chairman who is or has been a national of one party to the dispute except with the consent of the other party to the dispute.

3 If one party to a dispute fails to nominate an arbitrator as provided in paragraph 1.1 within 60 days from the date of receipt of the request for arbitration, the other party may request the submission to the Secretary-General within a period of 30 days of an agreed list of qualified persons. The Secretary-General shall select the chairman of the tribunal from such list as soon as possible. The chairman shall then request the party which has not nominated an arbitrator to do so. If this party does not nominate an arbitrator within 15 days of such request, the Secretary-General shall, upon request of the chairman, nominate the arbitrator from the agreed list of qualified persons.

4 In the case of the death, disability or default of an arbitrator, the party to the dispute who nominated him shall nominate a replacement within 30 days of such death, disability or default. If the party does not nominate a replacement, the arbitration shall proceed with the remaining arbitrators. In the case of the death, disability or default of the chairman, a replacement shall be nominated in accordance with the provision of paragraphs 1.2 and 2 within 90 days of such death, disability or default.

5 A list of arbitrators shall be maintained by the Secretary-General and composed of qualified persons nominated by the Contracting Parties. Each Contracting Party may designate for inclusion in the list four persons who shall not necessarily be its nationals. If the parties to the dispute have failed within the specified time limits to submit to the Secretary-General an agreed list of qualified persons as provided for in paragraphs 2, 3 and 4, the Secretary-General shall select from the list maintained by him the arbitrator or arbitrators not yet nominated.

#### **Article 4**

The tribunal may hear and determine counter-claims arising directly out of the subject-matter of the dispute.

#### **Article 5**

Each party to the dispute shall be responsible for the costs entailed by the preparation of its own case. The remuneration of the members of the tribunal and of all general expenses incurred by the arbitration shall be borne equally by the parties to the dispute. The tribunal shall keep a record of all its expenses and shall furnish a final statement thereof to the parties.

#### **Article 6**

Any Contracting Party which has an interest of a legal nature which may be affected by the decision in the case may, after giving written notice to the parties to the dispute which have originally initiated the procedure, intervene in the arbitration procedure with the consent of the tribunal and at its own expense. Any such intervenor shall have the right to present evidence, briefs and oral argument on the matters giving rise to its intervention, in accordance with procedures established pursuant to article 7 of this annex, but shall have no rights with respect to the composition of the tribunal.

#### **Article 7**

A tribunal established under the provisions of this annex shall decide its own rules of procedure.

#### **Article 8**

1 Unless a tribunal consists of a single arbitrator, decisions of the tribunal as to its procedure, its place of meeting, and any question related to the dispute laid before it, shall be taken by majority vote of its members. However, the absence or abstention of any member of the tribunal who was nominated by a party to the dispute shall not constitute an impediment to the tribunal reaching a decision. In case of equal voting, the vote of the chairman shall be decisive.

2 The parties to the dispute shall facilitate the work of the tribunal and in particular shall, in accordance with their legislation and using all means at their disposal:

.1 provide the tribunal with all necessary documents and information; and

.2 enable the tribunal to enter their territory, to hear witnesses or experts, and to visit the scene.

3 The failure of a party to the dispute to comply with the provisions of paragraph 2 shall not preclude the tribunal from reaching a decision and rendering an award.

## **Article 9**

The tribunal shall render its award within five months from the time it is established unless it finds it necessary to extend that time limit for a period not to exceed five months. The award of the tribunal shall be accompanied by a statement of reasons for the decision. It shall be final and without appeal and shall be communicated to the Secretary-General who shall inform the Contracting Parties. The parties to the dispute shall immediately comply with the award.

**International Convention for the Prevention of Pollution from Ships,  
1973, as modified by the Protocol of 1978 and 1997 Protocols  
(MARPOL 73/78).**

Text from MARPOL 73/78, Consolidated Edition, 2011, has been omitted from this publication due to the size of the document. If any nations do not have access to a copy please contact SPREP for clarification on any MARPOL issues.

# INTERNATIONAL CONVENTION RELATING TO INTERVENTION ON THE HIGH SEAS IN CASES OF OIL POLLUTION CASUALTIES, 1969\*

Adopted at Brussels, 29 November 1969  
Entered into force 6 May 1975

THE STATES PARTIES TO THE PRESENT CONVENTION,

CONSCIOUS of the need to protect the interests of their peoples against the grave consequences of a maritime casualty resulting in danger of oil pollution of sea and coastlines,

CONVINCED that under these circumstances measures of an exceptional character to protect such interests might be necessary on the high seas and that these measures do not affect the principle of freedom of the high seas,

HAVE AGREED as follows:

## Article I

1. Parties to the present Convention may take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea by oil, following upon a maritime casualty or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences.

2. However, no measures shall be taken under the present Convention against any warship or other ship owned or operated by a State and used, for the time being, only on government non-commercial service.

## Article II

For the purposes of the present Convention:

1. *Maritime casualty* means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or cargo;

2. *Ship* means:

(a) any sea-going vessel of any type whatsoever, and

(b) any floating craft, with the exception of an installation or device engaged in the exploration and exploitation of the resources of the sea-bed and the ocean floor and the subsoil thereof;

3. *Oil* means crude oil, fuel oil, diesel oil and lubricating oil;

\* The Convention was done by the International Legal Conference on Marine Pollution Damage in Brussels on 29 November 1969. It entered into force on 6 May 1975.

4. *Related interests* means the interests of a coastal State directly affected or threatened by the maritime casualty, such as:

- (a) maritime coastal, port or estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;
- (b) tourist attractions of the area concerned;
- (c) the health of the coastal population and the well-being of the area concerned, including conservation of living marine resources and of wildlife.

5. *Organization* means the Inter-Governmental Maritime Consultative Organization.

### **Article III**

When a coastal State is exercising the right to take measures in accordance with Article I, the following provisions shall apply:

- (a) before taking any measures, a coastal State shall proceed to consultations with other States affected by the maritime casualty, particularly with the flag State or States;
- (b) the coastal State shall notify without delay the proposed measures to any persons physical or corporate known to the coastal State, or made known to it during the consultations, to have interests which can reasonably be expected to be affected by those measures. The coastal State shall take into account any views they may submit;
- (c) before any measure is taken, the coastal State may proceed to a consultation with independent experts, whose names shall be chosen from a list maintained by the Organization;
- (d) in cases of extreme urgency requiring measures to be taken immediately, the coastal State may take measures rendered necessary by the urgency of the situation, without prior notification or consultation or without continuing consultations already begun;
- (e) a coastal State shall, before taking such measures and during their course, use its best endeavours to avoid any risk to human life, and to afford persons in distress any assistance of which they may stand in need, and in appropriate cases to facilitate the repatriation of ships' crews, and to raise no obstacle thereto;
- (f) measures which have been taken in application of Article I shall be notified without delay to the States and to the known physical or corporate persons concerned, as well as to the Secretary-General of the Organization.

### **Article IV**

1. Under the supervision of the Organization, there shall be set up and maintained the list of experts contemplated by Article III of the present Convention, and the Organization shall make necessary and appropriate regulations in connexion therewith, including the determination of the required qualifications.

2. Nominations to the list may be made by Member States of the Organization and by Parties to this Convention. The experts shall be paid on the basis of services rendered by the States utilizing those services.

## **Article V**

1. Measures taken by the coastal State in accordance with Article I shall be proportionate to the damage actual or threatened to it.

2. Such measures shall not go beyond what is reasonably necessary to achieve the end mentioned in Article I and shall cease as soon as that end has been 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.

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

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

## **Article VI**

Any Party which has taken measures in contravention of the provisions of the present Convention causing damage to others, shall be obliged to pay compensation to the extent of the damage caused by measures which exceed those reasonably necessary to achieve the end mentioned in Article I.

## **Article VII**

Except as specifically provided, nothing in the present Convention shall prejudice any otherwise applicable right, duty, privilege or immunity or deprive any of the Parties or any interested physical or corporate person of any remedy otherwise applicable.

## **Article VIII**

1. Any controversy between the Parties as to whether measures taken under Article I were in contravention of the provisions of the present Convention, to whether compensation is obliged to be paid under Article VI, and to the amount of such compensation shall, if settlement by negotiation between the Parties involved or between the Party which took the measures and the physical or corporate claimants has not been possible, and if the Parties do not otherwise agree, be submitted upon request of any of the Parties concerned to conciliation or, if conciliation does not succeed, to arbitration, as set out in the [Annex](#) to the present Convention.

2. The Party which took the measures shall not be entitled to refuse a request for conciliation or arbitration under provisions of the preceding paragraph solely on the grounds that any remedies under municipal law in its own courts have not been exhausted.



## **Article IX**

1. The present Convention shall remain open for signature until 31 December 1970 and shall thereafter remain open for accession.
2. States Members of the United Nations or any of the Specialized Agencies or of the International Atomic Energy Agency or Parties to the Statute of the International Court of Justice may become Parties to this Convention by:
  - (a) signature without reservation as to ratification, acceptance or approval;
  - (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
  - (c) accession.

## **Article X**

1. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.
2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the present Convention with respect to all existing Parties or after the completion of all measures required for the entry into force of the amendment with respect to those Parties shall be deemed to apply to the Convention as modified by the amendment.

## **Article XI**

1. The present Convention shall enter into force on the ninetieth day following the date on which Governments of fifteen States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization.
2. For each State which subsequently ratifies, accepts, approves or accedes to it the present Convention shall come into force on the ninetieth day after deposit by such State of the appropriate instrument.

## **Article XII**

1. The present Convention may be denounced by any Party at any time after the date on which the Convention comes into force for that State.
2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General of the Organization.
3. A denunciation shall take effect one year, or such longer period as may be specified in the Instrument of denunciation, after its deposit with the Secretary-General of the Organization.

### **Article XIII**

1. The United Nations where it is the administering authority for a territory, or any State Party to the present Convention responsible for the international relations of a territory, shall as soon as possible consult with the appropriate authorities of such territories or take such other measures as may be appropriate, in order to extend the present Convention to that territory and may at any time by notification in writing to the Secretary-General of the Organization declare that the present Convention shall extend to such territory.
2. The present Convention shall, from the date of receipt of the notification or from such other date as may be specified in the notification, extend to the territory named therein.
3. The United Nations, or any Party which has made a declaration under paragraph 1 of this Article may at any time after the date on which the Convention has been so extended to any territory declare by notification in writing to the Secretary-General of the Organization that the present Convention shall cease to extend to any such territory named in the notification.
4. The present Convention shall cease to extend to any territory mentioned in such notification one year, or such longer period as may be specified therein, after the date of receipt of the notification by the Secretary-General of the Organization.

### **Article XIV**

1. A Conference for the purpose of revising or amending the present Convention may be convened by the Organization.
2. The Organization shall convene a Conference of the States Parties to the present Convention for revising or amending the present Convention at the request of not less than one-third of the Parties.

### **Article XV**

1. The present Convention shall be deposited with the Secretary- General of the Organization.
2. The Secretary-General of the Organization shall:
  - (a) inform all States which have signed or acceded to the Convention -of:
    - (i) each new signature or deposit of instrument together with the date thereof;
    - (ii) the deposit of any instrument of denunciation of this Convention together with the date of the deposit;
    - (iii) the extension of the present Convention to any territory under paragraph 1 of Article XIII and of the termination of any such extension under the provisions of paragraph 4 of that Article stating in each case the date on which the present Convention has been or will cease to be so extended;
  - (b) transmit certified true copies of the present Convention to all Signatory States and to all States which accede to the present Convention.

### **Article XVI**

As soon as the present Convention comes into force, the text shall be transmitted by the Secretary-General of the Organization to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

#### **Article XVII**

The present Convention is established in a single copy in the English and French languages, both texts being equally authentic.

Official translations in the Russian and Spanish languages shall be prepared and deposited with the signed original.

IN WITNESS WHEREOF the undersigned\* being duly authorized by their respective Governments for that purpose have signed the present Convention.

DONE at Brussels this twenty-ninth day of November 1969.

\*Signatures omitted.

## **Annex Chapter I - Conciliation**

### **Article 1**

Provided the Parties concerned do not decide otherwise, the procedure for conciliation shall be in accordance with the rules set out in this Chapter.

### **Article 2**

1. A Conciliation Commission shall be established upon the request of one Party addressed to another in application of Article VIII of the Convention.
2. The request for conciliation submitted by a Party shall consist of a statement of the case together with any supporting documents.
3. If a procedure has been initiated between two Parties, any other Party the nationals or property of which have been affected by the same measures, or which is a coastal State having taken similar measures, may join in the conciliation procedure by giving written notice to the Parties which have originally initiated the procedure unless either of the latter Parties object to such joinder.

### **Article 3**

1. The Conciliation Commission shall be composed of three members: one nominated by the coastal State which took the measures, one nominated by the State the nationals or property of which have been affected by those measures and a third, who shall preside over the Commission and shall be nominated by agreement between the two original members.
2. The Conciliators shall be selected from a list previously drawn up in accordance with the procedure set out in Article 4 below.
3. If within a period of 60 days from the date of receipt of the request for conciliation, the Party to which such request is made has not given notice to the other Party to the controversy of the nomination of the Conciliator for whose selection it is responsible, or if, within a period of 30 days from the date of nomination of the second of the members of the Commission to be designated by the Parties, the first two Conciliators have not been able to designate by common agreement the Chairmen of the Commission, the Secretary-General of the Organization shall upon request of either Party and within a period of 30 days, proceed to the required nomination. The members of the Commission thus nominated shall be selected from the list prescribed in the preceding paragraph.
4. In no case shall the Chairman of the Commission be or have been a national of one of the original Parties to the procedure, whatever the method of his nomination.

### **Article 4**

1. The list prescribed in Article 3 above shall consist of qualified persons designated by the Parties and shall be kept up to date by the Organization. Each Party may designate for inclusion on the list four persons, who shall not necessarily be its nationals. The nominations shall be for periods of six years each and shall be renewable.

2. In the case of the decease or resignation of a person whose name appears on the list, the Party which nominated such person shall be permitted to nominate a replacement for the remainder of the term of office.

## **Article 5**

1. Provided the Parties do not agree otherwise, the Conciliation Commission shall establish its own procedures, which shall in all cases permit a fair hearing. As regards examination, the Commission, unless it unanimously decides otherwise, shall conform with the provisions of Chapter III of The Hague Convention for the Peaceful Settlement of International Disputes of 18 October 1907.

2. The Parties shall be represented before the Conciliation Commission by agents whose duty shall be to act as intermediaries between the Parties and the Commission. Each of the Parties may seek also the assistance of advisers and experts nominated by it for this purpose and may request the hearing of all persons whose evidence the Party considers useful.

3. The Commission shall have the right to request explanations from agents, advisers and experts of the Parties as well as from any persons whom, with the consent of their Governments, it may deem useful to call.

## **Article 6**

Provided the Parties do not agree otherwise, decisions of the Conciliation Commission shall be taken by a majority vote and the Commission shall not pronounce on the substance of the controversy unless all its members are present.

## **Article 7**

The Parties shall facilitate the work of the Conciliation Commission and in particular, in accordance with their legislation, and using all means at their disposal:

(a) provide the Commission with the necessary documents and information;

(b) enable the Commission to enter their territory, to hear witnesses or experts, and to visit the scene.

## **Article 8**

The task of the Conciliation Commission will be to clarify the matters under dispute, to assemble for this purpose all relevant information by means of examination or other means, and to endeavour to reconcile the Parties. After examining the case, the Commission shall communicate to the Parties a recommendation which appears to the Commission to be appropriate to the matter and shall fix a period of not more than 90 days within which the Parties are called upon to state whether or not they accept the recommendation.

## **Article 9**

The recommendation shall be accompanied by a statement of reasons. If the recommendation does not represent in whole or in part the unanimous opinion of the Commission, any Conciliator shall be entitled to deliver a separate opinion.

## **Article 10**

A conciliation shall be deemed unsuccessful if, 90 days after the Parties have been notified of the recommendation, either Party shall not have notified the other Party of its acceptance of the recommendation. Conciliation shall likewise be deemed unsuccessful if the Commission shall not have been established within the period prescribed in the third paragraph of Article 3 above, or provided the Parties have not agreed otherwise, if the Commission shall not have issued its recommendation within one year from the date on which the Chairman of the Commission was nominated.

## **Article 11**

1. Each member of the Commission shall receive remuneration for his work, such remuneration to be fixed by agreement between the Parties which shall each contribute an equal proportion.
2. Contributions for miscellaneous expenditure incurred by the work of the Commission shall be apportioned in the same manner.

## **Article 12**

The parties to the controversy may at any time during the conciliation procedure decide in agreement to have recourse to a different procedure for settlement of disputes.

## **Chapter II - Arbitration**

### **Article 13**

1. Arbitration procedure, unless the Parties decide otherwise, shall be in accordance with the rules set out in this Chapter.
2. Where conciliation is unsuccessful, a request for arbitration may only be made within a period of 180 days following the failure of conciliation.

### **Article 14**

The Arbitration Tribunal shall consist of three members: one Arbitrator nominated by the coastal State which took the measures, one Arbitrator nominated by the State the nationals or property of which have been affected by those measures, and another Arbitrator who shall be nominated by agreement between the two first-named, and shall act as its Chairman.

### **Article 15**

1. If, at the end of a period of 60 days from the nomination of the second Arbitrator, the Chairman of the Tribunal shall not have been nominated, the Secretary-General of the Organization upon request of either Party shall within a further period of 60 days proceed to such nomination, selecting from a list of qualified persons previously drawn up in accordance with the provisions of Article 4 above. This list shall be separate from the list of experts prescribed in Article IV of the Convention and from the list of Conciliators prescribed in Article 4 of the present Annex; the name of the same person may, however, appear both on the list of Conciliators and on the list of Arbitrators. A person who has acted as Conciliator in a dispute may not, however, be chosen to act as Arbitrator in the same matter.

2. If, within a period of 60 days from the date of the receipt of the request, one of the Parties shall not have nominated the member of the Tribunal for whose designation it is responsible, the other Party may directly inform the Secretary-General of the Organization who shall nominate the Chairman of the Tribunal within a period of 60 days, selecting him from the list prescribed in paragraph 1 of the present Article.

3. The Chairman of the Tribunal shall, upon nomination, request the party which has not provided an Arbitrator, to do so in the same manner and under the same conditions. If the party does not make the required nomination, the Chairman of the Tribunal shall request the Secretary-General of the Organization to make the nomination in the form and conditions prescribed in the preceding paragraph.

4. The Chairman of the Tribunal, if nominated under the provisions of the present Article, shall not be or have been a national of one of the Parties concerned, except with the consent of the other Party or Parties.

5. In the case of the decease or default of an Arbitrator for whose nomination one of the Parties is responsible, the said Party shall nominate a replacement within a period of 60 days from the date of decease or default. Should the said Party not make the nomination, the arbitration shall proceed under the remaining Arbitrators. In the case of decease or default of the Chairman of the Tribunal, a replacement shall be nominated in accordance with the provisions of Article 14 above, or in the absence of agreement between the members of the Tribunal within a period of 60 days of the decease or default, according to the provisions of the present Article.

## **Article 16**

If a procedure has been initiated between two Parties, any other Party, the nationals or property of which have been affected by the same measures or which is a coastal State having taken similar measures, may join in the arbitration procedure by giving written notice to the Parties which have originally initiated the procedure unless either of the latter Parties object to such joinder.

## **Article 17**

Any Arbitration Tribunal established under the provisions of the present Annex shall decide its own rules of procedure.

## **Article 18**

1. Decisions of the Tribunal both as to its procedure and its place of meeting and as to any controversy laid before it, shall be taken by majority vote of its members; the absence or abstention of one of the members of , the Tribunal for whose nomination the Parties were responsible shall not constitute an impediment to the Tribunal reaching a decision. In cases of equal voting, the Chairman shall cast the deciding vote.

2. The Parties shall facilitate the work of the Tribunal and in particular, in accordance with their legislation, and using all means at their disposal:

(a) provide the Tribunal with the necessary documents and information;

(b) enable the Tribunal to enter their territory, to hear witnesses or experts, and to visit the scene.

3. Absence or default of one Party shall not constitute an impediment to the procedure.

## **Article 19**

1. The award of the Tribunal shall be accompanied by a statement of reasons. It shall be final and without appeal. The Parties shall immediately comply with the award.

2. Any controversy which may arise between the Parties as regards interpretation and execution of the award may be submitted by either Party for judgment to the Tribunal which made the award, or, if it is not available, to another Tribunal constituted for this purpose in the same manner as the original Tribunal.



# **Protocol Relating To Intervention On The High Seas In Cases Of Pollution By Substances Other Than Oil, 1973\***

THE PARTIES TO THE PRESENT PROTOCOL,

BEING PARTIES to the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, done at Brussels on 29 November 1969,

TAKING INTO ACCOUNT the Resolution on International Co-operation Concerning Pollutants other than Oil adopted by the International Legal Conference on Marine Pollution Damage, 1969,

FURTHER TAKING INTO ACCOUNT that pursuant to the Resolution, the Inter-Governmental Maritime Consultative Organization has intensified its work, in collaboration with all interested international organizations, on all aspects of pollution by substances other than oil,

HAVE AGREED as follows:

## **Article I**

1. Parties to the present Protocol may take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution by substances other than oil following upon a maritime casualty or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences.

2. *Substances other than oil* as referred to in paragraph 1 shall be:

(a) those substances enumerated in a list which shall be established by an appropriate body designated by the Organization and which shall be annexed to the present Protocol, and

(b) those other substances which are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

3. Whenever an intervening Party takes action with regard to a substance referred to in paragraph 2(b) above that Party shall have the burden of establishing that the substance, under the circumstances present at the time of the intervention, could reasonably pose a grave and imminent danger analogous to that posed by any of the substances enumerated in the list referred to in paragraph 2(a) above.

\*The Preamble, Articles and Testimonium of the Protocol were done by the International Conference on Marine Pollution in London on 2 November 1973. For the text of the Final Act of the Conference, see IMO Publication 77.14.E. The Annex to the Protocol (see page 22) was adopted by the Marine Environment Protection Committee of the Organization by Resolution MEPC.1 (II) of 21 November 1974, that Committee having been designated by the Assembly of the Organization as the body referred to in paragraph 2(a) of Article I of the Protocol (Assembly Resolution A.296(VIII) of 23 November 1973).

## **Article II**

1. The provisions of paragraph 2 of Article I and of Articles II to VIII of the Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, and the Annex thereto as they relate to oil, shall be applicable with regard to the substances referred to in Article I of the present Protocol.
2. For the purpose of the present Protocol the list of experts referred to in Articles III(c) and N of the Convention shall be extended to include experts qualified to give advice in relation to substances other than oil. Nominations to the list may be made by Member States of the Organization and by Parties to the present Protocol.

## **Article III**

1. The list referred to in paragraph 2(a) of Article I shall be maintained by the appropriate body designated by the Organization.
2. Any amendment to the list proposed by a Party to the present Protocol shall be submitted to the Organization and circulated by it to all Members of the Organization and all Parties to the present Protocol at least three months prior to its consideration by the appropriate body.
3. Parties to the present Protocol whether or not Members of the Organization shall be entitled to participate in the proceedings of the appropriate body.
4. Amendments shall be adopted by a two-thirds majority of only the Parties to the present Protocol present and voting.
5. If adopted in accordance with paragraph 4 above, the amendment shall be communicated by the Organization to all Parties to the present Protocol for acceptance.
6. The amendment shall be deemed to have been accepted at the end of a period of six months after it has been communicated, unless within that period an objection to the amendment has been communicated to the Organization by not less than one-third of the Parties to the present Protocol.
7. An amendment deemed to have been accepted in accordance with paragraph 6 above shall enter into force three months after its acceptance for all Parties to the present Protocol, with the exception of those which before that date have made a declaration of non-acceptance of the said amendment.

## **Article IV**

1. The present Protocol shall be open for signature by the States which have signed the Convention referred to in Article II or acceded thereto, and by any State invited to be represented at the International Conference on Marine Pollution 1973. The Protocol shall remain open for signature from 15 January 1974 until 31 December 1974 at the Headquarters of the Organization.
2. Subject to paragraph 4 of this Article, the present Protocol shall be subject to ratification, acceptance or approval by the States which have signed it.
3. Subject to paragraph 4, this Protocol shall be open for accession by States which did not sign it.

4. The present Protocol may be ratified, accepted, approved or acceded to only by States which have ratified, accepted, approved or acceded to the Convention referred to in Article II.

#### **Article V**

1. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.

2. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the present Protocol with respect to all existing Parties or after the completion of all measures required for the entry into force of the amendment with respect to all existing Parties shall be deemed to apply to the Protocol as modified by the amendment.

#### **Article VI**

1. The present Protocol shall enter into force on the ninetieth day following the date on which fifteen States have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization, provided however that the present Protocol shall not enter into force before the Convention referred to in Article II has entered into force.

2. For each State which subsequently ratifies: accepts, approves or accedes to it, the present Protocol shall enter into force on the ninetieth day after the deposit by such State of the appropriate instrument.

#### **Article VII**

1. The present Protocol may be denounced by any Party at any time after the date on which the Protocol enters into force for that Party.

2. Denunciation shall be effected by the deposit of an instrument to that effect with the Secretary-General of the Organization.

3. Denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General of the Organization.

4. Denunciation of the Convention referred to in Article II by a Party shall be deemed to be a denunciation of the present Protocol by that Party. Such denunciation shall take effect on the same day as the denunciation of the Convention takes effect in accordance with paragraph 3 of Article XII of that Convention.

#### **Article VIII**

1. A conference for the purpose of revising or amending the present Protocol may be convened by the Organization.

2. The Organization shall convene a conference of Parties to the present Protocol for the purpose of revising or amending it at the request of not less than one-third of the Parties.

#### **Article IX**

1. The present Protocol shall be deposited with the Secretary-General of the Organization.

2. The Secretary-General of the Organization shall:

- (a) inform all States which have signed the present Protocol or acceded thereto of:
- (i) each new signature or deposit of an instrument together with the date thereof;
  - (ii) the date of entry into force of the present Protocol;
  - (iii) the deposit of any instrument of denunciation of the present Protocol together with the date on which the denunciation takes effect;
  - (iv) any amendments to the present Protocol or its Annex and any objection or declaration of non-acceptance of the said amendment;
- (b) transmit certified true copies of the present Protocol to all States which have signed the present Protocol or acceded thereto.

### **Article X**

As soon as the present Protocol enters into force, a certified true copy thereof shall be transmitted by the Secretary-General of the Organization to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

### **Article XI**

The present Protocol is established in a single original in the English, French, Russian and Spanish languages, all four texts being equally authentic.

IN WITNESS WHEREOF the undersigned\* being duly authorized for that purpose have signed the present Protocol.

DONE AT LONDON this second day of November one thousand nine hundred and seventy-three.

\*Signatures omitted.

**Annex - List of substances established by the Marine Environment Protection Committee of the Organization in accordance with paragraph 2(a) of Article I\*.**

**1. Oil (when carried in bulk)**

Asphalt Solutions	Oil	Distillates	Gas Oil	Gasoline Blending Stocks	Gasoline's	Jet Fuels	Naphtha
Asphalt Solutions	Clarified	Straight Run	Cracked	Alkylates - fuel	Casinghead (natural)	JP-I (Kerosene)	Solvent
Blending Stocks	Mixtures containing Crude Oil	Flashed Feed Stocks		Reformats	Automotive	JP-3	Petroleum Heartcut Distillate Oil
Roofers Flux	Road Oil			Polymer - fuel	Aviation	JP-4	
Straight Run Residue	Aromatic Oil (excluding vegetable oil)				Straight Run	JP-S (Kerosene, heavy)	
	Blending Stocks					Turbo Fuel	
	Mineral Oil					Mineral Spirit	
	Penetrating Oil						
	Spindle Oil						
	Turbine Oil						

**2. Noxious Substances**

Noxious Substances				
Acetic anhydride	Benzene	Chromic acid (Chromium trioxide)	Ethyl bromoacetate	N aphthylthiourea
Acetone	Benzenehexachloride isomers (Lindane)	Cocculus (solid)	Ethylene chlorohydrin (2-Chloro-ethanol)	Nitric acid (90%)
Acetone cyanohydrin	Benzidine	Copper compounds	Ethylene dichloride	Oleum
Acrolein	Beryllium powder	Cresols	Ethyl parathion	Parathion
Acrylonitrile	Bromine	Cupriethylene diarnine	Fentin acetate (dry)	Paraquat
Aldrin	Bromobenzyl cyanide	Cyanide compounds	Fluosilicic acid	Phenol
Allyl isothiocyanate	n-Butyl acrylate	Cyanogen bromide	Heptachlor	Phosphoric acid
Aluminium phosphide	Butyric acid	Cyanogen chloride	Hexachlorobenzene	Phosphorus (elemental)
Ammonia (28% aqueous)	Cacodylic acid	DDT	Hexaethyl tetraphosphate	Polyhalogenated biphenyls
Ammonium phosphate	Cadmium compounds	Dichloroanilines	Hydrocyanic acid	Sodium pentachlorophenate (solution)
Amyl mercaptan	Carbaryl (Sevin)	Dichlorobenzenes	Hydrofluoric acid (40% aqueous)	Styrene monomer
Aniline	Carbon disulphide	Dieldrin	Isoprene	Toluene
Aniline hydrochloride	Carbontetrachloride	Dimethoate (Cygon)	Lead compounds	Toluene diisocyanate
Antimony compounds	Chlorodane	Dimethyl amine (40% aqueous)	Lindane (Ganunexane, BHC)	Toxaphene
Arsenic compounds	Chloroacetone	Dinitroanilines	Malathion	Tritolyl phosphate (Tricresyl phosphate)
Atrazine	Chloroacetophenone	4,6-Dinitroorthocresol	Mercuric compounds	2,4,5-T
Azinphos methyl (Guthion)	Chlorodinitrobenzene	Dinitwphenols	Methyl alcohol	
Barium azide	Chloroform	Endosulphan (Thiodan)	Methylene chloride	
Barium cyanide	Chlorohydrins (crude)	Endrin	Molasses	
Barium oxide	Chloropicrin	Epichlorohydrin	Naphthalene (molten)	

\*See footnote on page 17

### 3. Liquefied Gases (when carried in bulk)

Liquefied Gases (when carried in bulk)	
Acetaldehyde	Ethylene Oxide
Anhydrous Ammonia	Methane (LNG)
Butadiene	Methyl Acetylene Propadiene mixture
Butane	Methyl Bromide
Butane/Propane Mixtures	Methyl Chloride
Butylenes	Propane
Chlorine	Propylene
Dimethylamine	Vinyl Chloride Monomer
Ethyl Chloride	Anhydrous Hydrogen Chloride
Ethane	Anhydrous Hydrogen Fluoride
Ethylene	Sulphur Dioxide

### 4. Radioactive Substances

Radioactive substances, including, but not limited to, elements and compounds the isotopes of which are subject to the requirements of Section 835 of the Regulations for the Safe Transport of Radioactive Materials, 1973 Revised Edition, published by the International Atomic Energy Agency, and which may be found to be stored or transported as substances and/or materials in Type A packages, Type B packages, as fissile materials or materials transported under special elements, such as:

$^{60}\text{Co}$ ,  $^{137}\text{Cs}$ ,  $^{226}\text{Ra}$ ,  $^{239}\text{Pu}$ ,  $^{235}\text{U}$

# **International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990 (OPRC 90)**

**Adopted at London on 30 November 1990**

**Entered into force 13 May 1995**

THE PARTIES TO THE PRESENT CONVENTION,

CONSCIOUS of the need to preserve the human environment in general and the marine environment in particular,

RECOGNIZING the serious threat posed to the marine environment by oil pollution incidents involving ships, offshore units, sea ports and oil handling facilities,

MINDFUL of the importance of precautionary measures and prevention in avoiding oil pollution in the first instance, and the need for strict application of existing international instruments dealing with maritime safety and marine pollution prevention, particularly the International Convention for the Safety of Life at Sea, 1974, as amended, and the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended, and also the speedy development of enhanced standards for the design, operation and maintenance of ships carrying oil, and of offshore units,

MINDFUL ALSO that, in the event of an oil pollution incident, prompt and effective action is essential in order to minimize the damage which may result from such an incident,

EMPHASIZING the importance of effective preparation for combating oil pollution incidents and the important role which the oil and shipping industries have in this regard,

RECOGNIZING FURTHER the importance of mutual assistance and international co-operation relating to matters including the exchange of information respecting the capabilities of States to respond to oil pollution incidents, the preparation of oil pollution contingency plans, the exchange of reports of incidents of significance which may affect the marine environment or the coastline and related interests of States, and research and development respecting means of combating oil pollution in the marine environment,

TAKING ACCOUNT of the "polluter pays" principle as a general principle of international environmental law,

TAKING ACCOUNT ALSO of the importance of international instruments on liability and compensation for oil pollution damage, including the 1969 International Convention on Civil Liability for Oil Pollution Damage (CLC); and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND); and the compelling need for early entry into force of the 1984 Protocols to the CLC and FUND Conventions,

TAKING ACCOUNT FURTHER of the importance of bilateral and multilateral agreements and arrangements including regional conventions and agreements,

BEARING IN MIND the relevant provisions of the United Nations Convention on the Law of the Sea, in particular of its part XII,

BEING AWARE of the need to promote international co-operation and to enhance existing national, regional and global capabilities concerning oil pollution preparedness and response, taking into account the special needs of the developing countries and particularly small island States,

CONSIDERING that these objectives may best be achieved by the conclusion of an International Convention on Oil Pollution Preparedness, Response and Co-operation,

HAVE AGREED as follows:

### **Article 1 General Provisions**

(1) Parties undertake, individually or jointly, to take all appropriate measures in accordance with the provisions of this Convention and the Annex thereto to prepare for and respond to an oil pollution incident.

(2) The [Annex](#) to this Convention shall constitute an integral part of the Convention and a reference to this Convention constitutes at the same time a reference to the [Annex](#)

(3) This Convention shall not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service. However, each Party shall ensure by the adoption of appropriate measures not impairing the operations or operational capabilities of such ships owned or operated by it, that such ships act in a manner consistent, so far as is reasonable and practicable, with this Convention.

### **Article 2 Definitions**

For the purposes of this Convention:

(1) "Oil" means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products.

(2) "Oil pollution incident" means an occurrence or series of occurrences having the same origin, which results or may result in a discharge of oil and which poses or may pose a threat to the marine environment, or to the coastline or related interests of one or more States, and which requires emergency action or other immediate response.

(3) "Ship" means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, and floating craft of any type.

(4) "Offshore unit" means any fixed or floating offshore installation or structure engaged in gas or oil exploration, exploitation or production activities, or loading or unloading of oil.

(5) "Sea ports and oil handling facilities" means those facilities which present a risk of an oil pollution incident and includes, inter alia, sea ports, oil terminals, pipelines and other oil handling facilities.

(6) "Organization" means the International Maritime Organization.

(7) "Secretary-General" means the Secretary-General of the Organization.



### **Article 3 Oil Pollution Emergency Plans**

(1) (a) Each Party shall require that ships entitled to fly its flag have on board a shipboard oil pollution emergency plan as required by and in accordance with the provisions adopted by the Organization for this purpose.

(b) A ship required to have on board an oil pollution emergency plan in accordance with subparagraph (a) is subject, while in a port or at an offshore terminal under the jurisdiction of a Party, to inspection by officers duly authorized by that Party, in accordance with the practices provided for in existing international agreements or its national legislation.

(2) Each Party shall require that operators of offshore units under its jurisdiction have oil pollution emergency plans, which are coordinated with the national system established in accordance with article 6 and approved in accordance with procedures established by the competent national authority.

(3) Each Party shall require that authorities or operators in charge of such sea ports and oil handling facilities under its jurisdiction as it deems appropriate have oil pollution emergency plans or similar arrangements which are coordinated with the national system established in accordance with article 6 and approved in accordance with procedures established by the competent national authority.

### **Article 4 Oil Pollution Reporting Procedures**

(1) Each Party shall:

(a) Require masters or other persons having charge of ships flying its flag and persons having charge of offshore units under its jurisdiction to report without delay any event on their ship or offshore unit involving a discharge or probable discharge of oil:

(i) in the case of a ship, to the nearest coastal State;

(ii) in the case of an offshore unit, to the coastal State to whose jurisdiction the unit is subject;

(b) Require masters or other persons having charge of ships flying its flag and persons having charge of offshore units under its jurisdiction to report without delay any observed event at sea involving a discharge of oil or the presence of oil:

(i) in the case of a ship, to the nearest coastal State;

(ii) in the case of an offshore unit, to the coastal State to whose jurisdiction the unit is subject;

(c) require persons having charge of sea ports and oil handling facilities under its jurisdiction to report without delay any event involving a discharge or probable discharge of oil or the presence of oil to the competent national authority;

(d) Instruct its maritime inspection vessels or aircraft and other appropriate services or officials to report without delay any observed event at sea or at a sea port or oil handling facility involving a discharge of oil or the presence of oil to the competent national authority or, as the case may be, to the nearest coastal State;

(e) request the pilots of civil aircraft to report without delay any observed event at sea involving a discharge of oil or the presence of oil to the nearest coastal State.

(2) Reports under paragraph (1)(a)(i) shall be made in accordance with the requirements developed by the Organization and based on the guidelines and general principles adopted by the Organization. Reports under paragraph (1)(a)(ii), (b), (c) and (d) shall be made in accordance with the guidelines and general principles adopted by the Organization to the extent applicable.

### **Article 5 Action On Receiving AN Oil Pollution Report**

(1) Whenever a Party receives a report referred to in article 4 or pollution information provided by other sources, it shall:

- (a) Assess the event to determine whether it is an oil pollution incident;
- (b) Assess the nature, extent and possible consequences of the oil pollution incident; and
- (c) then, without delay, inform all States whose interests are affected or likely to be affected by such oil pollution incident, together with
  - (i) details of its assessments and any action it has taken, or intends to take, to deal with the incident, and
  - (ii) further information as appropriate, until the action taken to respond to the incident has been concluded or until joint action has been decided by such States.

(2) When the severity of such oil pollution incident so justifies, the Party should provide the Organization directly or, as appropriate, through the relevant regional organization or arrangements with the information referred to in paragraph (1)(b) and (c).

(3) When the severity of such oil pollution incident so justifies, other States affected by it are urged to inform the Organization directly or, as appropriate, through the relevant regional organizations or arrangements of their assessment of the extent of the threat to their interests and any action taken or intended.

(4) Parties should use, in so far as practicable, the oil pollution reporting system developed by the Organization when exchanging information and communicating with other States and with the Organization.

### **Article 6 National and regional systems for preparedness and response**

(1) Each Party shall establish a national system for responding promptly and effectively to oil pollution incidents. This system shall include as a minimum:

- (a) the designation of:
  - (i) the competent national authority or authorities with responsibility for oil pollution preparedness and response;
  - (ii) the national operational contact point or points, which shall be responsible for the receipt and transmission of oil pollution reports as referred to in article 4; and

(iii) an authority which is entitled to act on behalf of the State to request assistance or to decide to render the assistance requested.

(b) A national contingency plan for preparedness and response which includes the organizational relationship of the various bodies involved, whether public or private, taking into account guidelines developed by the Organization.

(2) In addition, each Party, within its capabilities either individually or through bilateral or multilateral co-operation and, as appropriate, in co-operation with the oil and shipping industries, port authorities and other relevant entities, shall establish:

(a) a minimum level of pre-positioned oil spill combating equipment, commensurate with the risk involved, and programmes for its use;

(b) a programme of exercises for oil pollution response organizations and training of relevant personnel;

(c) detailed plans and communication capabilities for responding to an oil pollution incident. Such capabilities should be continuously available; and

(d) A mechanism or arrangement to co-ordinate the response to an oil pollution incident with, if appropriate, the capabilities to mobilize the necessary resources.

(3) Each Party shall ensure that current information is provided to the Organization, directly or through the relevant regional organization or arrangements, concerning:

(a) The location, telecommunication data and, if applicable, areas of responsibility of authorities and entities referred to in paragraph (1)(a);

(b) information concerning pollution response equipment and expertise in disciplines related to oil pollution response and marine salvage which may be made available to other States, upon request; and

(c) Its national contingency plan.

## **Article 7 International Cooperation In Pollution Response**

(1) Parties agree that, subject to their capabilities and the availability of relevant resources, they will co-operate and provide advisory services, technical support and equipment for the purpose of responding to an oil pollution incident, when the severity of such incident so justifies, upon the request of any Party affected or likely to be affected. The financing of the costs for such assistance shall be based on the provisions set out in the Annex to this Convention.

(2) A Party which has requested assistance may ask the Organization to assist in identifying sources of provisional financing of the costs referred to in paragraph (1).

(3) In accordance with applicable international agreements, each Party shall take necessary legal or administrative measures to facilitate:

(a) the arrival and utilization in and departure from its territory of ships, aircraft and other modes of transport engaged in responding to an oil pollution incident or transporting personnel, cargoes, materials and equipment required to deal with such an incident; and

(b) the expeditious movement into, through, and out of its territory of personnel, cargoes, materials and equipment referred to in subparagraph (a).

## **Article 8 Research And Development**

(1) Parties agree to co-operate directly or, as appropriate, through the Organization or relevant regional organizations or arrangements in the promotion and exchange of results of research and development programmes relating to the enhancement of the state-of-the-art of oil pollution preparedness and response, including technologies and techniques for surveillance, containment, recovery, dispersion, clean-up and otherwise minimizing or mitigating the effects of oil pollution, and for restoration.

(2) To this end, Parties undertake to establish directly or, as appropriate, through the Organization or relevant regional organizations or arrangements, the necessary links between Parties' research institutions.

(3) Parties agree to co-operate directly or through the Organization or relevant regional organizations or arrangements to promote, as appropriate, the holding on a regular basis of international symposia on relevant subjects, including technological advances in oil pollution combating techniques and equipment.

(4) Parties agree to encourage, through the Organization or other competent international organizations, the development of standards for compatible oil pollution combating techniques and equipment.

## **Article 9 Technical Cooperation**

(1) Parties undertake directly or through the Organization and other international bodies, as appropriate, in respect of oil pollution preparedness and response, to provide support for those Parties which request technical assistance:

(a) to train personnel;

(b) to ensure the availability of relevant technology, equipment and facilities;

(c) to facilitate other measures and arrangements to prepare for and respond to oil pollution incidents; and

(d) to initiate joint research and development programmes.

(2) Parties undertake to co-operate actively, subject to their national laws, regulations and policies, in the transfer of technology in respect of oil pollution preparedness and response.

## **Article 10 Promotion Of Bilateral And Multilateral Co-Operation In Preparedness And Response**

Parties shall endeavour to conclude bilateral or multilateral agreements for oil pollution preparedness and response. Copies of such agreements shall be communicated to the Organization which should make them available on request to Parties.

## **Article 11 Relation To Other Conventions And International Agreements**

Nothing in this Convention shall be construed as altering the rights or obligations of any Party under any other convention or international agreement.

## **Article 12 Institutional Arrangements**

(1) Parties designate the Organization, subject to its agreement and the availability of adequate resources to sustain the activity, to perform the following functions and activities:

(a) Information services:

(i) to receive, collate and disseminate on request the information provided by Parties (see, for example, articles 5(2) and (3), 6(3) and 10) and relevant information provided by other sources; and

(ii) to provide assistance in identifying sources of provisional financing of costs (see, for example, article 7(2));

(b) education and training:

(i) to promote training in the field of oil pollution preparedness and response (see, for example, article 9); and

(ii) to promote the holding of international symposia (see, for example, article 8(3));

(c) Technical services:

(i) to facilitate co-operation in research and development (see, for example, articles 8(1), (2) and (4) and 9(1)(d));

(ii) To provide advice to States establishing national or regional response capabilities; and

(iii) to analyse the information provided by Parties (see, for example, articles 5(2) and (3), 6(3) and 8(1)) and relevant information provided by other sources and provide advice or information to States;

(d) technical assistance:

(i) to facilitate the provision of technical assistance to States establishing national or regional response capabilities; and

(ii) to facilitate the provision of technical assistance and advice, upon the request of States faced with major oil pollution incidents.

(2) In carrying out the activities specified in this article, the Organization shall endeavour to strengthen the ability of States individually or through regional arrangements to prepare for and combat oil pollution incidents, drawing upon the experience of States, regional agreements and industry arrangements and paying particular attention to the needs of developing countries.

(3) The provisions of this article shall be implemented in accordance with a programme developed and kept under review by the Organization.

## **Article 13 Evaluation Of The Convention**

Parties shall evaluate within the Organization the effectiveness of Convention in the light of its objectives, particularly with respect to the principles underlying co-operation and assistance.

#### **Article 14 Amendments**

(1) This Convention may be amended by one of the procedures specified in the following paragraphs.

(2) Amendment after consideration by the Organization:

(a) Any amendment proposed by a Party to the Convention shall be submitted to the Organization and circulated by the Secretary-General to all Members of the Organization and all Parties at least six months prior to its consideration.

(b) Any amendment proposed and circulated as above shall be submitted to the Marine Environment Protection Committee of the Organization for consideration.

(c) Parties to the Convention, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Marine Environment Protection Committee.

(d) Amendments shall be adopted by a two-thirds majority of only the Parties to the Convention present and voting.

(e) If adopted in accordance with subparagraph (d), amendments shall be communicated by the Secretary-General to all Parties to the Convention for acceptance.

(f) (i) An amendment to an article or the Annex of the Convention shall be deemed to have been accepted on the date on which it is accepted by two thirds of the Parties.

(ii) An amendment to an appendix shall be deemed to have been accepted at the end of a period to be determined by the Marine Environment Protection Committee at the time of its adoption, which period shall not be less than ten months, unless within that period an objection is communicated to the Secretary-General by not less than one third of the Parties.

(g) (i) An amendment to an article or the Annex of the Convention accepted in conformity with subparagraph (f)(i) shall enter into force six months after the date on which it is deemed to have been accepted with respect to the Parties which have notified the Secretary-General that they have accepted it.

(ii) An amendment to an appendix accepted in conformity with subparagraph (f)(ii) shall enter into force six months after the date on which it is deemed to have been accepted with respect to all Parties with the exception of those which, before that date, have objected to it. A Party may at any time withdraw a previously communicated objection by submitting a notification to that effect to the Secretary-General.

(3) Amendment by a Conference:

(a) Upon the request of a Party, concurred with by at least one third of the Parties, the Secretary-General shall convene a Conference of Parties to the Convention to consider amendments to the Convention.

(b) An amendment adopted by such a Conference by a two-thirds majority of those Parties present and voting shall be communicated by the Secretary-General to all Parties for their acceptance.

(c) Unless the Conference decides otherwise, the amendment shall be deemed to have been accepted and shall enter into force in accordance with the procedures specified in paragraph (2)(f) and (g).

(4) The adoption and entry into force of an amendment constituting an addition of an Annex or an appendix shall be subject to the procedure applicable to an amendment to the Annex.

(5) Any Party which has not accepted an amendment to an article or the Annex under paragraph (2)(f)(i) or an amendment constituting an addition of an Annex or an appendix under paragraph (4) or has communicated an objection to an amendment to an appendix under paragraph (2)(f)(ii) shall be treated as a non-Party only for the purpose of the application of such amendment. Such treatment shall terminate upon the submission of a notification of acceptance under paragraph (2)(f)(i) or withdrawal of the objection under paragraph (2)(g)(ii).

(6) The Secretary-General shall inform all Parties of any amendment which enters into force under this article, together with the date on which the amendment enters into force.

(7) Any notification of acceptance of, objection to, or withdrawal of objection to, an amendment under this article shall be communicated in writing to the Secretary-General who shall inform Parties of such notification and the date of its receipt.

(8) An appendix to the Convention shall contain only provisions of a technical nature.

### **Article 15 Signatures, Ratification, Acceptance, Approval And Accession**

(1) This Convention shall remain open for signature at the Headquarters of the Organization from 30 November 1990 until 29 November 1991 and shall thereafter remain open for accession. Any State may become Party to this Convention by:

(a) signature without reservation as to ratification, acceptance or approval; or

(b) Signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(c) Accession.

(2) Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

### **Article 16 Entry Into Force**

(1) This Convention shall enter into force twelve months after the date on which not less than fifteen States have either signed it without reservation as to ratification, acceptance or approval or have deposited the requisite instruments of ratification, acceptance, approval or accession in accordance with article 15.

(2) For States which have deposited an instrument of ratification, acceptance, approval or accession in respect of this Convention after the requirements for entry into force thereof have been met but prior to the date of entry into force, the ratification, acceptance, approval or accession shall take effect on the date of entry into force of this Convention or three months after the date of deposit of the instrument, whichever is the later date.

(3) For States which have deposited an instrument of ratification, acceptance, approval or accession after the date on which this Convention entered into force, this Convention shall become effective three months after the date of deposit of the instrument.

(4) After the date on which an amendment to this Convention is deemed to have been accepted under article 14, any instrument of ratification, acceptance, approval or accession deposited shall apply to this Convention as amended.

### **Article 17 Denunciation**

(1) This Convention may be denounced by any Party at any time after the expiry of five years from the date on which this Convention enters into force for that Party.

(2) Denunciation shall be effected by notification in writing to the Secretary-General.

(3) A denunciation shall take effect twelve months after receipt of the notification of denunciation by the Secretary-General or after the expiry of any longer period which may be indicated in the notification.

### **Article 18 Depositary**

(1) This Convention shall be deposited with the Secretary-General.

(2) The Secretary-General shall:

(a) inform all States which have signed this Convention or acceded thereto of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) the date of entry into force of this Convention; and

(iii) the deposit of any instrument of denunciation of this Convention together with the date on which it was received and the date on which the denunciation takes effect;

(b) Transmit certified true copies of this Convention to the Governments of all States which have signed this Convention or acceded thereto.

(3) As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.



## **Article 19 Languages**

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, and each text being equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Convention.

DONE AT London this thirtieth day of November one thousand nine hundred and ninety.

## **Annex - Reimbursement Of Costs Of Assistance**

(1) (a) Unless an agreement concerning the financial arrangements governing actions of Parties to deal with oil pollution incidents has been concluded on a bilateral or multilateral basis prior to the oil pollution incident, Parties shall bear the costs of their respective actions in dealing with pollution in accordance with subparagraph (i) or subparagraph (ii).

(i) If the action was taken by one Party at the express request of another Party, the requesting Party shall reimburse to the assisting Party the cost of its action. The requesting Party may cancel its request at any time, but in that case it shall bear the costs already incurred or committed by the assisting Party.

(ii) If the action was taken by a Party on its own initiative, this Party shall bear the costs of its action.

(b) The principles laid down in subparagraph (a) shall apply unless the Parties concerned otherwise agree in any individual case.

(2) Unless otherwise agreed, the costs of action taken by a Party at the request of another Party shall be fairly calculated according to the law and current practice of the assisting Party concerning the reimbursement of such costs.

(3) The Party requesting assistance and the assisting Party shall, where appropriate, co-operate in concluding any action in response to a compensation claim. To that end, they shall give due consideration to existing legal regimes. Where the action thus concluded does not permit full compensation for expenses incurred in the assistance operation, the Party requesting assistance may ask the assisting Party to waive reimbursement of the expenses exceeding the sums compensated or to reduce the costs which have been calculated in accordance with paragraph (2). It may also request a postponement of the reimbursement of such costs. In considering such a request, assisting Parties shall give due consideration to the needs of the developing countries.

(4) The provisions of this Convention shall not be interpreted as in any way prejudicing the rights of Parties to recover from third parties the costs of actions to deal with pollution or the threat of pollution under other applicable provisions and rules of national and international law. Special attention shall be paid to the 1969 International Convention on Civil Liability for Oil Pollution Damage and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage or any subsequent amendment to those Conventions.

# **ORPC-HNS Protocol On Preparedness, Response and Co-Operation To Pollution Incidents By Hazardous and Noxious Substances, 2000**

THE PARTIES TO THE PRESENT PROTOCOL,  
BEING PARTIES to the International Convention on Oil Pollution Preparedness, Response and Co-operation, done at London on 30 November 1990,

TAKING INTO ACCOUNT Resolution 10, on the expansion of the scope of the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990, to include hazardous and noxious substances, adopted by the Conference on International Co-operation on Oil Pollution Preparedness and Response 1990,

FURTHER TAKING INTO ACCOUNT that pursuant to Resolution 10 of the Conference on International Co-operation on Oil Pollution Preparedness and Response 1990, the International Maritime Organization has intensified its work, in collaboration with all interested international organizations, on all aspects of preparedness, response and co-operation to pollution incidents by hazardous and noxious substances ,

TAKING ACCOUNT of the "polluter pays" principle as a general principle of international environmental law,

BEING MINDFUL of the development of a strategy for incorporating the precautionary approach in the policies of the International Maritime Organization,

MINDFUL ALSO that, in the event of a pollution incident by hazardous and noxious substances, prompt and effective action is essential in order to minimize the damage which may result from such an incident,

HAVE AGREED as follows:

## **Article 1 General Provisions**

(1) Parties undertake, individually or jointly, to take all appropriate measures in accordance with the provisions of this Protocol and the Annex thereto to prepare for and respond to a pollution incident by hazardous and noxious substances.

(2) The [Annex](#) to this Protocol shall constitute an integral part of this Protocol and a reference to this Protocol constitutes at the same time a reference to the [Annex](#).

(3) This Protocol shall not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service. However, each Party shall ensure by the adoption of appropriate measures not impairing the operations or operational capabilities of such ships owned or operated by it, that such ships act in a manner consistent, so far as is reasonable and practicable, with this Protocol.

## **Article 2 Definitions**

For the purposes of this Protocol:

(1) Pollution incident by hazardous and noxious substances (hereinafter referred to as "pollution incident") means any occurrence or series of occurrences having the same origin, including fire or explosion, which results or may result in a discharge, release or emission of hazardous and noxious

substances and which poses or may pose a threat to the marine environment, or to the coastline or related interests of one or more States, and which requires emergency action or immediate response.

(2) Hazardous and noxious substances means any substance other than oil which, if introduced into the marine environment is likely to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

(3) Sea ports and hazardous and noxious substances handling facilities mean those ports or facilities where such substances are loaded into or unloaded from ships.

(4) Organization means the International Maritime Organization.

(5) Secretary-General means the Secretary-General of the Organization.

(6) OPRC Convention means the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990.

### **Article 3 Emergency Plans and Reporting**

(1) Each Party shall require that ships entitled to fly its flag have on-board a pollution incident emergency plan and shall require masters or other persons having charge of such ships to follow reporting procedures to the extent required. Both planning requirements and reporting procedures shall be in accordance with applicable provisions of the conventions developed within the Organization which have entered into force for that Party. On-board pollution incident emergency plans for offshore units, including Floating Production, Storage and Offloading Facilities and Floating Storage Units, should be dealt with under national provisions and/or company environmental management systems, and are excluded from the application of this article.

(2) Each Party shall require that authorities or operators in charge of sea ports and hazardous and noxious substances handling facilities under its jurisdiction as it deems appropriate have pollution incident emergency plans or similar arrangements for hazardous and noxious substances that it deems appropriate which are co-ordinated with the national system established in accordance with article 4 and approved in accordance with procedures established by the competent national authority.

(3) When the appropriate authorities of a Party learn of a pollution incident, they shall notify other States whose interests are likely to be affected by such incident.

### **Article 4 National and Regional Systems For Preparedness and Response**

(1) Each Party shall establish a national system for responding promptly and effectively to pollution incidents. This system shall include as a minimum:

(a) the designation of:

(i) the competent national authority or authorities with responsibility for preparedness for and response to pollution incidents;

(ii) the national operational contact point or points; and

(iii) an authority which is entitled to act on behalf of the State to request assistance or to decide to render the assistance requested;

(b) a national contingency plan for preparedness and response which includes the organizational relationship of the various bodies involved, whether public or private, taking into account guidelines developed by the Organization.

(2) In addition, each Party within its capabilities either individually or through bilateral or multilateral co-operation and, as appropriate, in co-operation with the shipping industries and industries dealing with hazardous and noxious substances, port authorities and other relevant entities, shall establish:

(a) a minimum level of pre-positioned equipment for responding to pollution incidents commensurate with the risk involved, and programmes for its use;

(b) a programme of exercises for pollution incident response organizations and training of relevant personnel;

(c) detailed plans and communication capabilities for responding to a pollution incident. Such capabilities should be continuously available; and

(d) a mechanism or arrangement to co-ordinate the response to a pollution incident with, if appropriate, the capabilities to mobilize the necessary resources.

(3) Each Party shall ensure that current information is provided to the Organization, directly or through the relevant regional organization or arrangements, concerning:

(a) the location, telecommunication data and, if applicable, areas of responsibility of authorities and entities referred to in paragraph (1)(a);

(b) information on pollution response equipment and expertise in disciplines related to pollution incident response and marine salvage which may be made available to other States, upon request; and

(c) its national contingency plan.

## **Article 5 International Cooperation In Pollution Response**

(1) Parties agree that, subject to their capabilities and the availability of relevant resources, they will co-operate and provide advisory services, technical support and equipment for the purpose of responding to a pollution incident, when the severity of the incident so justifies, upon the request of any Party affected or likely to be affected. The financing of the costs for such assistance shall be based on the provisions set out in the Annex to this Protocol.

(2) A Party which has requested assistance may ask the Organization to assist in identifying sources of provisional financing of the costs referred to in paragraph (1).

(3) In accordance with applicable international agreements, each Party shall take necessary legal or administrative measures to facilitate:

(a) the arrival and utilization in and departure from its territory of ships, aircraft and other modes of transport engaged in responding to a pollution incident or transporting personnel, cargoes, materials and equipment required to deal with such an incident; and

(b) the expeditious movement into, through, and out of its territory of personnel, cargoes, materials and equipment referred to in subparagraph (a).

## **Article 6 Research and Development**

(1) Parties agree to co-operate directly or, as appropriate, through the Organization or relevant regional organizations or arrangements in the promotion and exchange of results of research and development programmes relating to the enhancement of the state-of-the-art of preparedness for and response to pollution incidents, including technologies and techniques for surveillance, containment, recovery, dispersion, clean-up and otherwise minimizing or mitigating the effects of pollution incidents, and for restoration.

(2) To this end, Parties undertake to establish directly or, as appropriate, through the Organization or relevant regional organizations or arrangements, the necessary links between Parties' research institutions.

(3) Parties agree to co-operate directly or through the Organization or relevant regional organizations or arrangements to promote, as appropriate, the holding on a regular basis of international symposia on relevant subjects, including technological advances in techniques and equipment for responding to pollution incidents.

(4) Parties agree to encourage, through the Organization or other competent international organizations, the development of standards for compatible hazardous and noxious substances pollution combating techniques and equipment.

## **Article 7 Technical Co-Operation**

(1) Parties undertake directly or through the Organization and other international bodies, as appropriate, in respect of preparedness for and response to pollution incidents, to provide support for those Parties which request technical assistance:

(a) to train personnel;

(b) to ensure the availability of relevant technology, equipment and facilities;

(c) to facilitate other measures and arrangements to prepare for and respond to pollution incidents; and

(d) to initiate joint research and development programmes.

(2) Parties undertake to co-operate actively, subject to their national laws, regulations and policies, in the transfer of technology in respect of preparedness for and response to pollution incidents.

## **Article 8 Promotion Of Bilateral and Multilateral Co-Operation In Preparedness And Response**

Parties shall endeavour to conclude bilateral or multilateral agreements for preparedness for and response to pollution incidents. Copies of such agreements shall be communicated to the Organization which should make them available on request to the Parties.

## **Article 9 Relation To Other Conventions and Other Agreements**

Nothing in this Protocol shall be construed as altering the rights or obligations of any Party under any other convention or international agreement.

## **Article 10 Institutional Arrangements**

(1) Parties designate the Organization, subject to its agreement and the availability of adequate resources to sustain the activity, to perform the following functions and activities:

(a) Information services:

(i) To receive, collate and disseminate on request the information provided by Parties and relevant information provided by other sources; and

(ii) To provide assistance in identifying sources of provisional financing of costs;

(b) Education and training:

(i) To promote training in the field of preparedness for and response to pollution incidents; and

(ii) To promote the holding of international symposia;

(c) Technical services:

(i) To facilitate co-operation in research and development;

(ii) To provide advice to States establishing national or regional response capabilities; and

(iii) To analyse the information provided by Parties and relevant information provided by other sources and provide advice or information to States;

(d) Technical assistance:

(i) To facilitate the provision of technical assistance to States establishing national or regional response capabilities; and

(ii) To facilitate the provision of technical assistance and advice, upon the request of States faced with major pollution incidents.

(2) In carrying out the activities specified in this article, the Organization shall endeavour to strengthen the ability of States individually or through regional arrangements to prepare for and combat pollution incidents, drawing upon the experience of States, regional agreements and industry arrangements and paying particular attention to the needs of developing countries.

(3) The provisions of this article shall be implemented in accordance with a programme developed and kept under review by the Organization.

## **Article 11 Evaluation of the Protocol**

Parties shall evaluate within the Organization the effectiveness of the Protocol in the light of its objectives, particularly with respect to the principles underlying co-operation and assistance.

## **Article 12 Amendments**

(1) This Protocol may be amended by one of the procedures specified in the following paragraphs.

(2) Amendment after consideration by the Organization:

(a) Any amendment proposed by a Party to the Protocol shall be submitted to the Organization and circulated by the Secretary-General to all Members of the Organization and all Parties at least six months prior to its consideration.

(b) Any amendment proposed and circulated as above shall be submitted to the Marine Environment Protection Committee of the Organization for consideration.

(c) Parties to the Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Marine Environment Protection Committee.

(d) Amendments shall be adopted by a two thirds majority of only the Parties to the Protocol present and voting.

(e) If adopted in accordance with subparagraph (d), amendments shall be communicated by the Secretary-General to all Parties to the Protocol for acceptance.

(f) (i) An amendment to an article or the Annex of the Protocol shall be deemed to have been accepted on the date on which two thirds of the Parties have notified the Secretary-General that they have accepted it.

(ii) An amendment to an appendix shall be deemed to have been accepted at the end of a period to be determined by the Marine Environment Protection Committee at the time of its adoption, in accordance with subparagraph (d), which period shall not be less than ten months, unless within that period an objection is communicated to the Secretary-General by not less than one third of the Parties.

(g) (i) An amendment to an article or the Annex of the Protocol accepted in conformity with subparagraph (f)(i) shall enter into force six months after the date on which it is deemed to have been accepted with respect to the Parties which have notified the Secretary-General that they have accepted it.

(ii) An amendment to an appendix accepted in conformity with subparagraph (f) (ii) shall enter into force six months after the date on which it is deemed to have been accepted with respect to all Parties with the exception of those which, before that date, have objected to it. A Party may at any time withdraw a previously communicated objection by submitting a notification to that effect to the Secretary-General.

(3) Amendment by a Conference:

(a) Upon the request of a Party, concurred with by at least one third of the Parties, the Secretary-General shall convene a Conference of Parties to the Protocol to consider amendments to the Protocol.



(b) An amendment adopted by such a Conference by a two thirds majority of those Parties present and voting shall be communicated by the Secretary-General to all Parties for their acceptance.

(c) Unless the Conference decides otherwise, the amendment shall be deemed to have been accepted and shall enter into force in accordance with the procedures specified in paragraph (2)(f) and (g).

(4) The adoption and entry into force of an amendment constituting an addition of an Annex or an appendix shall be subject to the procedure applicable to an amendment to the Annex.

(5) Any Party which:

(a) Has not accepted an amendment to an article or the Annex under paragraph (2)(f)(i); or

(b) Has not accepted an amendment constituting an addition of an Annex or an appendix under paragraph (4); or

(c) Has communicated an objection to an amendment to an appendix under paragraph (2)(f)(ii) shall be treated as a non-Party only for the purpose of the application of such amendment. Such treatment shall terminate upon the submission of a notification of acceptance under paragraph (2) (f)(i) or withdrawal of the objection under paragraph (2)(g)(ii).

(6) The Secretary-General shall inform all Parties of any amendment which enters into force under this article, together with the date on which the amendment enters into force.

(7) Any notification of acceptance of, objection to, or withdrawal of objection to, an amendment under this article shall be communicated in writing to the Secretary-General who shall inform Parties of such notification and the date of its receipt.

(8) An appendix to the Protocol shall contain only provisions of a technical nature.

### **Article 13 Signature, Ratification, Acceptance, Approval and Accession**

(1) This Protocol shall remain open for signature at the Headquarters of the Organization from 15 March 2000 until 14 March 2001 and shall thereafter remain open for accession. Any State party to the OPRC Convention may become Party to this Protocol by:

(a) Signature without reservation as to ratification, acceptance or approval; or

(b) Signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(c) Accession.

(2) Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

### **Article 14 States With More Than One System Of Law**

(1) If a State party to the OPRC Convention comprises two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Protocol, it may at the time of signature, ratification, acceptance, approval or accession declare that this Protocol shall

extend to all its territorial units or only to one or more of them to which the application of the OPRC Convention has been extended, and may modify this declaration by submitting another declaration at any time.

(2) Any such declarations shall be notified to the depositary in writing and shall state expressly the territorial unit or units to which the Protocol applies. In the case of modification the declaration shall state expressly the territorial unit or units to which the application of the Protocol shall be further extended and the date on which such extension takes effect.

### **Article 15 Entry Into Force**

(1) This Protocol shall enter into force twelve months after the date on which not less than fifteen States have either signed it without reservation as to ratification, acceptance or approval or have deposited the requisite instruments of ratification, acceptance, approval or accession in accordance with article 13.

(2) For States which have deposited an instrument of ratification, acceptance, approval or accession in respect of this Protocol after the requirements for entry into force thereof have been met but prior to the date of entry into force, the ratification, acceptance, approval or accession shall take effect on the date of entry into force of this Protocol or three months after the date of deposit of the instrument, whichever is the later date.

(3) For States which have deposited an instrument of ratification, acceptance, approval or accession after the date on which this Protocol entered into force, this Protocol shall become effective three months after the date of deposit of the instrument.

(4) After the date on which an amendment to this Protocol is deemed to have been accepted under article 12, any instrument of ratification, acceptance, approval or accession deposited shall apply to this Protocol as amended.

### **Article 16 Denunciation**

(1) This Protocol may be denounced by any Party at any time after the expiry of five years from the date on which this Protocol enters into force for that Party.

(2) Denunciation shall be effected by notification in writing to the Secretary-General.

(3) A denunciation shall take effect twelve months after receipt of the notification of denunciation by the Secretary-General or after the expiry of any longer period which may be indicated in the notification.

(4) A Party denouncing the OPRC Convention also automatically denounces the Protocol.

### **Article 17 Depositary**

(1) This Protocol shall be deposited with the Secretary-General.

(2) The Secretary-General shall:

(a) Inform all States which have signed this Protocol or acceded thereto of:

(i) Each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) Any declaration made under article 14;

(iii) The date of entry into force of this Protocol; and

(iv) The deposit of any instrument of denunciation of this Protocol together with the date on which it was received and the date on which the denunciation takes effect;

(b) Transmit certified true copies of this Protocol to the Governments of all States which have signed this Protocol or acceded thereto.

(3) As soon as this Protocol enters into force, a certified true copy thereof shall be transmitted by the depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

### **Article 18 Languages**

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, and each text being equally authentic.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

DONE AT London this fifteenth day of March two thousand.

## **Annex - Reimbursement Of Costs Of Assistance**

(1) (a) Unless an agreement concerning the financial arrangements governing actions of Parties to deal with oil pollution incidents has been concluded on a bilateral or multilateral basis prior to the oil pollution incident, Parties shall bear the costs of their respective actions in dealing with pollution in accordance with subparagraph (i) or subparagraph (ii).

(i) If the action was taken by one Party at the express request of another Party, the requesting Party shall reimburse to the assisting Party the cost of its action. The requesting Party may cancel its request at any time, but in that case it shall bear the costs already incurred or committed by the assisting Party.

(ii) If the action was taken by a Party on its own initiative, this Party shall bear the costs of its action.

(b) The principles laid down in subparagraph (a) shall apply unless the Parties concerned otherwise agree in any individual case.

(2) Unless otherwise agreed, the costs of action taken by a Party at the request of another Party shall be fairly calculated according to the law and current practice of the assisting Party concerning the reimbursement of such costs.

(3) The Party requesting assistance and the assisting Party shall, where appropriate, co-operate in concluding any action in response to a compensation claim. To that end, they shall give due consideration to existing legal regimes. Where the action thus concluded does not permit full compensation for expenses incurred in the assistance operation, the Party requesting assistance may ask the assisting Party to waive reimbursement of the expenses exceeding the sums compensated or to reduce the costs which have been calculated in accordance with paragraph (2). It may also request a postponement of the reimbursement of such costs. In considering such a request, assisting Parties shall give due consideration to the needs of the developing countries.

(4) The provisions of this Convention shall not be interpreted as in any way prejudicing the rights of Parties to recover from third parties the costs of actions to deal with pollution or the threat of pollution under other applicable provisions and rules of national and international law.

# **International Convention On Civil Liability For Oil Pollution Damage 1992<sup>1</sup>**

**Adopted at London on 27 November 1992  
Entered into force 30 May 1996**

## **Introduction**

Compensation for oil pollution damage caused by spills from oil tankers is governed by an International regime developed under the auspices of the International Maritime Organization (IMO). The framework for the regime was originally the 1969 International Convention on Civil Liability for Oil Pollution Damage (1969 Civil Liability Convention) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1971 Fund Convention). This 'old' regime was amended in 1992 by two Protocols, and the amended Conventions are known as the 1992 Civil Liability Convention and the 1992 Fund Convention. The 1992 Conventions entered into force on 30 May 1996. The 1971 Fund Convention ceased to be in force on 24 May 2002, when the number of 1971 Fund Member States fell below 25.

The 1992 Civil Liability Convention governs the liability of ship owners for oil pollution damage by laying down the principle of strict liability for ship owners and creating a system of compulsory liability insurance. The ship owner is normally entitled to limit his liability to an amount which is linked to the tonnage of his ship.

The International Oil Pollution Compensation Fund 1992 (IOPC Fund 1992 or 1992 Fund) was established under the 1992 Fund Convention in order to provide compensation for victims who do not obtain full compensation under the 1992 Civil Liability Convention. By becoming Party to the 1992 Fund Convention, a State becomes a Member of the 1992 Fund. The Organisation is based in London. The 1992 Fund is financed by contributions levied on any person who has received in a calendar year more than 150 000 tonnes of crude oil or heavy fuel oil after sea transport in a 1992 Fund Member State.

The compensation payable by the 1992 Fund under the 1992 Fund Convention for anyone incident occurring before 1 November 2003 was limited to 135 million Special Drawing Rights (SDR) of the International Monetary Fund (about £135 million or US \$210 million as at 3 October 2011), including the sum actually paid by the ship owner or his insurer under the 1992 Civil Liability Convention. In October 2000, the Legal Committee of the IMO adopted two Resolutions increasing the limits contained in the 1992 Civil Liability Convention and the 1992 Fund Convention by some 50.37%. These amendments entered into force on 1 November 2003, bringing the maximum amount payable by the 1992 Fund to 203 million SDR (£203 million or US\$316 million as at 3 October 2011) for anyone incident occurring on or after 1 November 2003, including the sum actually paid by the ship owner or his insurer.

In May 2003, a Protocol to the 1992 Fund Convention (Supplementary Fund Protocol) was adopted which provides a third tier of compensation by establishing an International Oil Pollution Compensation Supplementary Fund (Supplementary Fund). Membership of the Supplementary Fund is optional and is open to any State which is a Member of 1992 Fund. The maximum amount payable for any one incident is 750 million SDR (£751 million or US\$1 166 million as at 3 October 2011), including the amount payable under the 1992 Conventions.

1 1992 Civil Liability Convention

The Supplementary Fund is financed in a similar way to the 1992 Fund. The Supplementary Fund Protocol entered into force on 3 March 2005 and applies to incidents occurring on or after that date.

This booklet contains the texts of the 1992 Civil Liability Convention and the 1992 Fund Convention, ie. the consolidated texts of the 1969 Civil Liability Convention and the 1971 Fund Convention as amended by the 1992 Protocols, together with the texts of the two Resolutions on the increase of the limits, and the text of the Supplementary Fund Protocol.

The States Parties to the present Convention,

CONSCIOUS of the dangers of pollution posed by the worldwide maritime carriage of oil in bulk,

CONVINCED of the need to ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from ships,

DESIRING to adopt uniform international rules and procedures for determining questions of liability and providing adequate compensation in such cases,

HAVE AGREED as follows:

## **Article I**

For the purposes of this Convention:

1. "Ship" means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.
2. "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.
3. "Owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "owner" shall mean such company.
4. "State of the ship's registry" means in relation to registered ships the State of registration of the ship, and in relation to unregistered ships the State whose flag the ship is flying.
5. "Oil" means any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship.
6. "Pollution damage" means:
  - (a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken to be undertaken;
  - (b) the costs of preventive measures and further loss or damage caused by preventive measures.

7. "Preventive measures" means any reasonable measures taken by any person after an Incident has occurred to prevent or minimize pollution damage.
8. "Incident" means any occurrence, or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage.
9. "Organization" means the International Maritime Organization.
10. "1969 Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1969. For States Parties to the Protocol of 1976 to that Convention, the term shall be deemed to include the 1969 Liability Convention as amended by that Protocol.

## **Article II**

This Convention shall apply exclusively:

- (a) to pollution damage caused:
  - (i) In the territory, including the territorial sea, of a Contracting State, and
  - (ii) In the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;
- (b) to preventive measures, wherever taken, to prevent or minimize such damage.

## **Article III**

1. Except as provided in paragraphs 2 and 3 of this Article, the owner of a ship at the time of an incident, or, where the incident consists of a series of occurrences, at the time of the first such occurrence, shall be liable for any pollution damage caused by the ship as a result of the Incident.
2. No liability for pollution damage shall attach to the owner if he proves that the damage:
  - (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character, or
  - (b) was wholly caused by an act or omission done with intent to cause damage by a third party, or
  - (c) was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.
3. If the owner proves that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from his liability to such person.

4. No claim for compensation for pollution damage may be made against the owner otherwise than in accordance with this Convention. Subject to paragraph 5 of this Article, no claim for compensation for pollution damage under this Convention or otherwise may be made against:

- (a) the servants or agents of the owner or the members of the crew;
- (b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
- (c) any charterer (how so ever described, including a bareboat charterer), manager or operator of the ship;
- (d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
- (e) any person taking preventive measures;
- (f) all servants or agents of persons mentioned in subparagraphs (c), (d) and (e);

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

5. Nothing in this Convention shall prejudice any right of recourse of the owner against third parties.

#### **Article IV**

When an incident involving two or more ships occurs and pollution damage results there from, the owners of all the ships concerned, unless exonerated under Article III, shall be jointly and severally liable for all such damage which is not reasonably separable.

#### **Article V**

1. The owner of a ship shall be entitled to limit his liability under this Convention in respect of anyone incident to an aggregate amount calculated as follows:

- (a) 4,510,000 units of account<sup>2</sup> for a ship not exceeding 5,000 units of tonnage;
- (b) for a ship with a tonnage in excess thereof, for each additional unit of tonnage, 631 units of account<sup>2</sup> in addition to the amount mentioned in sub-paragraph (a);

provided, however, that this aggregate amount shall not in any event exceed 89,770,000 units of account<sup>2</sup>.

<sup>2</sup>Lower amounts applied to incidents occurring before 1 November 2003;

2. The owner shall not be entitled to limit his liability under this Convention if it is proved that the pollution damage resulted from his personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.



3. For the purpose of availing himself of the benefit of limitation provided for in paragraph 1 of this Article the owner shall constitute a fund for the total sum representing the limit of his liability with the Court or other competent authority of anyone of the Contracting States in which action is brought under Article IX or, if no action is brought, with any Court or other competent authority in anyone of the Contracting States in which an action can be brought under Article IX. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the legislation of the Contracting State where the fund is constituted, and considered to be adequate by the Court or other competent authority.

4. The fund shall be distributed among the claimants in proportion to the amounts of their established claims.

5. If before the fund is distributed the owner or any of his servants or agents or any person providing him insurance or other financial security has as a result of the incident in question, paid compensation for pollution damage, such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

6. The right of subrogation provided for in paragraph 5 of this Article may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for pollution damage which he may have paid but only to the extent that such subrogation is permitted under the applicable national law.

7. Where the owner or any other person establishes that he may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which such person would have enjoyed a right of subrogation under paragraphs 5 or 6 of this Article, had the compensation been paid before the fund was distributed, the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

8. Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize pollution damage shall rank equally with other claims against the fund.

9. (a) The "unit of account" referred to in paragraph 1 of this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in paragraph 1 shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the constitution of the fund referred to in paragraph 3. The value of the national currency, in terms of the Special Drawing Right, of a Contracting State which is a member of the International Monetary Fund shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a Contracting State which is not a member of the International Monetary Fund shall be calculated in a manner determined by that State.

(b) Nevertheless, a Contracting State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 9(a) may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare that the unit of account referred to in paragraph 9(a) shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.

(c) The calculation mentioned in the last sentence of paragraph 9 (a) and the conversion mentioned in paragraph 9 (b) shall be made in such manner as to express in the national currency of the Contracting State as far as possible the same real value for the amounts in paragraph 1 as would result from the application of the first three sentences of paragraph 9(a). Contracting States shall communicate to the depositary the manner of calculation pursuant to paragraph 9 (a) , or the result of the conversion in paragraph 9(b) as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

10. For the purpose of this Article the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

11. The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this Article on the same conditions and having the same effect as if it were constituted by the owner. Such a fund may be constituted even if, under the provisions of paragraph 2, the owner is not entitled to limit his liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

## **Article VI**

1. Where the owner, after an incident, has constituted a fund in accordance with Article V. and is entitled to limit his liability,

(a) no person having a claim for pollution damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim;

(b) the Court or other competent authority of any Contracting State shall order the release of any ship or other property belonging to the owner which has been arrested in respect of a claim for pollution damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.

2. The foregoing shall, however, only apply if the claimant has access to the Court administering the fund and the fund is actually available in respect of his claim.

## **Article VII**

1. The owner of a ship registered in a Contracting State and carrying more than 2,000 tons of oil in bulk as cargo shall be required to maintain insurance or other financial security, such as the guarantee of a bank or a certificate delivered by an international compensation fund, in the sums fixed by applying the limits of liability prescribed in Article V, paragraph I to cover his liability for pollution damage under this Convention.

2. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a Contracting State has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a Contracting State such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a Contracting State it may be issued or certified by the appropriate authority of any Contracting State. This certificate shall be in the form of the annexed model and shall contain the following particulars:

(a) name of ship and port of registration;

(b) name and principal place of business of owner;

(c) type of security;

(d) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established;

(e) period of validity of certificate which shall not be longer than the period of validity of the insurance or other security.

3. The certificate shall be in the official language or languages of the issuing State. If the language used is neither English nor French, the text shall include a translation into one of these languages.

4. The certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a Contracting State, with the authorities of the State Issuing or certifying the certificate.

5. An insurance or other financial security shall not satisfy the requirements of this Article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2 of this Article, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 4 of this Article, unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this Article.

6. The State of registry shall, subject to the provisions of this Article, determine the conditions of issue and validity of the certificate.

7. Certificates issued or certified under the authority of a Contracting State in accordance with paragraph 2 shall be accepted by other Contracting States for the purposes of this Convention and shall be regarded by other Contracting States as having the same force as certificates issued or certified by them even if issued or certified in respect of a ship not registered in a Contracting State. A Contracting State may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the certificate is not financially capable of meeting the obligations imposed by this Convention.

8. Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the owner's liability for pollution damage. In such case the defendant may, even if the owner is not entitled to limit his liability according to Article V, paragraph 2, avail himself of the limits of liability prescribed in Article V, paragraph 1. He may further avail himself of the defences (other than the bankruptcy or winding up of the owner) which the owner himself would have been entitled to invoke. Furthermore, the defendant may avail himself of the defence that the pollution damage resulted from the wilful misconduct of the owner himself, but the defendant shall not avail himself of any other defence which he might have been entitled to invoke in proceedings brought by the owner against him. The defendant shall in any event have the right to require the owner to be joined in the proceedings.

9. Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 of this Article shall be available exclusively for the satisfaction of claims under this Convention.

10. A Contracting State shall not permit a ship under its flag to which this Article applies to trade unless a certificate has been Issued under paragraph 2 or 12 of this Article.

11. Subject to the provisions of this Article, each Contracting State shall ensure, under its national legislation, that insurance or other security to the extent specified In paragraph 1 of this Article is in force in respect of any ship, wherever registered, entering 01' leaving a port in its territory, or arriving at or leaving an off-shore terminal in its territorial sea, if the ship actually carries more than 2,000 tons of oil in bulk as cargo.

12. If insurance or other financial security is not maintained in respect of a ship owned by a Contracting State, the provisions of this Article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authorities of the State of the ship's registry stating that the ship is owned by that State and that the ship's liability is covered within the limits prescribed by Article V, paragraph 1. Such a certificate shall follow as closely as practicable the model prescribed by paragraph 2 of this Article.

### **Article VIII**

Rights of compensation under this Convention shall be extinguished unless an action Is brought there under within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the damage. Where this incident consists of a series of occurrences, the six years' period shall run from the date of the first such occurrence.

### **Article IX**

1. Where an incident has caused pollution damage in the territory, including the territorial sea or an area referred to in Article II, of one or more Contracting States or preventive measures have been taken to prevent or minimize pollution damage in such territory including the territorial sea or area, actions for compensation may only be brought in the Courts of any such Contracting State or States. Reasonable notice of any such action shall be given to the defendant.

2. Each Contracting State shall ensure that its Courts possess the necessary jurisdiction to entertain such actions for compensation.

3. After the fund has been constituted in accordance with Article V the Courts of the State in which the fund is constituted shall be exclusively competent to determine all matters relating to the apportionment and distribution of the fund.

### **Article X**

1. Any judgment given by a Court with jurisdiction in accordance with Article IX which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in any Contracting State, except:

(a) where the judgment was obtained by fraud; or

(b) where the defendant was not given reasonable notice and a fair opportunity to present his case.

2. A judgment recognized under paragraph 1 of this Article shall be enforceable in each Contracting State as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

## **Article XI**

1. The provisions of this Convention shall not apply to warships or other ships owned or operated by a State and used, for the time being, only on government non-commercial service.
2. With respect to ships owned by a Contracting State and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in Article IX and shall waive all defences based on its status as a sovereign State.

## **Article XII**

This Convention shall supersede any International Conventions in force or open for signature, ratification or accession at the date on which the Convention is opened for signature, but only to the extent that such Conventions would be in conflict with it; however, nothing in this Article shall affect the obligations of Contracting States to non-Contracting States arising under such International Conventions.

## **Transitional provisions**

### **Article XII bis**

The following transitional provisions shall apply in the case of a State which at the time of an incident is a Party both to this Convention and to the 1969 Liability Convention:

(a) where an incident has caused pollution damage within the scope of this Convention, liability under this Convention shall be deemed to be discharged if, and to the extent that, it also arises under the 1969 Liability Convention;

(b) where an incident has caused pollution damage within the scope of this Convention, and the State is a Party both to this Convention and to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, liability remaining to be discharged after the application of subparagraph (a) of this Article shall arise under this Convention only to the extent that pollution damage remains uncompensated after application of the said 1971 Convention;

(c) in the application of Article III, paragraph 4, of this Convention the expression "this Convention" shall be interpreted as referring to this Convention or the 1969 Liability Convention, as appropriate;

(d) in the application of Article V, paragraph 3, of this Convention the total sum of the fund to be constituted shall be reduced by the amount by which liability has been deemed to be discharged in accordance with sub-paragraph (a) of this Article.

### **Article XII ter**

## **Final clauses**

The final clauses of this Convention shall be Articles 12 to 18 of the Protocol of 1992 to amend the 1969 Liability Convention. References in this Convention to Contracting States shall be taken to mean references to the Contracting States of that Protocol.

## **Final Clauses of the Protocol of 1992 to amend the 1969 Civil Liability Convention**

### **Article 12**

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at London from 15 January 1993 to 14 January 1994 by all States.
2. Subject to paragraph 4, any State may become a Party to this Protocol by:
  - (a) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
  - (b) accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.
4. Any Contracting State to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, hereinafter referred to as the 1971 Fund Convention, may ratify, accept, approve or accede to this Protocol only if it ratifies, accepts, approves or accedes to the Protocol of 1992 to amend that Convention at the same time, unless it denounces the 1971 Fund Convention to take effect on the date when this Protocol enters into force for that State.
5. A State which is a Party to this Protocol but not a Party to the 1969 Liability Convention shall be bound by the provisions of the 1969 Liability Convention as amended by this Protocol in relation to other States Parties here to, but shall not be bound by the provisions of the 1969 Liability Convention in relation to States Parties there to.
6. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the 1969 Liability Convention as amended by this Protocol shall be deemed to apply to the Convention so amended, as modified by such amendment.

### **Article 13**

#### **Entry Into force**

1. This Protocol shall enter into force twelve months following the date on which ten States including four States each with not less than one million units of gross tanker tonnage have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization.
2. However, any Contracting State to the 1971 Fund Convention may, at the time of the deposit of its instrument of ratification, acceptance, approval or accession in respect of this Protocol, declare that such instrument shall be deemed not to be effective for the purposes of this Article until the end of the six-month period in Article 31 of the Protocol of 1992 to amend the 1971 Fund Convention. A State which is not a Contracting State to the 1971 Fund Convention but which deposits an instrument of ratification, acceptance, approval or accession in respect of the Protocol

of 1992 to amend the 1971 Fund Convention may also make a declaration in accordance with this paragraph at the same time.

3. Any State which has made a declaration in accordance with the preceding paragraph may withdraw it at any time by means of a notification addressed to the Secretary-General of the Organization. Any such withdrawal shall take effect on the date the notification is received, provided that such State shall be deemed to have deposited its instrument of ratification, acceptance, approval or accession in respect of this Protocol on that date.

4. For any State which ratifies, accepts, approves or accedes to it after the conditions in paragraph 1 for entry into force have been met, this Protocol shall enter into force twelve months following the date of deposit by such State of the appropriate instrument.

## **Article 14**

### **Revision and amendment**

1. A Conference for the purpose of revising or amending the 1992 Liability Convention may be convened by the Organization.

2. The Organization shall convene a Conference of Contracting States for the purpose of revising or amending the 1992 Liability Convention at the request of not less than one third of the Contracting States.

## **Article 15**

### **Amendments of limitation amounts**

1. Upon the request of at least one quarter of the Contracting States any proposal to amend the limits of liability laid down in Article V, paragraph 1, of the 1969 Liability Convention as amended by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization for consideration at a date at least six months after the date of its circulation.

3. All Contracting States to the 1969 Liability Convention as amended by this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

4. Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States shall be present at the time of voting.

5. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and in particular the amount of damage resulting there from, changes in the monetary values and the effect of the proposed amendment on the cost of insurance. It shall also take into account the relationship between the limits in Article V, paragraph 1, of the 1969 Liability Convention as amended by this Protocol and those in Article 4, paragraph 4, of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992.

6. (a) No amendment of the limits of liability under this Article may be considered before 15 January 1998 nor less than five years from the date of entry into force of a previous amendment under this Article. No amendment under this Article shall be considered before this Protocol has entered into force.

(b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the 1969 Liability Convention as amended by this Protocol increased by 6 per cent per year calculated on a compound basis from 15 January 1993.

(c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the 1969 Liability Convention as amended by this Protocol multiplied by 3.

7. Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period not less than one quarter of the States that were Contracting States at the time of the adoption of the amendment by the Legal Committee have communicated to the Organization that they do not accept the amendment in which case the amendment is rejected and shall have no effect.

8. An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force eighteen months after its acceptance.

9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with Article 16, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

10. When an amendment has been adopted by the Legal Committee but the eighteen-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

## **Article 16**

### **Denunciation**

1. This Protocol may be denounced by any Party at any time after the date on which it enters into force for that Party.

2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General of the Organization.

3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General of the Organization.

4. As between the Parties to this Protocol, denunciation by any of them of the 1969 Liability Convention in accordance with Article XVI thereof shall not be construed in any way as a denunciation of the 1969 Liability Convention as amended by this Protocol.

5. Denunciation of the Protocol of 1992 to amend the 1971 Fund Convention by a State which remains a Party to the 1971 Fund Convention shall be deemed to be a denunciation of this Protocol.



Such denunciation shall take effect on the date on which denunciation of the Protocol of 1992 to amend the 1971 Fund Convention takes effect according to Article 34 of that Protocol.

## **Article 17**

### **Depositary**

1. This Protocol and any amendments accepted under Article 15 shall be deposited with the Secretary-General of the Organization.
2. The Secretary-General of the Organization shall:
  - (a) Inform all States which have signed or acceded to this Protocol of:
    - (i) each new signature or deposit of an instrument together with the date thereof;
    - (ii) each declaration and notification under Article 13 and each declaration and communication under Article V, paragraph 9, of the 1992 liability Convention;
    - (III) the date of entry into force of this Protocol;
    - (iv) any proposal to amend limits of liability which has been made in accordance with Article 15, paragraph 1;
    - (v) any amendment which has been adopted in accordance with Article 15, paragraph 4;
    - (vi) any amendment deemed to have been accepted under Article 15, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that Article;
    - (vii) the deposit of any instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;
    - (viii) any denunciation deemed to have been made under Article 16, paragraph 5;
    - (ix) any communication called for by any Article of this Protocol;
  - (b) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to this Protocol.
3. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General of the Organization to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

## **Article 18**

### **Languages**

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this twenty-seventh day of November one thousand nine hundred and ninety-two.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol<sup>3</sup>

<sup>3</sup> Signatures omitted.

\*\*\*\*\*

## Annex - Certificate Of Insurance Or Other Financial Security In Respect Of Civil Liability For Oil Pollution Damage

Issued in accordance with the provisions of Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1992.

Name of ship	Distinctive number or letters	Port of registry	Name and address of owner

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article VII of the International Convention on Civil Liability for Oil Pollution Damage, 1992.

Type of Security \_\_\_\_\_

Duration of Security \_\_\_\_\_

Name and Address of the Insurer(s) and/or Name  
Guarantor(s) \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

This certificate is valid until \_\_\_\_\_

Issued or certified by the Government  
of \_\_\_\_\_

(Full designation of the State)

At \_\_\_\_\_ On \_\_\_\_\_

(Place)

(Date)

Signature and Title of issuing or certifying official \_\_\_\_\_

### Explanatory Notes:

- 1. If desired, the designation of the State may include a reference to the competent public authority of the country where the certificate is issued.*
- 2. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.*
- 3. If security is furnished in several forms, these should be enumerated.*
- 4. The entry "Duration of Security" must stipulate the date on which such security takes effect.*

**Resolution - Adoption Of The Limitation Amounts In The Protocol Of 1992 To  
Amend The International Convention On Civil Liability For Oil Pollution  
Damage, 1969**

(Adopted by the Legal Committee of the International Maritime Organization on 18 October 2000)

THE LEGAL COMMITTEE at Its eighty-second session:

RECALLING Article 33(b) of the Convention on the International Maritime Organization (hereinafter referred to as the "IMO Convention") concerning the functions of the Committee,

MINDFUL of Article 36 of the IMO Convention concerning rules governing the procedures to be followed when exercising the functions conferred on It by or under any international convention or Instrument,

RECALLING FURTHER article 15 of the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (hereinafter referred to as the "1992 CLC Protocol") concerning the procedures for amending the limitation amounts set out in article 6(1) of the 1992 CLC Protocol,

HAVING CONSIDERED amendments to the limitation amounts proposed and circulated in accordance with the provisions of article IS(I) and (2) of the 1992 CLC Protocol,

1. ADOPTS, in accordance with article 15(4) of the 1992 CLC Protocol, amendments to the limitation amounts set out in article 6(1) of the 1992 CLC Protocol, as set out in the Annex to this resolution;
2. DETERMINES, in accordance with article 15(7) of the 1992 CLC Protocol, that these amendments shall be deemed to have been accepted on 1 May 2002 unless, prior to that date, not less than one quarter of the States that were Contracting States on the date of the adoption of these amendments (being 18 October 2000) have communicated to the Organization that they do not accept these amendments;
3. FURTHER DETERMINES that, in accordance with article 15(8) of the 1992 CLC Protocol, these amendments, deemed to have been accepted in accordance with paragraph 2 above, shall enter into force on 1 November 2003;
4. REQUESTS the Secretary-General, in accordance with articles 15(7) and 17(2)(v) of the 1992 CLC Protocol, to transmit certified copies of the present resolution and the amendments contained in the Annex thereto to all States which have signed or acceded to the 1992 CLC Protocol; and
5. FURTHER REQUESTS the Secretary-General to transmit copies of the present resolution and its Annex to the Members of the Organization which have not signed or acceded to the 1992 CLC Protocol.

**Annex - Adoption Of The Limitation Amounts In The Protocol Of 1992 To  
Amend The International Convention On Civil Liability For Oil Pollution  
Damage, 1969**

Article 6(1) of the 1992 CLC Protocol is amended as follows:

- the reference to "3 million units of account" shall read "4,510,000 units of account";
- the reference to "420 units of account" shall read "631 units of account"; and
- the reference to "59.7 million units of account" shall read "89,770,000 units of account".

# **International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992<sup>4</sup>**

The States Parties to the present Convention,

BEING PARTIES to the International Convention on Civil Liability for Oil Pollution Damage. adopted at Brussels on 29 November 1969.

CONSCIOUS of the dangers of pollution posed by the world-wide maritime carriage of oil in bulk.

CONVINCED of the need to ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from ships.

CONSIDERING that the International Convention of 29 November 1969. on Civil Liability for Oil Pollution Damage. by providing a regime for compensation for pollution damage in Contracting States and for the costs of measures. wherever taken. to prevent or minimize such damage. represents a considerable progress towards the achievement of this aim.

CONSIDERING HOWEVER that this regime does not afford full compensation for victims of oil pollution damage in all cases while it imposes an additional financial burden on ship-owners,

CONSIDERING FURTHER that the economic consequences of oil pollution damage resulting from the escape or discharge of oil carried in bulk at sea by ships should not exclusively be borne by the shipping industry but should in part be borne by the oil cargo interests.

CONVINCED of the need to elaborate a compensation and indemnification system supplementary to the International Convention on Civil Liability for Oil Pollution Damage with a view to ensuring that full compensation will be available to victims of oil pollution incidents and that the ship owners are at the same time given relief in respect of the additional financial burdens imposed on them by the said Convention.

TAKING NOTE of the Resolution on the Establishment of an International Compensation Fund for Oil Pollution Damage which was adopted on 29 November 1969 by the International Legal Conference on Marine Pollution Damage.

HAVE AGREED as follows:

## **General Provisions**

### **Article 1**

For the purposes of this Convention:

1. "1992 Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage. 1992.

4 1992 Fund Convention

*1bis.* "1971 Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage. 1971. For States Parties to the Protocol of 1976 to that Convention, the term shall be deemed to include the 1971 Fund Convention as amended by that Protocol.

2. "Ship", "Person", "Owner", "Oil", "Pollution Damage", "Preventive Measures", "Incident", and "Organization" have the same meaning as in Article I of the 1992 Liability Convention.

3. "Contributing Oil" means crude oil and fuel oil as defined in sub-paragraphs (a) and (b) below:

(a) "Crude Oil" means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation. It also includes crude oils from which certain distillate fractions have been removed (sometimes referred to as "topped crudes") or to which certain distillate fractions have been added (sometimes referred to as "spiked" or "reconstituted" crudes).

(b) "Fuel Oil" means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the "American Society for Testing and Materials' Specification for Number Four Fuel Oil (Designation D 396-69)", or heavier.

4. "Unit of account" has the same meaning as in Article V, paragraph 9, of the 1992 Liability Convention.

5. "Ship's tonnage" has the same meaning as in Article V, paragraph 10, of the 1992 Liability Convention.

6. "Ton", in relation to oil, means a metric ton.

7. "Guarantor" means any person providing insurance or other financial security to cover an owner's liability in pursuance of Article VII, paragraph 1. of the 1992 Liability Convention.

8. "Terminal installation" means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated off-shore and linked to such site.

9. Where an incident consists of a series of occurrences, it shall be treated as having occurred on the date of the first such occurrence.

## **Article 2**

1. An International Fund for compensation for pollution damage, to be named "The International Oil Pollution Compensation Fund 1992" and hereinafter referred to as "the Fund", is hereby established with the following aims:

(a) to provide compensation for pollution damage to the extent that the protection afforded by the 1992 Liability Convention is inadequate;

(b) to give effect to the related purposes set out in this Convention.

2. The Fund shall in each Contracting State be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each Contracting State shall recognize the Director of the Fund (hereinafter referred to as "The Director") as the legal representative of the Fund.

### **Article 3**

This Convention shall apply exclusively:

(a) to pollution damage caused:

(i) in the territory, including the territorial sea, of a Contracting State, and

(ii) in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;

(b) to preventive measures, wherever taken, to prevent or minimize such damage.

### **Compensation**

#### **Article 4**

1. For the purpose of fulfilling its function under Article 2, paragraph 1(a), the Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1992 Liability Convention,

(a) because no liability for the damage arises under the 1992 Liability Convention;

(b) because the owner liable for the damage under the 1992 Liability Convention is financially incapable of meeting his obligations in full and any financial security that may be provided under Article VII of that Convention does not cover 01' is insufficient to satisfy the claims for compensation for the damage; an owner being treated as financially incapable of meeting his obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under the 1992 Liability Convention after having taken all reasonable steps to pursue the legal remedies available to him;

(c) because the damage exceeds the owner's liability under the 1992 Liability Convention as limited pursuant to Article V, paragraph I, of that Convention or under the terms of any other international Convention in force or open for signature, ratification or accession at the date of this Convention. Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize pollution damage shall be treated as pollution damage for the purposes of this Article.

2. The Fund shall incur no obligation under the preceding paragraph if:

(a) it proves that the pollution damage resulted from an act of war, hostilities, civil war or insurrection or was caused by oil which has escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the incident, only on Government non-commercial service; or

(b) the claimant cannot prove that the damage resulted from an incident involving one or more ships.



3. If the Fund proves that the pollution damage resulted wholly or partially either from an act or omission done with the intent to cause damage by the person who suffered the damage or from the negligence of that person, the Fund may be exonerated wholly or partially from its obligation to pay compensation to such person. The Fund shall in any event be exonerated to the extent that the ship owner may have been exonerated under Article III, paragraph 3, of the 1992 Liability Convention. However, there shall be no such exoneration of the Fund with regard to preventive measures.

4. (a) Except as otherwise provided in sub-paragraphs (b) and (c) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article shall in respect of anyone incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the 1992 Liability Convention for pollution damage within the scope of application of this Convention as defined in Article 3 shall not exceed 203,000,000 units of account<sup>5</sup>.

(b) Except as otherwise provided in sub-paragraph (c), the aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 203,000,000 units of account<sup>5</sup>.

(c) The maximum amount of compensation referred to in sub-paragraphs (a) and (b) shall be 300,740,000 units of account<sup>5</sup> with respect to any incident occurring during any period when there are three Parties to this Convention in respect of which the combined relevant quantity of contributing oil received by persons in the territories of such Parties, during the preceding calendar year, equalled or exceeded 600 million tons.

(d) Interest accrued on a fund constituted in accordance with Article y, paragraph 3, of the 1992 Liability Convention, if any, shall not be taken into account for the computation of the maximum compensation payable by the Fund under this Article.

(e) The amounts mentioned in this Article shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the decision of the Assembly of the Fund as to the first date of payment of compensation.

5. Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Convention shall be the same for all claimants.

6. The Assembly of the Fund may decide that, in exceptional cases, compensation in accordance with this Convention can be paid even if the owner of the ship has not constituted a fund in accordance with Article y, paragraph 3, of the 1992 Liability Convention. In such case paragraph 4 (e) of this Article applies accordingly.

7. The Fund shall, at the request of a Contracting State, use its good offices as necessary to assist that State to secure promptly such personnel, material and services as are necessary to enable the State to take measures to prevent or mitigate pollution damage arising from an incident in respect of which the Fund may be called upon to pay compensation under this Convention.

<sup>5</sup> Lower limits applied to incidents occurring before 1 November 2003

8. The Fund may on conditions to be laid down in the Internal Regulations provide credit facilities with a view to the taking of preventive measures against pollution damage arising from a particular

incident in respect of which the Fund may be called upon to pay compensation under this Convention.

## **Article 5**

(deleted)

## **Article 6**

Rights to compensation under Article 4 shall be extinguished unless an action is brought there under or a notification has been made pursuant to Article 7, paragraph 6, within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the damage.

## **Article 7**

1. Subject to the subsequent provisions of this Article. any action against the Fund for compensation under Article 4 of this Convention shall be brought only before a court competent under Article IX of the 1992 Liability Convention In respect of actions against the owner who is or who would. but for the provisions of Article III, paragraph 2, of that Convention. have been liable for pollution damage caused by the relevant incident.

2. Each Contracting State shall ensure that its courts possess the necessary jurisdiction to entertain such actions against the Fund as are referred to in paragraph 1.

3. Where an action for compensation for pollution damage has been brought before a court competent under Article IX of the 1992 Liability Convention against the owner of a ship or his guarantor. such court shall have exclusive jurisdictional competence over any action against the Fund for compensation under the provisions of Article 4 of this Convention In respect of the same damage. However. where an action for compensation for pollution damage under the 1992 Liability Convention has been brought before a court in a State Party to the 1992 Liability Convention but not to this Convention. any action against the Fund under Article 4 of this Convention shall at the option of the claimant be brought either before a court of the State where the Fund has its headquarters or before any court of a State Party to this Convention competent under Article IX of the 1992 Liability Convention.

4. Each Contracting State shall ensure that the Fund shall have the right to Intervene as a party to any legal proceedings instituted in accordance with Article IX of the 1992 Liability Convention before a competent court of that State against the owner of a ship or his guarantor.

5. Except as otherwise provided in paragraph 6. the Fund shall not be bound by any judgment or decision in proceedings to which it has not been a party or by any settlement to which it is not a party.

6. Without prejudice to the provisions of paragraph 4. where an action under the 1992 Liability Convention for compensation for pollution damage has been brought against an owner or his guarantor before a competent court in a Contracting State. each party to the proceedings shall be entitled under the national law of that State to notify the Fund of the proceedings. Where such notification has been made in accordance with the formalities required by the law of the court seized and in such time and in such a manner that the Fund has in fact been in a position effectively to intervene as a party to the proceedings. any judgment rendered by the court in such proceedings shall, after it has become final and enforceable in the State where the judgment was given, become

binding upon the Fund in the sense that the facts and findings in that judgment may not be disputed by the Fund even if the Fund has not actually intervened in the proceedings.

## **Article 8**

Subject to any decision concerning the distribution referred to in Article 4, paragraph 5, any judgment given against the Fund by a court having jurisdiction in accordance with Article 7, paragraphs 1 and 3 shall. When it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review. be recognized and enforceable in each Contracting State on the same conditions as are prescribed in Article X of the 1992 Liability Convention.

## **Article 9**

1. The Fund shall. in respect of any amount of compensation for pollution damage paid by the Fund in accordance with Article 4. paragraph 1. of this Convention. acquire by subrogation the rights that the person so compensated may enjoy under the 1992 Liability Convention against the owner or his guarantor.

2. Nothing in this Convention shall prejudice any right of recourse or subrogation of the Fund against persons other than those referred to in the preceding paragraph. In any event the right of the Fund to subrogation against such person shall not be less favourable than that of an insurer of the person to whom compensation has been paid.

3. Without prejudice to any other rights of subrogation or recourse against the Fund which may exist. a Contracting State or agency thereof which has paid compensation for pollution damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

## **Contributions**

### **Article 10**

1. Annual contributions to the Fund shall be made In respect of each Contracting State by any person who, In the calendar year referred to In Article 12, paragraph 2(a) or (b), has received in total quantities exceeding 150,000 tons:

(a) In the ports or terminal installations in the territory of that State contributing oil carried by sea to such ports or terminal installations; and

(b) in any Installations situated in the territory of that Contracting State contributing oil which has been carried by sea and discharged In a port or terminal installation of a non-Contracting State, provided that contributing oil shall only be taken into account by virtue of this sub-paragraph on first receipt in a Contracting State after its discharge in that non-Contracting State.

2. (a) For the purposes of paragraph 1, where the quantity of contributing oil received in the territory of a Contracting State by any person in a calendar year when aggregated with the quantity of contributing oil received in the same Contracting State in that year by any associated person or persons exceeds 150,000 tons, such person shall pay contributions in respect of the actual quantity received by him notwithstanding that that quantity did not exceed 150,000 tons.

(b) "Associated person" means any subsidiary or commonly controlled entity. The question whether a person comes within this definition shall be determined by the national law of the State concerned.

## **Article 11**

(deleted)

## **Article 12**

1. With a view to assessing the amount of annual contributions due, if any, and taking account of the necessity to maintain sufficient liquid funds, the Assembly shall for each calendar year make an estimate in the form of a budget of:

### (i) Expenditure

(a) costs and expenses of the administration of the Fund in the relevant year and any deficit from operations in preceding years;

(b) payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under Article 4, including repayment on loans previously taken by the Fund for the satisfaction of such claims, to the extent that the aggregate amount of such claims in respect of anyone incident does not exceed four million units of account;

(c) payments to be made by the Fund in the relevant year for the satisfaction of claims against the Fund due under Article 4, including repayments on loans previously taken by the Fund for the satisfaction of such claims, to the extent that the aggregate amount of such claims in respect of anyone incident is in excess of four million units of account;

### (ii) Income

(a) surplus funds from operations in preceding years, including any interest;

(b) annual contributions, if required to balance the budget;

(c) any other income.

2. The Assembly shall decide the total amount of contributions to be levied. On the basis of that decision, the Director shall, in respect of each Contracting State, calculate for each person referred to in Article 10 the amount of his annual contribution:

(a) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1 (i)(a) and (b) on the basis of a fixed sum for each ton of contributing oil received in the relevant State by such persons during the preceding calendar year; and

(b) in so far as the contribution is for the satisfaction of payments referred to in paragraph 1 (I) (c) of this Article on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident in question occurred, provided that State was a Party to this Convention at the date of the incident.

3. The sums referred to in paragraph 2 above shall be arrived at by dividing the relevant total amount of contributions required by the total amount of contributing oil received in all Contracting States in the relevant year.

4. The annual contribution shall be due on the date to be laid down in the Internal Regulations of the Fund. The Assembly may decide on a different date of payment.

5. The Assembly may decide, under conditions to be laid down in the Financial Regulations of the Fund, to make transfers between funds received in accordance with Article 12.2(a) and funds received in accordance with Article 12.2(b).

### **Article 13**

1. The amount of any contribution due under Article 12 and which is in arrears shall bear interest at a rate which shall be determined in accordance with the Internal Regulations of the Fund, provided that different rates may be fixed for different circumstances.

2. Each Contracting State shall ensure that any obligation to contribute to the Fund arising under this Convention in respect of oil received within the territory of that State is fulfilled and shall take any appropriate measures under its law, including the imposing of such sanctions as it may deem necessary, with a view to the effective execution of any such obligation; provided, however, that such measures shall only be directed against those persons who are under an obligation to contribute to the Fund.

3. Where a person who is liable in accordance with the provisions of Articles 10 and 12 to make contributions to the Fund does not fulfil his obligations in respect of any such contribution or any part thereof and is in arrear, the Director shall take all appropriate action against such person on behalf of the Fund with a view to the recovery of the amount due. However, where the defaulting contributor is manifestly insolvent or the circumstances otherwise so warrant, the Assembly may, upon recommendation of the Director, decide that no action shall be taken or continued against the contributor.

### **Article 14**

1. Each Contracting State may at the time when it deposits its instrument of ratification or accession or at any time thereafter declare that it assumes itself obligations that are incumbent under this Convention on any person who is liable to contribute to the Fund in accordance with Article 10, paragraph I, in respect of oil received within the territory of that State. Such declaration shall be made in writing and shall specify which obligations are assumed.

2. Where a declaration under paragraph 1 is made prior to the entry into force of this Convention in accordance with Article 40, it shall be deposited with the Secretary-General of the Organization who shall after the entry into force of the Convention communicate the declaration to the Director.

3. A declaration under paragraph 1 which is made after the entry into force of this Convention shall be deposited with the Director.

4. A declaration made in accordance with this Article may be withdrawn by the relevant State giving notice thereof in writing to the Director. Such notification shall take effect three months after the Director's receipt thereof.

5. Any State which is bound by a declaration made under this Article shall, in any proceedings brought against it before a competent court in respect of any obligation specified in the declaration, waive any immunity that it would otherwise be entitled to invoke.

### **Article 15**

I. Each Contracting State shall ensure that any person who receives contributing oil within its territory in such quantities that he is liable to contribute to the Fund appears on a list to be established and kept up to date by the Director in accordance with the subsequent provisions of this Article.

2. For the purposes set out in paragraph I, each Contracting State shall communicate, at a time and in the manner to be prescribed in the Internal Regulations, to the Director the name and address of any person who in respect of that State is liable to contribute to the Fund pursuant to Article 10, as well as data on the relevant quantities of contributing oil received by any such person during the preceding calendar year.

3. For the purposes of ascertaining who are, at any given time, the persons liable to contribute to the Fund in accordance with Article 10, paragraph 1, and of establishing, where applicable, the quantities of oil to be taken into account for any such person when determining the amount of his contribution, the list shall be *prima facie* evidence of the facts stated therein.

4. Where a Contracting State does not fulfil its obligations to submit to the Director the communication referred to in paragraph 2 and this results in a financial loss for the Fund, that Contracting State shall be liable to compensate the Fund for such loss. The Assembly shall, on the recommendation of the Director, decide whether such compensation shall be payable by that Contracting State.

## **Organization and Administration**

### **Article 16**

The Fund shall have an Assembly and a Secretariat headed by a Director.

### **Assembly**

### **Article 17**

The Assembly shall consist of all Contracting States to this Convention.

### **Article 18**

The functions of the Assembly shall be:

1. to elect at each regular session its Chairman and two Vice-Chairmen who shall hold office until the next regular session;

2. to determine its own rules of procedure, subject to the provisions of this Convention;

3. to adopt Internal Regulations necessary for the proper functioning of the Fund;

4. to appoint the Director and make provisions for the appointment of such other personnel as may be necessary and determine the terms and conditions of service of the Director and other personnel;

5. to adopt the annual budget and fix the annual contributions;

6. to appoint auditors and approve the accounts of the Fund;

7. to approve settlements of claims against the Fund, to take decisions in respect of the distribution among claimants of the available amount of compensation in accordance with Article 4, paragraph 5, and to determine the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims of pollution damage are compensated as promptly as possible;

8. (deleted).

9. to establish any temporary or permanent subsidiary body it may consider to be necessary, to define its terms of reference and to give it the authority needed to perform the functions entrusted to it; when appointing the members of such body, the Assembly shall endeavor to secure an equitable geographical distribution of members and to ensure that the Contracting States, in respect of which the largest quantities of contributing oil are being received, are appropriately represented; the Rules of Procedure of the Assembly may be applied, *mutatis mutandis*, for the work of such subsidiary body;

10. to determine which non-Contracting States and which inter-governmental and international non-governmental organizations shall be admitted to take part, without voting rights, in meetings of the Assembly and subsidiary bodies;

11. to give instructions concerning the administration of the Fund to the Director and subsidiary bodies;

12. (deleted);

13. to supervise the proper execution of the Convention and of its own decisions; and

14. to perform such other functions as are allocated to it under the Convention or are otherwise necessary for the proper operation of the Fund.

## **Article 19**

1. Regular sessions of the Assembly shall take place once every calendar year upon convocation by the Director.

2. Extraordinary sessions of the Assembly shall be convened by the Director at the request of at least one third of the members of the Assembly and may be convened on the Director's own initiative after consultation with the Chairman of the Assembly. The Director shall give members at least thirty days' notice of such sessions.

## **Article 20**

A majority of the members of the Assembly shall constitute a quorum for its meetings.

## **Articles 21-27**

(deleted)

## **Secretariat**

## **Article 28**

1. The Secretariat shall comprise the Director and such staff as the administration of the Fund may require.
2. The Director shall be the legal representative of the Fund.

## **Article 29**

1. The Director shall be the chief administrative officer of the Fund. Subject to the instructions given to him by the Assembly, he shall perform those functions which are assigned to him by this Convention, the Internal Regulations of the Fund and the Assembly.
2. The Director shall in particular:
  - (a) appoint the personnel required for the administration of the Fund;
  - (b) take all appropriate measures with a view to the proper administration of the Fund's assets;
  - (c) collect the contributions due under this Convention while observing in particular the provisions of Article 13, paragraph 3;
  - (d) to the extent necessary to deal with claims against the Fund and carry out the other functions of the Fund, employ the services of legal, financial and other experts;
  - (e) take all appropriate measures for dealing with claims against the Fund within the limits and on conditions to be laid down in the Internal Regulations, including the final settlement of claims without the prior approval of the Assembly where these Regulations so provide;
  - (f) prepare and submit to the Assembly the financial statements and budget estimates for each calendar year;
  - (g) prepare, in consultation with the Chairman of the Assembly, and publish a report of the activities of the Fund during the previous calendar year;
  - (h) prepare, collect and circulate the papers, documents, agenda, minutes and information that may be required for the work of the Assembly and subsidiary bodies.

## **Article 30**

In the performance of their duties the Director and the staff and experts appointed by him shall not seek or receive instructions from any Government or from any authority external to the Fund. They shall refrain from any action which might reflect on their position as international officials. Each Contracting State on its part undertakes to respect the exclusively international character of the responsibilities of the Director and the staff and experts appointed by him, and not to seek to influence them in the discharge of their duties.

## **Finances**

### **Article 31**



1. Each Contracting State shall bear the salary, travel and other expenses of its own delegation to the Assembly and of its representatives on subsidiary bodies.
2. Any other expenses incurred in the operation of the Fund shall be borne by the Fund.

## **Voting**

### **Article 32**

The following provisions shall apply to voting in the Assembly:

- (a) each member shall have one vote;
- (b) except as otherwise provided in Article 33, decisions of the Assembly shall be by a majority vote of the members present and voting;
- (c) decisions where a three-fourths or a two-thirds majority is required shall be by a three-fourths or two-thirds majority vote, as the case may be, of those present;
- (d) for the purpose of this Article the phrase "members present" means "members present at the meeting at the time of the vote", and the phrase "members present and voting" means "members present and casting an affirmative or negative vote". Members who abstain from voting shall be considered as not voting.

### **Article 33**

The following decisions of the Assembly shall require a two-thirds majority:

- (a) a decision under Article 13, paragraph 3, not to take or continue action against a contributor;
- (b) the appointment of the Director under Article 18, paragraph 4;
- (c) the establishment of subsidiary bodies, under Article 18, paragraph 9, and matters relating to such establishment.

### **Article 34**

1. The Fund, its assets, income, including contributions, and other property shall enjoy in all Contracting States exemption from all direct taxation.
2. When the Fund makes substantial purchases of movable or immovable property, or has important work carried out which is necessary for the exercise of its official activities and the cost of which includes indirect taxes or sales taxes, the Governments of Member States shall take, whenever possible, appropriate measures for the remission or refund of the amount of such duties and taxes.
3. No exemption shall be accorded in the case of duties, taxes or dues which merely constitute payment for public utility services.
4. The Fund shall enjoy exemption from all customs duties, taxes and other related taxes on articles imported or exported by it or on its behalf for its official use. Articles thus imported shall not be transferred either for consideration or *gratis* on the territory of the country into which they have been imported except on conditions agreed by the Government of that country.

5. Persons contributing to the Fund and victims and owners of ships receiving compensation from the Fund shall be subject to the fiscal legislation of the State where they are taxable, no special exemption or other benefit being conferred on them in this respect.

6. Information relating to individual contributors supplied for the purpose of this Convention shall not be divulged outside the Fund except in so far as it may be strictly necessary to enable the Fund to carry out its functions including the bringing and defending of legal proceedings.

7. Independently of existing or future regulations concerning currency or transfers, Contracting States shall authorize the transfer and payment of any contribution to the Fund and of any compensation paid by the Fund without any restriction.

## **Transitional Provisions**

### **Article 35**

Claims for compensation under Article 4 arising from incidents occurring after the date of entry into force of this Convention may not be brought against the Fund earlier than the one hundred and twentieth day after that date.

### **Article 36**

The Secretary-General of the Organization shall convene the first session of the Assembly. This session shall take place as soon as possible after entry into force of this Convention and, in any case, not more than thirty days after such entry into force.

### **Article 36 bis**

The following transitional provisions shall apply in the period, hereinafter referred to as the transitional period, commencing with the date of entry into force of this Convention and ending with the date on which the denunciations provided for in Article 31 of the 1992 Protocol to amend the 1971 Fund Convention take effect:

(a) In the application of paragraph 1 (a) of Article 2 of this Convention, the reference to the 1992 Liability Convention shall include reference to the International Convention on Civil Liability for Oil Pollution Damage, 1969, either in its original version or as amended by the Protocol thereto of 1976 (referred to in this Article as "the 1969 Liability Convention"), and also the 1971 Fund Convention.

(b) Where an incident has caused pollution damage within the scope of this Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1969 Liability Convention, the 1971 Fund Convention and the 1992 Liability Convention, provided that, in respect of pollution damage within the scope of this Convention in respect of a Party to this Convention but not a Party to the 1971 Fund Convention, the Fund shall pay compensation to any person suffering pollution damage only if, and to the extent that, such person would have been unable to obtain full and adequate compensation had that State been party to each of the above-mentioned Conventions.

(c) In the application of Article 4 of this Convention, the amount to be taken into account in determining the aggregate amount of compensation payable by the Fund shall also include the

amount of compensation actually paid under the 1969 Liability Convention, if any, and the amount of compensation actually paid or deemed to have been paid under the 1971 Fund Convention.

(d) Paragraph 1 of Article 9 of this Convention shall also apply to the rights enjoyed under the 1969 Liability Convention.

### **Article 36 *ter***

1. Subject to paragraph 4 of this Article, the aggregate amount of the annual contributions payable in respect of contributing oil received in a Single Contracting State during a calendar year shall not exceed 27.5% of the total amount of annual contributions pursuant to the 1992 Protocol to amend the 1971 Fund Convention, in respect of that calendar year.

2. If the application of the provisions in paragraphs 2 and 3 of Article 12 would result in the aggregate amount of the contributions payable by contributors in a Single Contracting State in respect of a given calendar year exceeding 27.5% of the total annual contributions, the contributions payable by all contributors in that State shall be reduced *pro rata* so that their aggregate contributions equal 27.5% of the total annual contributions to the Fund in respect of that year.

3. If the contributions payable by persons in a given Contracting State shall be reduced pursuant to paragraph 2 of this Article, the contributions payable by persons in all other Contracting States shall be increased *pro rata* so as to ensure that the total amount of contributions payable by all persons liable to contribute to the Fund in respect of the calendar year in question will reach the total amount of contributions decided by the Assembly.

4. The provisions in paragraphs 1 to 3 of this Article shall operate until the total quantity of contributing oil received in all Contracting States in a calendar year has reached 750 million tons or until a period of 5 years after the date of entry into force of the said 1992 Protocol has elapsed, whichever occurs earlier.

### **Article 36 *quater***

Notwithstanding the provisions of this Convention, the following provisions shall apply to the administration of the Fund during the period in which both the 1971 Fund Convention and this Convention are in force:

(a) The Secretariat of the Fund, established by the 1971 Fund Convention (hereinafter referred to as "the 1971 Fund"), headed by the Director, may also function as the Secretariat and the Director of the Fund.

(b) If, in accordance with sub-paragraph (a), the Secretariat and the Director of the 1971 Fund also perform the function of Secretariat and Director of the Fund, the Fund shall be represented, in cases of conflict of interests between the 1971 Fund and the Fund, by the Chairman of the Assembly of the Fund.

(c) The Director and the staff and experts appointed by him, performing their duties under this Convention and the 1971 Fund Convention, shall not be regarded as contravening the provisions of Article 30 of this Convention in so far as they discharge their duties in accordance with this Article.

(d) The Assembly of the Fund shall endeavor not to take decisions which are incompatible with decisions taken by the Assembly of the 1971 Fund. If differences of opinion with respect to common administrative issues arise, the Assembly of the Fund shall try to reach a consensus with the Assembly of the 1971 Fund, in a spirit of mutual co-operation and with the common aims of both organizations in mind.

(e) The Fund may succeed to the rights, obligations and assets of the 1971 Fund if the Assembly of the 1971 Fund so decides, in accordance with Article 44, paragraph 2, of the 1971 Fund Convention.

(f) The Fund shall reimburse to the 1971 Fund all costs and expenses arising from administrative services performed by the 1971 Fund on behalf of the Fund.

### **Article 36 *quinquies***

### **Final clauses**

The final clauses of this Convention shall be Articles 28 to 39 of the Protocol of 1992 to amend the 1971 Fund Convention. References in this Convention to Contracting States shall be taken to mean references to the Contracting States of that Protocol.

### **Final Clauses of the Protocol of 1992 to amend the 1971 Fund Convention**

#### **Article 28**

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at London from 15 January 1993 to 14 January 1994 by any State which has signed the 1992 liability Convention.

2. Subject to paragraph 4, this Protocol shall be ratified, accepted or approved by States which have signed it.

3. Subject to paragraph 4, this Protocol is open for accession by States which did not sign it.

4. This Protocol may be ratified, accepted, approved or acceded to only by States which have ratified, accepted, approved or acceded to the 1992 Liability Convention.

5. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization.

6. A State which is a Party to this Protocol but is not a Party to the 1971 Fund Convention shall be bound by the provisions of the 1971 Fund Convention as amended by this Protocol in relation to other Parties hereto, but shall not be bound by the provisions of the 1971 Fund Convention in relation to Parties thereto.

7. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to the 1971 Fund Convention as amended by this Protocol shall be deemed to apply to the Convention so amended, as modified by such amendment.

#### **Article 29**

## **Information on contributing oil**

1. Before this Protocol comes into force for a State, that State shall, when depositing an instrument referred to in Article 28, paragraph 5, and annually thereafter at a date to be determined by the Secretary-General of the Organization, communicate to him the name and address of any person who in respect of that State would be liable to contribute to the Fund pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol as well as data on the relevant quantities of contributing oil received by any such person in the territory of that State during the preceding calendar year.
2. During the transitional period, the Director shall, for Parties, communicate annually to the Secretary-General of the Organization data on quantities of contributing oil received by persons liable to contribute to the Fund pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol.

## **Article 30**

### **Entry into force**

1. This Protocol shall enter into force twelve months following the date on which the following requirements are fulfilled:
  - (a) at least eight States have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization; and
  - (b) the Secretary-General of the Organization has received information in accordance with Article 29 that those persons who would be liable to contribute pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol have received during the preceding calendar year a total quantity of at least 450 million tons of contributing oil.
2. However, this Protocol shall not enter into force before the 1992 Liability Convention has entered into force.
3. For each State which ratifies, accepts, approves or accedes to this Protocol after the conditions in paragraph I for entry into force have been met, the Protocol shall enter into force twelve months following the date of the deposit by such State of the appropriate instrument.
4. Any State may, at the time of the deposit of its instrument of ratification, acceptance, approval or accession in respect of this Protocol declare that such instrument shall not take effect for the purpose of this Article until the end of the six-month period in Article 31.
5. Any State which has made a declaration in accordance with the preceding paragraph may withdraw it at any time by means of a notification addressed to the Secretary-General of the Organization. Any such withdrawal shall take effect on the date the notification is received, and any State making such a withdrawal shall be deemed to have deposited its instrument of ratification, acceptance, approval or accession in respect of this Protocol on that date.
6. Any State which has made a declaration under Article 13, paragraph 2, of the Protocol of 1992 to amend the 1969 Liability Convention shall be deemed to have also made a declaration under paragraph 4 of this Article. Withdrawal of a declaration under the said Article 13, paragraph 2, shall be deemed to constitute withdrawal also under paragraph 5 of this Article.

## **Article 31**

### **Denunciation of the 1969 and 1971 Conventions**

Subject to Article 30, within six months following the date on which the following requirements are fulfilled:

(a) at least eight States have become Parties to this Protocol or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization, whether or not subject to Article 3D, paragraph 4, and

(b) the Secretary-General of the Organization has received information in accordance with Article 29 that those persons who are or would be liable to contribute pursuant to Article 10 of the 1971 Fund Convention as amended by this Protocol have received during the preceding calendar year a total quantity of at least 750 million tons of contributing oil;

each Party to this Protocol and each State which has deposited an instrument of ratification, acceptance, approval or accession, whether or not subject to Article 3D, paragraph 4, shall, if party thereto, denounce the 1971 Fund Convention and the 1969 Liability Convention with effect twelve months after the expiry of the above-mentioned six-month period.

## **Article 32**

### **Revision and amendment**

1. A conference for the purpose of revising or amending the 1992 Fund Convention may be convened by the Organization.

2. The Organization shall convene a Conference of Contracting States for the purpose of revising or amending the 1992 Fund Convention at the request of not less than one third of all Contracting States.

## **Article 33**

### **Amendment of compensation limits**

1. Upon the request of at least one quarter of the Contracting States, any proposal to amend the limits of amounts of compensation laid down in Article 4, paragraph 4, of the 1971 Fund Convention as amended by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization for consideration at a date at least six months after the date of its circulation.

3. All Contracting States to the 1971 Fund Convention as amended by this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

4. Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States shall be present at the time of voting.

5. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and in particular the amount of damage resulting there from and changes in the monetary values. It shall also take into account the relationship between the limits in Article 4, paragraph 4, of the 1971 Fund Convention as amended by this Protocol and those in Article V, paragraph 1 of the International Convention on Civil Liability for Oil Pollution Damage, 1992.

6. (a) No amendments of the limits under this Article may be considered before **15** January 1998 nor less than five years from the date of entry into force of a previous amendment under this Article. No amendment under this Article shall be considered before this Protocol has entered into force.

(b) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the 1971 Fund Convention as amended by this Protocol increased by six per cent per year calculated on a compound basis from 15 January 1993. (c) No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the 1971 Fund Convention as amended by this Protocol multiplied by three.

7. Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification unless within that period not less than one quarter of the States that were Contracting States at the time of the adoption of the amendment by the Legal Committee have communicated to the Organization that they do not accept the amendment in which case the amendment is rejected and shall have no effect.

8. An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force eighteen months after its acceptance.

9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with Article 34, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

10. When an amendment has been adopted by the Legal Committee but the eighteen-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

## **Article 34**

### **Denunciation**

1. This Protocol may be denounced by any Party at any time after the date on which it enters into force for that Party.

2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General of the Organization.
3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General of the Organization.
4. Denunciation of the 1992 Liability Convention shall be deemed to be a denunciation of this Protocol. Such denunciation shall take effect on the date on which denunciation of the Protocol of 1992 to amend the 1969 Liability Convention takes effect according to Article 16 of that Protocol.
5. Any Contracting State to this Protocol which has not denounced the 1971 Fund Convention and the 1969 Liability Convention as required by Article 31 shall be deemed to have denounced this Protocol with effect twelve months after the expiry of the six-month period mentioned in that Article. As from the date on which the denunciations provided for in Article 31 take effect, any Party to this Protocol which deposits an instrument of ratification, acceptance, approval or accession to the 1969 Liability Convention shall be deemed to have denounced this Protocol with effect from the date on which such Instrument takes effect.
6. As between the Parties to this Protocol, denunciation by any of them of the 1971 Fund Convention in accordance with Article 41 thereof shall not be construed in any way as a denunciation of the 1971 Fund Convention as amended by this Protocol.
7. Notwithstanding a denunciation of this Protocol by a Party pursuant to this Article, any provisions of this Protocol relating to the obligations to make contributions under Article 10 of the 1971 Fund Convention as amended by this Protocol with respect to an incident referred to in Article 12, paragraph 2(b), of that amended Convention and occurring before the denunciation takes effect shall continue to apply.

## **Article 35**

### **Extraordinary sessions of the Assembly**

1. Any Contracting State may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions for the remaining Contracting States, request the Director to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not later than sixty days after receipt of the request.
2. The Director may convene, on his own initiative, an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if he considers that such denunciation will result in a significant increase in the level of contributions of the remaining Contracting States.
3. If the Assembly at an extraordinary session convened in accordance with paragraph 1 or 2 decides that the denunciation will result in a significant increase in the level of contributions for the remaining Contracting States, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Protocol with effect from the same date.

## **Article 36**

### **Termination**



1. This Protocol shall cease to be in force on the date when the number of Contracting States falls below three.
2. States which are bound by this Protocol on the day before the date it ceases to be in force shall enable the Fund to exercise its functions as described under Article 37 of this Protocol and shall, for that purpose only, remain bound by this Protocol.

## **Article 37**

### **Winding up of the Fund**

1. If this Protocol ceases to be in force, the Fund shall nevertheless:
  - (a) meet its obligations in respect of any incident occurring before the Protocol ceased to be in force;
  - (b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under sub-paragraph (a), including expenses for the administration of the Fund necessary for this purpose.
2. The Assembly shall take all appropriate measures to complete the winding up of the Fund including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Fund.
3. For the purposes of this Article the Fund shall remain a legal person.

## **Article 38**

### **Depositary**

1. This Protocol and any amendments accepted under Article 33 shall be deposited with the Secretary-General of the Organization.
2. The Secretary-General of the Organization shall:
  - (a) inform all States which have signed or acceded to this Protocol of:
    - (i) each new signature or deposit of an instrument together with the date thereof;
    - (ii) each declaration and notification under Article 30 including declarations and withdrawals deemed to have been made in accordance with that Article;
    - (iii) the date of entry into force of this Protocol;
    - (iv) the date by which denunciations provided for in Article 31 are required to be made;
    - (v) any proposal to amend limits of amounts of compensation which has been made in accordance with Article 33, paragraph 1;
    - (vi) any amendment which has been adopted in accordance with Article 33, paragraph 4;

(vii) any amendment deemed to have been accepted under Article 33, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that Article;

(viii) the deposit of an instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;

(ix) any denunciation deemed to have been made under Article 34, paragraph 5;

(x) any communication called for by any Article in this Protocol;

(b) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to the Protocol.

3. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General of the Organization to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

## **Article 39**

### **Languages**

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this twenty-seventh day of November one thousand nine hundred and ninety-two.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol<sup>6</sup>.

<sup>6</sup> Signatures omitted.

**Resolution - Adoption Of Amendments Of The Limits Of Compensation In The  
Protocol Of 1992 To Amend The International Convention On The  
Establishment Of An International Fund For Compensation For Oil Pollution  
Damage, 1971**

(Adopted by the Legal Committee of the International Maritime Organization on 18 October 2000)

THE LEGAL COMMITTEE at its eighty-second session:

RECALLING Article 33(b) of the Convention on the International Maritime Organization (hereinafter referred to as the "IMO Convention") concerning the functions of the Committee.

MINDFUL of Article 36 of the IMO Convention concerning rules governing the procedures to be followed when exercising the functions conferred on it by or under any International convention or instrument.

RECALLING FURTHER article 33 of the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (hereinafter referred to as the "1992 Fund Protocol") concerning the procedures for amending the limits of the amounts of compensation set out in article 6 (3) of the 1992 Fund Protocol.

HAVING CONSIDERED amendments to the limits of the amounts of compensation proposed and circulated in accordance with the provisions of article 33(1) and (2) of the 1992 Fund Protocol.

1. ADOPTS, in accordance with article 33(4) of the 1992 Fund Protocol, amendments to the limits of the amounts of compensation set out in article 6(3) of the 1992 Fund Protocol, as set out in the Annex to this resolution;
2. DETERMINES, in accordance with article 33(7) of the 1992 Fund Protocol, that these amendments shall be deemed to have been accepted on 1 May 2002 unless, prior to that date, not less than one quarter of the States that were Contracting States on the date of the adoption of these amendments (being 18 October 2000) have communicated to the Organization that they do not accept these amendments;
3. FURTHER DETERMINES that, in accordance with article 33(8) of the 1992 Fund Protocol, these amendments, deemed to have been accepted in accordance with paragraph 2 above, shall enter into force on 1 November 2003;
4. REQUESTS the Secretary-General, in accordance with articles 33(7) and 38(2)(vi) of the 1992 Fund Protocol, to transmit certified copies of the present resolution and the amendments contained in the Annex thereto to all States which have signed or acceded to the 1992 Fund Protocol; and
5. FURTHER REQUESTS the Secretary-General to transmit copies of the present resolution and its Annex to the Members of the Organization which have not signed or acceded to the 1992 Fund Protocol.

**Annex - Amendments Of The Limits Of Compensation In The Protocol Of 1992  
To Amend The International Convention On The Establishment Of An  
International Fund For Compensation For Oil Pollution Damage, 1971**

Article 6(3) of the 1992 Fund Protocol is amended as follows:

- the reference In paragraph 4(a) to "135 million units of account" shall read "203,000,000 units of account";
- the reference in paragraph 4(b) to "135 million units of account" shall read "203,000,000 units of account";
- and the reference in paragraph 4(c) to "200 million units of account" shall read "300,740,000 units of account".

# **Protocol Of 2003 To The International Convention On The Establishment Of An International Fund For Compensation For Oil Pollution Damage, 1992<sup>7</sup>**

THE CONTRACTING STATES TO THE PRESENT PROTOCOL,

BEARING IN MIND the International Convention on Civil Liability for Oil Pollution Damage, 1992 (hereinafter "the 1992 Liability Convention"),

HAVING CONSIDERED the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (hereinafter "the 1992 Fund Convention"),

AFFIRMING the importance of maintaining the viability of the international oil pollution liability and compensation system,

NOTING that the maximum compensation afforded by the 1992 Fund Convention might be insufficient to meet compensation needs in certain circumstances in some Contracting States to that Convention,

RECOGNIZING that a number of Contracting States to the 1992 Liability and 1992 Fund Conventions consider it necessary as a matter of urgency to make available additional funds for compensation through the creation of a supplementary scheme to which States may accede if they so wish,

BELIEVING that the supplementary scheme should seek to ensure that victims of oil pollution damage are compensated in full for their loss or damage and should also alleviate the difficulties faced by victims in cases where there is a risk that the amount of compensation available under the 1992 Liability and 1992 Fund Conventions will be insufficient to pay established claims in full and that as a consequence the International Oil Pollution Compensation Fund, 1992, has decided provisionally that it will pay only a proportion of any established claim,

CONSIDERING that accession to the supplementary scheme will be open only to Contracting States to the 1992 Fund Convention,

HAVE AGREED AS FOLLOWS:

## **General provisions**

### **Article 1**

For the purposes of this Protocol:

1. "1992 Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1992;
2. "1992 Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992;
3. "1992 Fund" means the International Oil Pollution Compensation Fund, 1992, established under the 1992 Fund Convention;

<sup>7</sup> Supplementary Fund Protocol

4. "Contracting State" means a Contracting State to this Protocol, unless stated otherwise;
5. When provisions of the 1992 Fund Convention are incorporated by reference into this Protocol, "Fund" in that Convention means "Supplementary Fund", unless stated otherwise;
6. "Ship", "Person", "Owner", "011", "Pollution Damage", "Preventive Measures" and "Incident" have the same meaning as in article I of the 1992 Liability Convention;
7. "Contributing 011", "Unit of Account", "Ton", "Guarantor" and "Terminal Installation" have the same meaning as In article 1 of the 1992 Fund Convention, unless stated otherwise;
8. "Established claim" means a claim which has been recognised by the 1992 Fund or been accepted as admissible by decision of a competent court binding upon the 1992 Fund not subject to ordinary forms of review and which would have been fully compensated If the limit set out In article 4, paragraph 4, of the 1992 Fund Convention had not been applied to that incident;
9. "Assembly" means the Assembly of the International Oil Pollution Compensation Supplementary Fund, 2003, unless otherwise indicated;
10. "Organization" means the International Maritime Organization;
11. "Secretary-General" means the Secretary-General of the Organization.

## **Article 2**

1. An International Supplementary Fund for compensation for pollution damage, to be named "The International Oil Pollution Compensation Supplementary Fund, 2003" (hereinafter "the Supplementary Fund"), Is hereby established.
2. The Supplementary Fund shall in each Contracting State be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each Contracting State shall recognize the Director of the Supplementary Fund as the legal representative of the Supplementary Fund.

## **Article 3**

This Protocol shall apply exclusively:

- (a) to pollution damage caused:
  - (i) in the territory, Including the territorial sea, of a Contracting State, and
  - (ii) In the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, In an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea Is measured;
- (b) to preventive measures, wherever taken, to prevent or minimize such damage.

## **Supplementary Compensation**

## **Article 4**

1. The Supplementary Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for an established claim for such damage under the terms of the 1992 Fund Convention, because the total damage exceeds, or there is a risk that it will exceed, the applicable limit of compensation laid down in article 4, paragraph 4, of the 1992 Fund Convention in respect of anyone incident.

2. (a) The aggregate amount of compensation payable by the Supplementary Fund under this article shall in respect of anyone incident be limited, so that the total sum of that amount together with the amount of compensation actually paid under the 1992 Liability Convention and the 1992 Fund Convention within the scope of application of this Protocol shall not exceed 750 million units of account.

(b) The amount of 750 million units of account mentioned in paragraph 2(a) shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date determined by the Assembly of the 1992 Fund for conversion of the maximum amount payable under the 1992 Liability and 1992 Fund Conventions.

3. Where the amount of established claims against the Supplementary Fund exceeds the aggregate amount of compensation payable under paragraph 2, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Protocol shall be the same for all claimants.

4. The Supplementary Fund shall pay compensation in respect of established claims as defined in article 1, paragraph 8, and only in respect of such claims.

## **Article 5**

The Supplementary Fund shall pay compensation when the Assembly of the 1992 Fund has considered that the total amount of the established claims exceeds, or there is a risk that the total amount of established claims will exceed the aggregate amount of compensation available under article 4, paragraph 4, of the 1992 Fund Convention and that as a consequence the Assembly of the 1992 Fund has decided provisionally or finally that payments will only be made for a proportion of any established claim. The Assembly of the Supplementary Fund shall then decide whether and to what extent the Supplementary Fund shall pay the proportion of any established claim not paid under the 1992 Liability Convention and the 1992 Fund Convention.

## **Article 6**

1. Subject to article 15, paragraphs 2 and 3, rights to compensation against the Supplementary Fund shall be extinguished only if they are extinguished against the 1992 Fund under article 6 of the 1992 Fund Convention.

2. A claim made against the 1992 Fund shall be regarded as a claim made by the same claimant against the Supplementary Fund.

## **Article 7**

1. The provisions of article 7, paragraphs I, 2, 4, 5 and 6, of the 1992 Fund Convention shall apply to actions for compensation brought against the Supplementary Fund in accordance with article 4, paragraph I, of this Protocol.
2. Where an action for compensation for pollution damage has been brought before a court competent under article IX of the 1992 Liability Convention against the owner of a ship or his guarantor, such court shall have exclusive jurisdictional competence over any action against the Supplementary Fund for compensation under the provisions of article 4 of this Protocol in respect of the same damage. However, where an action for compensation for pollution damage under the 1992 liability Convention has been brought before a court in a Contracting State to the 1992 Liability Convention but not to this Protocol, any action against the Supplementary Fund under article 4 of this Protocol shall at the option of the claimant be brought either before a court of the State where the Supplementary Fund has its headquarters or before any court of a Contracting State to this Protocol competent under article IX of the 1992 Liability Convention.
3. Notwithstanding paragraph I, where an action for compensation for pollution damage against the 1992 Fund has been brought before a court in a Contracting State to the 1992 Fund Convention but not to this Protocol, any related action against the Supplementary Fund shall, at the option of the claimant, be brought either before a court of the State where the Supplementary Fund has its headquarters or before any court of a Contracting State competent under paragraph 1.

#### **Article 8**

1. Subject to any decision concerning the distribution referred to in article 4, paragraph 3 of this Protocol, any judgment given against the Supplementary Fund by a court having jurisdiction in accordance with article 7 of this Protocol, shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each Contracting State on the same conditions as are prescribed in article X of the 1992 Liability Convention.
2. A Contracting State may apply other rules for the recognition and enforcement of judgments, provided that their effect is to ensure that judgments are recognized and enforced at least to the same extent as under paragraph 1.

#### **Article 9**

1. The Supplementary Fund shall, in respect of any amount of compensation for pollution damage paid by the Supplementary Fund in accordance with article 4, paragraph I, of this Protocol, acquire by subrogation the rights that the person so compensated may enjoy under the 1992 Liability Convention against the owner or his guarantor.
2. The Supplementary Fund shall acquire by subrogation the rights that the person compensated by it may enjoy under the 1992 Fund Convention against the 1992 Fund.
3. Nothing in this Protocol shall prejudice any right of recourse or subrogation of the Supplementary Fund against persons other than those referred to in the preceding paragraphs. In any event the right of the Supplementary Fund to subrogation against such person shall not be less favourable than that of an insurer of the person to whom compensation has been paid.
4. Without prejudice to any other rights of subrogation or recourse against the Supplementary Fund which may exist, a Contracting State or agency thereof which has paid compensation for pollution



damage in accordance with provisions of national law shall acquire by subrogation the lights which the person so compensated would have enjoyed under this Protocol.

## **Contributions**

### **Article 10**

1. Annual contributions to the Supplementary Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in article 11, paragraph 2(a) or (b), has received in total quantities exceeding 150,000 tons:

(a) in the ports or terminal installations in the territory of that State contributing oil carried by sea to such ports or terminal installations; and

(b) in any installations situated in the territory of that Contracting State contributing oil which has been carried by sea and discharged in a port or terminal installation of a non-Contracting State, provided that contributing oil shall only be taken into account by virtue of this sub-paragraph on first receipt in a Contracting State after its discharge in that non-Contracting State.

2. The provisions of article 10, paragraph 2, of the 1992 Fund Convention shall apply in respect of the obligation to pay contributions to the Supplementary Fund.

### **Article 11**

1. With a view to assessing the amount of annual contributions due, if any, and taking account of the necessity to maintain sufficient liquid funds, the Assembly shall for each calendar year make an estimate in the form of a budget of:

(i) Expenditure

(a) costs and expenses of the administration of the Supplementary Fund in the relevant year and any deficit from operations in preceding years;

b) payments to be made by the Supplementary Fund in the relevant year for the satisfaction of claims against the Supplementary Fund due under article 4, including repayments on loans previously taken by the Supplementary Fund for the satisfaction of such claims;

(ii) Income

(a) surplus funds from operations in preceding years, including any interest;

(b) annual contributions, if required to balance the budget;

(c) any other income.

2. The Assembly shall decide the total amount of contributions to be levied. On the basis of that decision, the Director of the Supplementary Fund shall, in respect of each Contracting State, calculate for each person referred to in article 10, the amount of that person's annual contribution:

(a) in so far as the contribution is for the satisfaction of payments reflected to in paragraph 1(i)(a) on the basis of a fixed sum for each ton of contributing oil received in the relevant State by such person during the preceding calendar year; and

(b) in so far as the contribution is for the satisfaction of payments referred to in paragraph I (i)(b) on the basis of a fixed sum for each ton of contributing oil received by such person during the calendar year preceding that in which the incident in question occurred, provided that State was a Contracting State to this Protocol at the date of the incident.

3. The sums referred to in paragraph 2 shall be arrived at by dividing the relevant total amount of contributions required by the total amount of contributing oil received in all Contracting States in the relevant year.

4. The annual contribution shall be due on the date to be laid down in the Internal Regulations of the Supplementary Fund. The Assembly may decide on a different date of payment.

5. The Assembly may decide, under conditions to be laid down in the Financial Regulations of the Supplementary Fund, to make transfers between funds received in accordance with paragraph 2(a) and funds received in accordance with paragraph 2(b).

## **Article 12**

1. The provisions of article 13 of the 1992 Fund Convention shall apply to contributions to the supplementary Fund.

2. A Contracting State itself may assume the obligation to pay contributions to the Supplementary Fund in accordance with the procedure set out in article 14 of the 1992 Fund Convention.

## **Article 13**

1. Contracting States shall communicate to the Director of the Supplementary Fund information on oil receipts in accordance with article 15 of the 1992 Fund Convention provided, however, that communications made to the Director of the 1992 Fund under article 15, paragraph 2, of the 1992 Fund Convention shall be deemed to have been made also under this Protocol.

2. Where a Contracting State does not fulfil its obligations to submit the communication referred to in paragraph 1 and this results in a financial loss for the Supplementary Fund, that Contracting State shall be liable to compensate the Supplementary Fund for such loss. The Assembly shall, on the recommendation of the Director of the Supplementary Fund, decide whether such compensation shall be payable by that Contracting State.

## **Article 14**

1. Notwithstanding article 10, for the purposes of this Protocol there shall be deemed to be a minimum receipt of 1 million tons of contributing oil in each Contracting State.

2. When the aggregate quantity of contributing oil received in a Contracting State is less than 1 million tons, the Contracting State shall assume the obligations that would be incumbent under this Protocol on any person who would be liable to contribute to the Supplementary Fund in respect of oil received within the territory of that State in so far as no liable person exists for the aggregated quantity of oil received.

## **Article 15**

1. If in a Contracting State there is no person meeting the conditions of article 10, that Contracting State shall for the purposes of this Protocol inform the Director of the Supplementary Fund thereof.

2. No compensation shall be paid by the Supplementary Fund for pollution damage in the territory, territorial sea or exclusive economic zone or area determined in accordance with article 3(a)(ii), of this Protocol, of a Contracting State in respect of a given incident or for preventive measures, wherever taken, to prevent or minimize such damage, until the obligations to communicate to the Director of the Supplementary Fund according to article 13, paragraph 1 and paragraph 1 of this article have been complied with in respect of that Contracting State for all years prior to the occurrence of that incident. The Assembly shall determine in the Internal Regulations the circumstances under which a Contracting State shall be considered as having failed to comply with its obligations.

3. Where compensation has been denied temporarily in accordance with paragraph 2, compensation shall be denied permanently in respect of that incident if the obligations to communicate to the Director of the Supplementary Fund under article 13, paragraph 1 and paragraph 1 of this article, have not been complied with within one year after the Director of the Supplementary Fund has notified the Contracting State of its failure to report.

4. Any payments of contributions due to the Supplementary Fund shall be set off against compensation due to the debtor, or the debtor's agents.

## **Organization and administration**

### **Article 16**

1. The Supplementary Fund shall have an Assembly and a Secretariat headed by a Director.
2. Articles 17 to 20 and 28 to 33 of the 1992 Fund Convention shall apply to the Assembly, Secretariat and Director of the Supplementary Fund.
3. Article 34 of the 1992 Fund Convention shall apply to the Supplementary Fund.

### **Article 17**

1. The Secretariat of the 1992 Fund, headed by the Director of the 1992 Fund, may also function as the Secretariat and the Director of the Supplementary Fund.
2. If, in accordance with paragraph 1, the Secretariat and the Director of the 1992 Fund also perform the function of Secretariat and Director of the Supplementary Fund, the Supplementary Fund shall be represented, in cases of conflict of interests between the 1992 Fund and the Supplementary Fund, by the Chairman of the Assembly.
3. The Director of the Supplementary Fund, and the staff and experts appointed by the Director of the Supplementary Fund, performing their duties under this Protocol and the 1992 Fund Convention, shall not be regarded as contravening the provisions of article 30 of the 1992 Fund Convention as applied by article 16, paragraph 2, of this Protocol in so far as they discharge their duties in accordance with this article.
4. The Assembly shall endeavour not to take decisions which are incompatible with decisions taken by the Assembly of the 1992 Fund. If differences of opinion with respect to common administrative issues arise, the Assembly shall try to reach a consensus with the Assembly of the 1992 Fund, in a spirit of mutual co-operation and with the common aims of both organizations in mind.

5. The Supplementary Fund shall reimburse the 1992 Fund all costs and expenses arising from administrative services performed by the 1992 Fund on behalf of the Supplementary Fund.

## **Transitional provisions**

### **Article 18**

1. Subject to paragraph 4, the aggregate amount of the annual contributions payable in respect of contributing oil received in a Single Contracting State during a calendar year shall not exceed 20% of the total amount of annual contributions pursuant to this Protocol in respect of that calendar year.

2. If the application of the provisions in article 11, paragraphs 2 and 3, would result in the aggregate amount of the contributions payable by contributors in a single Contracting State in respect of a given calendar year exceeding 20% of the total annual contributions, the contributions payable by all contributors in that State shall be reduced *pro rata* so that their aggregate contributions equal 20% of the total annual contributions to the Supplementary Fund in respect of that year.

3. If the contributions payable by persons in a given Contracting State shall be reduced pursuant to paragraph 2, the contributions payable by persons in all other Contracting States shall be increased *pro rata* so as to ensure that the total amount of contributions payable by all persons liable to contribute to the Supplementary Fund in respect of the calendar year in question will reach the total amount of contributions decided by the Assembly.

4. The provisions in paragraphs 1 to 3 shall operate until the total quantity of contributing oil received in all Contracting States in a calendar year, including the quantities referred to in article 14, paragraph 1, has reached 1.000 million tons or until a period of 10 years after the date of entry into force of this Protocol has elapsed, whichever occurs earlier.

## **Final clauses**

### **Article 19**

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open for signature at London from 31 July 2003 to 30 July 2004. 2. States may express their consent to be bound by this Protocol by:

(a) signature without reservation as to ratification, acceptance or approval; or

(b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or

(c) accession.

3. Only Contracting States to the 1992 Fund Convention may become Contracting States to this Protocol.

4. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General.

### **Article 20**

## **Information on contributing oil**

Before this Protocol comes into force for a State, that State shall, when signing this Protocol in accordance with article 19, paragraph 2(a), or when depositing an instrument referred to in article 19, paragraph 4 of this Protocol, and annually thereafter at a date to be determined by the Secretary-General, communicate to the Secretary-General the name and address of any person who in respect of that State would be liable to contribute to the Supplementary Fund pursuant to article 10 as well as data on the relevant quantities of contributing oil received by any such person in the territory of that State during the preceding calendar year.

## **Article 21**

### **Entry into force**

1. This Protocol shall enter into force three months following the date on which the following requirements are fulfilled:

(a) at least eight States have signed the Protocol without reservation as to ratification, acceptance or approval, or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General; and

(b) the Secretary-General has received information from the Director of the 1992 Fund that those persons who would be liable to contribute pursuant to article 10 have received during the preceding calendar year a total quantity of at least 450 million tons of contributing oil, including the quantities referred to in article 14, paragraph 1.

2. For each State which signs this Protocol without reservation as to ratification, acceptance or approval, or which ratifies, accepts, approves or accedes to this Protocol, after the conditions in paragraph 1 for entry into force have been met, the Protocol shall enter into force three months following the date of the deposit by such State of the appropriate instrument.

3. Notwithstanding paragraphs 1 and 2, this Protocol shall not enter into force in respect of any State until the 1992 Fund Convention enters into force for that State.

## **Article 22**

### **First session of the Assembly**

The Secretary-General shall convene the first session of the Assembly. This session shall take place as soon as possible after the entry into force of this Protocol and, in any case, not more than thirty days after such entry into force.

## **Article 23**

### **Revision and amendment**

1. A conference for the purpose of revising or amending this Protocol may be convened by the Organization.

2. The Organization shall convene a Conference of Contracting States for the purpose of revising or amending this Protocol at the request of not less than one third of all Contracting States.

## **Article 24**

### **Amendment of compensation limit**

1. Upon the request of at least one quarter of the Contracting States, any proposal to amend the limit of the amount of compensation laid down in article 4, paragraph 2 (a), shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

2. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization for consideration at a date at least six months after the date of its circulation.

3. All Contracting States to this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

4. Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States shall be present at the time of voting.

5. When acting on a proposal to amend the limit, the Legal Committee shall take into account the experience of incidents and in particular the amount of damage resulting therefrom and changes in the monetary values.

6. (a) No amendments of the limit under this article may be considered before the date of entry into force of this Protocol nor less than three years from the date of entry into force of a previous amendment under this article.

(b) The limit may not be increased so as to exceed an amount which corresponds to the limit laid down in this Protocol increased by six per cent per year calculated on a compound basis from the date when this Protocol is opened for signature to the date on which the Legal Committee's decision comes into force.

(c) The limit may not be increased so as to exceed an amount which corresponds to the limit laid down in this Protocol multiplied by three.

7. Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of twelve months after the date of notification, unless within that period not less than one quarter of the States that were Contracting States at the time of the adoption of the amendment by the Legal Committee have communicated to the Organization that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.

8. An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force twelve months after its acceptance.

9. All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with article 26, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

10. When an amendment has been adopted by the Legal Committee but the twelve-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

## **Article 25**

### **Protocols to the 1992 Fund Convention**

1. If the limits laid down in the 1992 Fund Convention have been increased by a Protocol thereto, the limit laid down in article 4, paragraph 2(a), may be increased by the same amount by means of the procedure set out in article 24. The provisions of article 24, paragraph 6, shall not apply in such cases.

2. If the procedure referred to in paragraph 1 has been applied, any subsequent amendment of the limit laid down in article 4, paragraph 2, by application of the procedure in article 24 shall, for the purpose of article 24, paragraphs 6 (b) and (c), be calculated on the basis of the new limit as increased in accordance with paragraph 1.

## **Article 26**

### **Denunciation**

1. This Protocol may be denounced by any Contracting State at any time after the date on which it enters into force for that Contracting State.

2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General.

3. A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.

4. Denunciation of the 1992 Fund Convention shall be deemed to be a denunciation of this Protocol. Such denunciation shall take effect on the date on which denunciation of the Protocol of 1992 to amend the 1971 Fund Convention takes effect according to article 34 of that Protocol.

5. Notwithstanding a denunciation of the present Protocol by a Contracting State pursuant to this article, any provisions of this Protocol relating to the obligations to make contributions to the Supplementary Fund with respect to an incident referred to in article 11, paragraph 2(b), and occurring before the denunciation takes effect, shall continue to apply.

## **Article 27**

### **Extraordinary sessions of the Assembly**

1. Any Contracting State may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions for the remaining Contracting States, request the Director of the Supplementary Fund to convene an

extraordinary session of the Assembly. The Director of the Supplementary Fund shall convene the Assembly to meet not later than sixty days after receipt of the request.

2. The Director of the Supplementary Fund may take the initiative to convene an extraordinary session of the Assembly to meet within Sixty days after the deposit of any instrument of denunciation, if the Director of the Supplementary Fund considers that such denunciation will result in a significant increase in the level of contributions of the remaining Contracting States.

3. If the Assembly at an extraordinary session convened in accordance with paragraph I or 2 decides that the denunciation will result in a significant increase in the level of contributions for the remaining Contracting States, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Protocol with effect from the same date.

## **Article 28**

### **Termination**

1. This Protocol shall cease to be in force on the date when the number of Contracting States falls below seven or the total quantity of contributing oil received in the remaining Contracting States, including the quantities referred to in article 14, paragraph I, falls below 350 million tons, whichever occurs earlier.

2. States which are bound by this Protocol on the day before the date it ceases to be in force shall enable the Supplementary Fund to exercise its functions as described in article 29 and shall, for that purpose only, remain bound by this Protocol.

## **Article 29**

### **Winding up of the Supplementary Fund**

1. If this Protocol ceases to be in force, the Supplementary Fund shall nevertheless:

(a) meet its obligations in respect of any incident occurring before the Protocol ceased to be in force;

(b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under paragraph I (a), including expenses for the administration of the Supplementary Fund necessary for this purpose.

2. The Assembly shall take all appropriate measures to complete the winding up of the Supplementary Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Supplementary Fund.

3. For the purposes of this article the Supplementary Fund shall remain a legal person.

## **Article 30**

### **Depositary**

1. This Protocol and any amendments accepted under article 24 shall be deposited with the Secretary-General.



2. The Secretary-General shall:

(a) inform all States which have signed or acceded to this Protocol of:

(i) each new signature or deposit of an instrument together with the date thereof;

(ii) the date of entry into force of this Protocol;

(iii) any proposal to amend the limit of the amount of compensation which has been made in accordance with article 24, paragraph 1;

(iv) any amendment which has been adopted in accordance with article 24, paragraph 4;

(v) any amendment deemed to have been accepted under article 24, paragraph 7, together with the date on which that amendment shall enter into force in accordance with paragraphs 8 and 9 of that article;

(vi) the deposit of an instrument of denunciation of this Protocol together with the date of the deposit and the date on which it takes effect;

(vii) any communication called for by any article in this Protocol;

(b) transmit certified true copies of this Protocol to all Signatory States and to all States which accede to the Protocol.

3. As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

### **Article 31**

#### **Languages**

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this sixteenth day of May two thousand and three.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol<sup>8</sup>.

<sup>8</sup> Signatures omitted.

# **International Convention On Liability And Compensation For Damage In Connection With The Carriage Of Hazardous And Noxious Substances By Sea, 2010 (2010 HNS Convention)<sup>1,2</sup>**

**(Consolidated text of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, and the Protocol of 2010 to the Convention)**

## **Chapter I - General Provisions**

### **Definitions<sup>3</sup>**

#### **Article 1**

For the purposes of this Convention:

1 "Ship" means any seagoing vessel and seaborne craft, of any type whatsoever.

2 "Person" means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.

3 "Owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "owner" shall mean such company.

4 "Receiver" means either:

(a) the person who physically receives contributing cargo discharged in the ports and terminals of a State Party; provided that if at the time of receipt the person who physically receives the cargo acts as an agent for another who is subject to the jurisdiction of any State Party, then the principal shall be deemed to be the receiver, if the agent discloses the principal to the HNS Fund; or

(b) the person in the State Party who in accordance with the national law of that State Party is deemed to be the receiver of contributing cargo discharged in the ports and terminals of a State Party, provided that the total contributing cargo received according to such national law is substantially the same as that which would have been received under (a).

<sup>1</sup> Article 18 (Interpretation and application) of the Protocol of 2010 provides as follows: "1 The Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument. 2 Articles 1 to 44 and Annexes I and II of the Convention, as amended by this Protocol and the annex thereto, together with articles 20 to 29 of this Protocol (the final clauses), shall *mutatis mutandis* constitute and be called the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 (2010 HNS Convention). Articles 20 to 29 of this Protocol shall be renumbered sequentially with the preceding articles of the Convention. References within the final clauses to other articles of the final clauses shall be renumbered accordingly.

<sup>2</sup> Article 2 of the Protocol of 2010 provides as follows: "The Parties to this Protocol shall give effect to the provisions of this Protocol and the provisions of the Convention, as amended by this Protocol."

<sup>3</sup> Article 1 of the Protocol of 2010 contains definitions which apply only to the Protocol and are not amendments to the 1996 Convention.

5 "Hazardous and noxious substances" (HNS) means:

(a) any substances, materials and articles carried on board a ship as cargo, referred to in (i) to (vii) below:

(i) oils, carried in bulk, as defined in regulation 1 of annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;

(ii) noxious liquid substances, carried in bulk, as defined in regulation 1.10 of Annex II to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended, and those substances and mixtures provisionally categorized as falling in pollution category X, Y or Z in accordance with regulation 6.3 of the said Annex II;

(iii) dangerous liquid substances carried in bulk listed in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, as amended, and the dangerous products for which the preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;

(iv) dangerous, hazardous and harmful substances, materials and articles in packaged form covered by the International Maritime Dangerous Goods Code, as amended;

(v) liquefied gases as listed in chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, as amended, and the products for which preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;

(vi) liquid substances carried in bulk with a flashpoint not exceeding 60°C (measured by a closed-cup test);

(vii) solid bulk materials possessing chemical hazards covered by the International Maritime Solid Bulk Cargoes Code, as amended, to the extent that these substances are also subject to the provisions of the International Maritime Dangerous Goods Code in effect in 1996, when carried in packaged form; and

(b) residues from the previous carriage in bulk of substances referred to in (a)(i) to (iii) and (v) to (vii) above.

*5bis* "Bulk HNS" means any hazardous and noxious substances referred to in article 1, paragraph 5(a)(i) to (iii) and (v) to (vii) and paragraph 5(b).

*5ter* "Packaged HNS" means any hazardous and noxious substances referred to in article 1, paragraph 5(a)(iv).

6 "Damage" means:

(a) loss of life or personal injury on board or outside the ship carrying the hazardous and noxious substances caused by those substances;

(b) loss of or damage to property outside the ship carrying the hazardous and noxious substances caused by those substances;

(c) loss or damage by contamination of the environment caused by the hazardous and noxious substances, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and

(d) the costs of preventive measures and further loss or damage caused by preventive measures. Where it is not reasonably possible to separate damage caused by the hazardous and noxious substances from that caused by other factors, all such damage shall be deemed to be caused by the hazardous and noxious substances except if, and to the extent that, the damage caused by other factors is damage of a type referred to in article 4, paragraph 3. In this paragraph, "caused by those substances" means caused by the hazardous or noxious nature of the substances.

7 "Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize damage.

8 "Incident" means any occurrence or series of occurrences having the same origin, which causes damage or creates a grave and imminent threat of causing damage.

9 "Carriage by sea" means the period from the time when the hazardous and noxious substances enter any part of the ship's equipment, on loading, to the time they cease to be present in any part of the ship's equipment, on discharge. If no ship's equipment is used, the period begins and ends respectively when the hazardous and noxious substances cross the ship's rail.

10 "Contributing cargo" means any bulk HNS which is carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State. Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination.

11 The "HNS Fund" means the International Hazardous and Noxious Substances Fund established under article 13.

12 "Unit of account" means the Special Drawing Right as defined by the International Monetary Fund.

13 "State of the ship's registry" means in relation to a registered ship the State of registration of the ship, and in relation to an unregistered ship the State whose flag the ship is entitled to fly.

14 "Terminal" means any site for the storage of hazardous and noxious substances received from waterborne transportation, including any facility situated off-shore and linked by pipeline or otherwise to such site.

15 "Director" means the Director of the HNS Fund.

16 "Organization" means the International Maritime Organization.

17 "Secretary-General" means the Secretary-General of the Organization.

## **Annexes Article 2**

The Annexes to this Convention shall constitute an integral part of this Convention.

### **Scope of application**

#### **Article 3**

This Convention shall apply exclusively:

- (a) to any damage caused in the territory, including the territorial sea, of a State Party;
- (b) to damage by contamination of the environment caused in the exclusive economic zone of a State Party, established in accordance with international law, or, if a State Party has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;<sup>5</sup>
- (c) to damage, other than damage by contamination of the environment, caused outside the territory, including the territorial sea, of any State, if this damage has been caused by a substance carried on board a ship registered in a State Party or, in the case of an unregistered ship, on board a ship entitled to fly the flag of a State Party; and
- (d) to preventive measures, wherever taken, to prevent or minimize such damage as referred to in (a), (b) and (c) above.

#### **Article 4**

1 This Convention shall apply to claims, other than claims arising out of any contract for the carriage of goods and passengers, for damage arising from the carriage of hazardous and noxious substances by sea.

2 This Convention shall not apply to the extent that its provisions are incompatible with those of the applicable law relating to workers' compensation or social security schemes.

3 This Convention shall not apply:

- (a) to pollution damage as defined in the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended, whether or not compensation is payable in respect of it under that Convention; and
- (b) to damage caused by a radioactive material of class 7 either in the International Maritime Dangerous Goods Code, as amended, or in the International Maritime Solid Bulk Cargoes Code, as amended.

4 Except as provided in paragraph 5, the provisions of this Convention shall not apply to warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service.

5 A State Party may decide to apply this Convention to its warships or other vessels described in paragraph 4, in which case it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

6 With respect to ships owned by a State Party and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in article 38 and shall waive all defences based on its status as a sovereign State.

## **Article 5**

1 A State may, at the time of ratification, acceptance, approval of, or accession to, this Convention, or any time thereafter, declare that this Convention does not apply to ships:

- (a) which do not exceed 200 gross tonnage; and
- (b) which carry hazardous and noxious substances only in packaged form; and
- (c) while they are engaged on voyages between ports or facilities of that State.

2 Where two neighboring States agree that this Convention does not apply also to ships which are covered by paragraph 1(a) and (b) while engaged on voyages between ports or facilities of those States, the States concerned may declare that the exclusion from the application of this Convention declared under paragraph 1 covers also ships referred to in this paragraph.

3 Any State which has made the declaration under paragraph 1 or 2 may withdraw such declaration at any time.

4 A declaration made under paragraph 1 or 2, and the withdrawal of the declaration made under paragraph 3, shall be deposited with the Secretary-General who shall, after the entry into force of this Convention, communicate it to the Director.

5 The HNS Fund is not liable to pay compensation for damage caused by substances carried by a ship to which the Convention does not apply pursuant to a declaration made under paragraph 1 or 2, to the extent that:

- (a) the damage as defined in article 1, paragraph 6(a), (b) or (c) was caused in:
  - (i) the territory, including the territorial sea, of the State which has made the declaration, or in the case of neighbouring States which have made a declaration under paragraph 2, of either of them; or
  - (ii) the exclusive economic zone, or area mentioned in article 3(b), of the State or States referred to in (i); (b) the damage includes measures taken to prevent or minimize such damage.

## **Duties of State Parties**

## **Article 6**

Each State Party shall ensure that any obligation arising under this Convention is fulfilled and shall take appropriate measures under its law including the imposing of sanctions as it may deem necessary, with a view to the effective execution of any such obligation.

## **Chapter II Liability**

## Liability of the owner

### Article 7

1 Except as provided in paragraphs 2 and 3, the owner at the time of an incident shall be liable for damage caused by any hazardous and noxious substances in connection with their carriage by sea on board the ship, provided that if an incident consists of a series of occurrences having the same origin the liability shall attach to the owner at the time of the first of such occurrences.

2 No liability shall attach to the owner if the owner proves that:

- (a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
- (b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or
- (c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function; or
- (d) the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped either:
  - (i) has caused the damage, wholly or partly; or
  - (ii) has led the owner not to obtain insurance in accordance with article 12; provided that neither the owner nor its servants or agents knew or ought reasonably to have known of the hazardous and noxious nature of the substances shipped.

3 If the owner proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from liability to such person.

4 No claim for compensation for damage shall be made against the owner otherwise than in accordance with this Convention.

5 Subject to paragraph 6, no claim for compensation for damage under this Convention or otherwise may be made against:

- (a) the servants or agents of the owner or the members of the crew;
- (b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
- (c) any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;
- (d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
- (e) any person taking preventive measures; and

(f) the servants or agents of persons mentioned in (c), (d) and (e); unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

6 Nothing in this Convention shall prejudice any existing right of recourse of the owner against any third party, including, but not limited to, the shipper or the receiver of the substance causing the damage, or the persons indicated in paragraph 5.

### **Incidents involving two or more ships**

#### **Article 8**

1 Whenever damage has resulted from an incident involving two or more ships each of which is carrying hazardous and noxious substances, each owner, unless exonerated under article 7, shall be liable for the damage. The owners shall be jointly and severally liable for all such damage which is not reasonably separable.

2 However, owners shall be entitled to the limits of liability applicable to each of them under article 9. 3 Nothing in this article shall prejudice any right of recourse of an owner against any other owner.

### **Limitation of liability**

#### **Article 9**

1 The owner of a ship shall be entitled to limit liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:

(a) Where the damage has been caused by bulk HNS:

(i) 10 million units of account for a ship not exceeding 2,000 units of tonnage; and

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each unit of tonnage from 2,001 to 50,000 units of tonnage, 1,500 units of account;

for each unit of tonnage in excess of 50,000 units of tonnage, 360 units of account;

provided, however, that this aggregate amount shall not in any event exceed 100 million units of account.

(b) Where the damage has been caused by packaged HNS, or where the damage has been caused by both bulk HNS and packaged HNS, or where it is not possible to determine whether the damage originating from that ship has been caused by bulk HNS or by packaged HNS:

(i) 11.5 million units of account for a ship not exceeding 2,000 units of tonnage; and

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

a. for each unit of tonnage from 2,001 to 50,000 units of tonnage, 1,725 units of account;



b. for each unit of tonnage in excess of 50,000 units of tonnage, 414 units of account;

c. provided, however, that this aggregate amount shall not in any event exceed 115 million units of account.

2 The owner shall not be entitled to limit liability under this Convention if it is proved that the damage resulted from the personal act or omission of the owner, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

3 The owner shall, for the purpose of benefiting from the limitation provided for in paragraph 1, constitute a fund for the total sum representing the limit of liability established in accordance with paragraph 1 with the court or other competent authority of any one of the States Parties in which action is brought under article 38 or, if no action is brought, with any court or other competent authority in any one of the States Parties in which an action can be brought under article 38. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the law of the State Party where the fund is constituted, and considered to be adequate by the court or other competent authority.

4 Subject to the provisions of article 11, the fund shall be distributed among the claimants in proportion to the amounts of their established claims.

5 If before the fund is distributed the owner or any of the servants or agents of the owner or any person providing to the owner insurance or other financial security has as a result of the incident in question, paid compensation for damage, such person shall, up to the amount that person has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

6 The right of subrogation provided for in paragraph 5 may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for damage which such person may have paid but only to the extent that such subrogation is permitted under the applicable national law.

7 Where owners or other persons establish that they may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which the right of subrogation would have been enjoyed under paragraphs 5 or 6 had the compensation been paid before the fund was distributed, the court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce the claim against the fund.

8 Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize damage shall rank equally with other claims against the fund.

9 (a) The amounts mentioned in paragraph 1 shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the constitution of the fund referred to in paragraph 3. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

(b) Nevertheless, a State Party which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 9(a) may, at the time

of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare that the unit of account referred to in paragraph 9(a) shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five-and-a-half milligrammes of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.

(c) The calculation mentioned in the last sentence of paragraph 9(a) and the conversion mentioned in paragraph 9(b) shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in paragraph 1 as would result from the application of the first two sentences of paragraph 9(a). States Parties shall communicate to the Secretary-General the manner of calculation pursuant to paragraph 9(a), or the result of the conversion in paragraph 9(b) as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

10 For the purpose of this article the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

11 The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this article on the same conditions and having the same effect as if it were constituted by the owner. Such a fund may be constituted even if, under the provisions of paragraph 2, the owner is not entitled to limitation of liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

## **Article 10**

1 Where the owner, after an incident, has constituted a fund in accordance with article 9 and is entitled to limit liability:

(a) no person having a claim for damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim; and

(b) the court or other competent authority of any State Party shall order the release of any ship or other property belonging to the owner which has been arrested in respect of a claim for damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.

2 The foregoing shall, however, only apply if the claimant has access to the court administering the fund and the fund is actually available in respect of the claim.

## **Death and injury**

### **Article 11**

Claims in respect of death or personal injury have priority over other claims save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with article 9, paragraph 1.

## **Compulsory insurance of the owner**

### **Article 12**

1 The owner of a ship registered in a State Party and actually carrying hazardous and noxious substances shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, in the sums fixed by applying the limits of liability prescribed in article 9, paragraph 1, to cover liability for damage under this Convention.

2 A compulsory insurance certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party such compulsory insurance certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This compulsory insurance certificate shall be in the form of the model set out in Annex I and shall contain the following particulars:

- (a) name of the ship, distinctive number or letters and port of registry;
- (b) name and principal place of business of the owner;
- (c) IMO ship identification number;
- (d) type and duration of security;
- (e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
- (f) period of validity of certificate, which shall not be longer than the period of validity of the insurance or other security.

3 The compulsory insurance certificate shall be in the official language or languages of the issuing State. If the language used is neither English, nor French nor Spanish, the text shall include a translation into one of these languages.

4 The compulsory insurance certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authority of the State issuing or certifying the certificate.

5 An insurance or other financial security shall not satisfy the requirements of this article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 4, unless the compulsory insurance certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this article.

6 The State of the ship's registry shall, subject to the provisions of this article, determine the conditions of issue and validity of the compulsory insurance certificate.

7 Compulsory insurance certificates issued or certified under the authority of a State Party in accordance with paragraph 2 shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as compulsory insurance certificates issued or certified by them even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the compulsory insurance certificate is not financially capable of meeting the obligations imposed by this Convention.

8 Any claim for compensation for damage may be brought directly against the insurer or other person providing financial security for the owner's liability for damage. In such case the defendant may, even if the owner is not entitled to limitation of liability, benefit from the limit of liability prescribed in accordance with paragraph 1. The defendant may further invoke the defences (other than the bankruptcy or winding up of the owner) which the owner would have been entitled to invoke. Furthermore, the defendant may invoke the defence that the damage resulted from the wilful misconduct of the owner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the owner against the defendant. The defendant shall in any event have the right to require the owner to be joined in the proceedings.

9 Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 shall be available exclusively for the satisfaction of claims under this Convention.

10 A State Party shall not permit a ship under its flag to which this article applies to trade unless a certificate has been issued under paragraph 2 or 12.

11 Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security in the sums specified in paragraph 1 is in force in respect of any ship, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea.

12 If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a compulsory insurance certificate issued by the appropriate authorities of the State of the ship's registry stating that the ship is owned by that State and that the ship's liability is covered within the limit prescribed in accordance with paragraph 1. Such a compulsory insurance certificate shall follow as closely as possible the model prescribed by paragraph 2.

# **Chapter III - Compensation By The International Hazardous And Noxious Substances Fund (HNS Fund)**

## **Establishment of the HNS Fund**

### **Article 13**

1 The International Hazardous and Noxious Substances Fund (HNS Fund) is hereby established with the following aims:

(a) to provide compensation for damage in connection with the carriage of hazardous and noxious substances by sea, to the extent that the protection afforded by chapter II is inadequate or not available; and

(b) to give effect to the related tasks set out in article 15.

2 The HNS Fund shall in each State Party be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each State Party shall recognize the Director as the legal representative of the HNS Fund.

## **Compensation**

### **Article 14**

1 For the purpose of fulfilling its function under article 13, paragraph 1(a), the HNS Fund shall pay compensation to any person suffering damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of chapter II:

(a) because no liability for the damage arises under chapter II;

(b) because the owner liable for the damage under chapter II is financially incapable of meeting the obligations under this Convention in full and any financial security that may be provided under chapter II does not cover or is insufficient to satisfy the claims for compensation for damage; an owner being treated as financially incapable of meeting these obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under chapter II after having taken all reasonable steps to pursue the available legal remedies;

(c) because the damage exceeds the owner's liability under the terms of chapter II.

2 Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize damage shall be treated as damage for the purposes of this article.

3 The HNS Fund shall incur no obligation under the preceding paragraphs if:

(a) it proves that the damage resulted from an act of war, hostilities, civil war or insurrection or was caused by hazardous and noxious substances which had escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the incident, only on Government non-commercial service; or

(b) the claimant cannot prove that there is a reasonable probability that the damage resulted from an incident involving one or more ships.

4 If the HNS Fund proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the HNS Fund may be exonerated wholly or partially from its obligation to pay compensation to such person. The HNS Fund shall in any event be exonerated to the extent that the owner may have been exonerated under article 7, paragraph 3. However, there shall be no such exoneration of the HNS Fund with regard to preventive measures.

5 (a) Except as otherwise provided in subparagraph (b), the aggregate amount of compensation payable by the HNS Fund under this article shall in respect of any one incident be limited, so that the total sum of that amount and any amount of compensation actually paid under chapter II for damage within the scope of application of this Convention as defined in article 3 shall not exceed 250 million units of account.

(b) The aggregate amount of compensation payable by the HNS Fund under this article for damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 250 million units of account.

(c) Interest accrued on a fund constituted in accordance with article 9, paragraph 3, if any, shall not be taken into account for the computation of the maximum compensation payable by the HNS Fund under this article.

(d) The amounts mentioned in this article shall be converted into national currency on the basis of the value of that currency with reference to the Special Drawing Right on the date of the decision of the Assembly of the HNS Fund as to the first date of payment of compensation.

6 Where the amount of established claims against the HNS Fund exceeds the aggregate amount of compensation payable under paragraph 5, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Convention shall be the same for all claimants. Claims in respect of death or personal injury shall have priority over other claims, however, save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with paragraph 5.

7 The Assembly of the HNS Fund may decide that, in exceptional cases, compensation in accordance with this Convention can be paid even if the owner has not constituted a fund in accordance with chapter II. In such cases paragraph 5(d) applies accordingly.

## **Related tasks of the HNS Fund**

### **Article 15**

For the purpose of fulfilling its function under article 13, paragraph 1(a), the HNS Fund shall have the following tasks:

(a) to consider claims made against the HNS Fund;

(b) to prepare an estimate in the form of a budget for each calendar year of: Expenditure:

(i) costs and expenses of the administration of the HNS Fund in the relevant year and any deficit from operations in the preceding years; and

(ii) payments to be made by the HNS Fund in the relevant year; Income:

(iii) surplus funds from operations in preceding years, including any interest;

(iv) initial contributions to be paid in the course of the year;

(v) annual contributions if required to balance the budget; and

(vi) any other income;

(c) to use at the request of a State Party its good offices as necessary to assist that State to secure promptly such personnel, material and services as are necessary to enable the State to take measures to prevent or mitigate damage arising from an incident in respect of which the HNS Fund may be called upon to pay compensation under this Convention; and

(d) to provide, on conditions laid down in the internal regulations, credit facilities with a view to the taking of preventive measures against damage arising from a particular incident in respect of which the HNS Fund may be called upon to pay compensation under this Convention.

### **General provisions on contributions**

#### **Article 16**

1 The HNS Fund shall have a general account, which shall be divided into sectors.

2 The HNS Fund shall, subject to article 19, paragraphs 3 and 4, also have separate accounts in respect of:

(a) oil as defined in article 1, paragraph 5(a)(i) (oil account);

(b) liquefied natural gases of light hydrocarbons with methane as the main constituent (LNG) (LNG account); and

(c) liquefied petroleum gases of light hydrocarbons with propane and butane as the main constituents (LPG) (LPG account).

3 There shall be initial contributions and, as required, annual contributions to the HNS Fund.

4 Contributions to the HNS Fund shall be made into the general account in accordance with article 18, to separate accounts in accordance with article 19 and to either the general account or separate accounts in accordance with article 20 or article 21, paragraph 5. Subject to article 19, paragraph 6, the general account shall be available to compensate damage caused by hazardous and noxious substances covered by that account, and a separate account shall be available to compensate damage caused by a hazardous and noxious substance covered by that account.

5 For the purposes of article 18, article 19, paragraph 1(a)(i), paragraph 1(a)(ii) and paragraph 1(b), article 20 and article 21, paragraph 5, where the quantity of a given type of contributing cargo received in the territory of a State Party by any person in a calendar year when aggregated with the quantities of the same type of cargo received in the same State Party in that year by any associated

person or persons exceeds the limit specified in the respective subparagraphs, such a person shall pay contributions in respect of the actual quantity received by that person notwithstanding that that quantity did not exceed the respective limit.

6 "Associated person" means any subsidiary or commonly controlled entity. The question whether a person comes within this definition shall be determined by the national law of the State concerned.

## **General provisions on annual contributions**

### **Article 17**

1 Annual contributions to the general account and to each separate account shall be levied only as required to make payments by the account in question.

2 Annual contributions payable pursuant to articles 18, 19 and article 21, paragraph 5, shall be determined by the Assembly and shall be calculated in accordance with those articles on the basis of the units of contributing cargo received during the preceding calendar year or such other year as the Assembly may decide.

3 The Assembly shall decide the total amount of annual contributions to be levied to the general account and to each separate account. Following that decision the Director shall, in respect of each State Party, calculate for each person liable to pay contributions in accordance with article 18, article 19, paragraph 1 and paragraph *1bis*, and article 21, paragraph 5, the amount of that person's annual contribution to each account, on the basis of a fixed sum for each unit of contributing cargo reported in respect of the person during the preceding calendar year or such other year as the Assembly may decide. For the general account, the above-mentioned fixed sum per unit of contributing cargo for each sector shall be calculated pursuant to the regulations contained in Annex II to this Convention. For each separate account, the fixed sum per unit of contributing cargo referred to above shall be calculated by dividing the total annual contribution to be levied to that account by the total quantity of cargo contributing to that account.

4 The Assembly may also levy annual contributions for administrative costs and decide on the distribution of such costs between the sectors of the general account and the separate accounts.

5 The Assembly shall also decide on the distribution between the relevant accounts and sectors of amounts paid in compensation for damage caused by two or more substances which fall within different accounts or sectors, on the basis of an estimate of the extent to which each of the substances involved contributed to the damage.

## **Annual contributions to the general account**

### **Article 18**

1 Subject to article 16, paragraph 5, annual contributions to the general account shall be made in respect of each State Party by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of aggregate quantities exceeding 20,000 tonnes of contributing cargo, other than substances referred to in article 19, paragraph 1 and paragraph *1bis*, which fall within the following sectors:

- (a) solid bulk materials referred to in article 1, paragraph 5(a)(vii);
- (b) substances referred to in paragraph 2; and



(c) other substances.

2 Annual contributions shall also be payable to the general account by persons who would have been liable to pay contributions to a separate account in accordance with article 19, paragraph 1 and paragraph *1bis*, had its operation not been postponed or suspended in accordance with article 19. Each separate account the operation of which has been postponed or suspended under article 19 shall form a separate sector within the general account.

### **Annual contributions to separate accounts**

#### **Article 19**

1 Subject to article 16, paragraph 5, annual contributions to separate accounts shall be made in respect of each State Party:

(a) in the case of the oil account,

(i) by any person who has received in that State in the preceding calendar year, or such other year as the Assembly may decide, total quantities exceeding 150,000 tonnes of contributing oil as defined in article 1, paragraph 3 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as amended, and who is or would be liable to pay contributions to the International Oil Pollution Compensation Fund in accordance with article 10 of that Convention; and

(ii) by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of total quantities exceeding 20,000 tonnes of other oils carried in bulk listed in appendix I of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;

(b) in the case of the LPG account, by any person who in the preceding calendar year, or such other year as the Assembly may decide, was the receiver in that State of total quantities exceeding 20,000 tonnes of LPG.

*1bis* (a) In the case of the LNG account, subject to article 16, paragraph 5, annual contributions to the LNG account shall be made in respect of each State Party by any person who in the preceding calendar year, or such other year as the Assembly may decide, was the receiver in that State of any quantity of LNG.

(b) However, any contributions shall be made by the person who, immediately prior to its discharge, held title to an LNG cargo discharged in a port or terminal of that State (the titleholder) where:

(i) the titleholder has entered into an agreement with the receiver that the titleholder shall make such contributions; and

(ii) the receiver has informed the State Party that such an agreement exists.

(c) If the titleholder referred to in subparagraph (b) above does not make the contributions or any part thereof, the receiver shall make the remaining contributions. The Assembly shall determine in the internal regulations the circumstances under which the titleholder shall be

considered as not having made the contributions and the arrangements in accordance with which the receiver shall make any remaining contributions.

(d) Nothing in this paragraph shall prejudice any rights of recourse or reimbursement of the receiver that may arise between the receiver and the titleholder under the applicable law.

2 Subject to paragraph 3, the separate accounts referred to in paragraph 1 and paragraph *1bis* above shall become effective at the same time as the general account.

3 The initial operation of a separate account referred to in article 16, paragraph 2 shall be postponed until such time as the quantities of contributing cargo in respect of that account during the preceding calendar year, or such other year as the Assembly may decide, exceed the following levels:

(a) 350 million tonnes of contributing cargo in respect of the oil account;

(b) 20 million tonnes of contributing cargo in respect of the LNG account; and

(c) 15 million tonnes of contributing cargo in respect of the LPG account.

4 The Assembly may suspend the operation of a separate account if:

(a) the quantities of contributing cargo in respect of that account during the preceding calendar year fall below the respective level specified in paragraph 3; or

(b) when six months have elapsed from the date when the contributions were due, the total unpaid contributions to that account exceed ten per cent of the most recent levy to that account in accordance with paragraph 1.

5 The Assembly may reinstate the operation of a separate account which has been suspended in accordance with paragraph 4.

6 Any person who would be liable to pay contributions to a separate account the operation of which has been postponed in accordance with paragraph 3 or suspended in accordance with paragraph 4, shall pay into the general account the contributions due by that person in respect of that separate account. For the purpose of calculating future contributions, the postponed or suspended separate account shall form a new sector in the general account and shall be subject to the HNS points system defined in Annex II.

## **Initial contributions**

### **Article 20**

1 In respect of each State Party, initial contributions shall be made of an amount which shall, for each person liable to pay contributions in accordance with article 16, paragraph 5, articles 18, 19 and article 21, paragraph 5, be calculated on the basis of a fixed sum, equal for the general account and each separate account, for each unit of contributing cargo received in that State during the calendar year preceding that in which this Convention enters into force for that State.

2 The fixed sum and the units for the different sectors within the general account as well as for each separate account referred to in paragraph 1 shall be determined by the Assembly.

3 Initial contributions shall be paid within three months following the date on which the HNS Fund issues invoices in respect of each State Party to persons liable to pay contributions in accordance with paragraph 1.

## Reports

### Article 21

1 Each State Party shall ensure that any person liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article appears on a list to be established and kept up to date by the Director in accordance with the provisions of this article.

2 For the purposes set out in paragraph 1, each State Party shall communicate to the Director, at a time and in the manner to be prescribed in the internal regulations of the HNS Fund, the name and address of any person who in respect of the State is liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article, as well as data on the relevant quantities of contributing cargo for which such a person is liable to contribute in respect of the preceding calendar year.

3 For the purposes of ascertaining who are, at any given time, the persons liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article and of establishing, where applicable, the quantities of cargo to be taken into account for any such person when determining the amount of the contribution, the list shall be *prima facie* evidence of the facts stated therein.

4 If in a State Party there is no person liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article, that State Party shall, for the purposes of this Convention, inform the Director of the HNS Fund thereof.

5 In respect of contributing cargo carried from one port or terminal of a State Party to another port or terminal located in the same State and discharged there, States Parties shall have the option of submitting to the HNS Fund a report with an annual aggregate quantity for each account covering all receipts of contributing cargo, including any quantities in respect of which contributions are payable pursuant to article 16, paragraph 5. The State Party shall, at the time of reporting, either:

(a) notify the HNS Fund that that State will pay the aggregate amount for each account in respect of the relevant year in one lump sum to the HNS Fund; or

(b) instruct the HNS Fund to levy the aggregate amount for each account by invoicing individual receivers, or, in the case of LNG, the titleholder if article 19, paragraph 1*bis*(b) is applicable, for the amount payable by each of them. If the titleholder does not make the contributions or any part thereof, the HNS Fund shall levy the remaining contributions by invoicing the receiver of the LNG cargo. These persons shall be identified in accordance with the national law of the State concerned.

## Non-reporting

### Article 21*bis*

1 Where a State Party does not fulfil its obligations under article 21, paragraph 2, and this results in a financial loss for the HNS Fund, that State Party shall be liable to compensate the HNS Fund for such loss. The Assembly shall, upon recommendation of the Director, decide whether such compensation shall be payable by a State.

2 No compensation for any incident shall be paid by the HNS Fund for damage in the territory, including the territorial sea of a State Party in accordance with article 3(a), the exclusive economic zone or other area of a State Party in accordance with article 3(b), or damage in accordance with article 3(c) in respect of a given incident or for preventive measures, wherever taken, in accordance with article 3(d), until the obligations under article 21, paragraphs 2 and 4, have been complied with in respect of that State Party for all years prior to the occurrence of an incident for which compensation is sought. The Assembly shall determine in the internal regulations of the HNS Fund the circumstances under which a State Party shall be considered as not having fulfilled these obligations.

3 Where compensation has been denied temporarily in accordance with paragraph 2, compensation shall be denied permanently if the obligations under article 21, paragraphs 2 and 4, have not been fulfilled within one year after the Director has notified the State Party of its failure to fulfil these obligations.

4 Any payments of contributions due to the HNS Fund shall be set off against compensation due to the debtor, or the debtor's agents.

5 Paragraphs 2 to 4 shall not apply to claims in respect of death or personal injury.

### **Non-payment of contributions**

#### **Article 22**

1 The amount of any contribution due under articles 18, 19, 20 or article 21, paragraph 5 and which is in arrears shall bear interest at a rate which shall be determined in accordance with the internal regulations of the HNS Fund, provided that different rates may be fixed for different circumstances.

2 Where a person who is liable to pay contributions in accordance with articles 18, 19, 20 or article 21, paragraph 5, does not fulfil the obligations in respect of any such contribution or any part thereof and is in arrears, the Director shall take all appropriate action, including court action, against such a person on behalf of the HNS Fund with a view to the recovery of the amount due. However, where the defaulting contributor is manifestly insolvent or the circumstances otherwise so warrant, the Assembly may, upon recommendation of the Director, decide that no action shall be taken or continued against the contributor.

### **Optional liability of States Parties for the payment of contributions**

#### **Article 23**

1 Without prejudice to article 21, paragraph 5, a State Party may, at the time when it signs without reservation as to ratification, acceptance or approval, or deposits its instrument of ratification, acceptance, approval or accession or at any time thereafter, declare that it assumes responsibility for obligations imposed by this Convention on any person liable to pay contributions in accordance with articles 18, 19, 20 or article 21, paragraph 5, in respect of hazardous and noxious substances received in the territory of that State. Such a declaration shall be made in writing and shall specify which obligations are assumed.

2 Where a declaration under paragraph 1 is made prior to the entry into force of this Convention in accordance with article 46, it shall be deposited with the Secretary-General who shall after the entry into force of this Convention communicate the declaration to the Director.

3 A declaration under paragraph 1 which is made after the entry into force of this Convention shall be deposited with the Director.

4 A declaration made in accordance with this article may be withdrawn by the relevant State giving notice thereof in writing to the Director. Such a notification shall take effect three months after the Director's receipt thereof.

5 Any State which is bound by a declaration made under this article shall, in any proceedings brought against it before a competent court in respect of any obligation specified in the declaration, waive any immunity that it would otherwise be entitled to invoke.

## **Organization and administration**

### **Article 24**

The HNS Fund shall have an Assembly and a Secretariat headed by the Director.

### **Assembly**

### **Article 25**

The Assembly shall consist of all States Parties to this Convention.

### **Article 26**

The functions of the Assembly shall be:

- (a) to elect at each regular session its President and two Vice-Presidents who shall hold office until the next regular session;
- (b) to determine its own rules of procedure, subject to the provisions of this Convention;
- (c) to develop, apply and keep under review internal and financial regulations relating to the aim of the HNS Fund as described in article 13, paragraph 1(a), and the related tasks of the HNS Fund listed in article 15;
- (d) to appoint the Director and make provisions for the appointment of such other personnel as may be necessary and determine the terms and conditions of service of the Director and other personnel;
- (e) to adopt the annual budget prepared in accordance with article 15(b);
- (f) to consider and approve as necessary any recommendation of the Director regarding the scope of definition of contributing cargo;
- (g) to appoint auditors and approve the accounts of the HNS Fund;
- (h) to approve settlements of claims against the HNS Fund, to take decisions in respect of the distribution among claimants of the available amount of compensation in accordance with article

14 and to determine the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims of damage are compensated as promptly as possible;

(i) to establish a Committee on Claims for Compensation with at least 7 and not more than 15 members and any temporary or permanent subsidiary body it may consider to be necessary, to define its terms of reference and to give it the authority needed to perform the functions entrusted to it; when appointing the members of such body, the Assembly shall endeavour to secure an equitable geographical distribution of members and to ensure that the States Parties are appropriately represented; the Rules of Procedure of the Assembly may be applied, *mutatis mutandis*, for the work of such subsidiary body;

(j) to determine which States not party to this Convention, which Associate Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to take part, without voting rights, in meetings of the Assembly and subsidiary bodies;

(k) to give instructions concerning the administration of the HNS Fund to the Director and subsidiary bodies;<sup>24</sup>

(l) to supervise the proper execution of this Convention and of its own decisions;

(m) to review every five years the implementation of this Convention with particular reference to the performance of the system for the calculation of levies and the contribution mechanism for domestic trade; and

(n) to perform such other functions as are allocated to it under this Convention or are otherwise necessary for the proper operation of the HNS Fund.

## **Article 27**

1 Regular sessions of the Assembly shall take place once every calendar year upon convocation by the Director.

2 Extraordinary sessions of the Assembly shall be convened by the Director at the request of at least one-third of the members of the Assembly and may be convened on the Director's own initiative after consultation with the President of the Assembly. The Director shall give members at least thirty days' notice of such sessions.

## **Article 28**

A majority of the members of the Assembly shall constitute a quorum for its meetings.

## **Secretariat**

### **Article 29**

1 The Secretariat shall comprise the Director and such staff as the administration of the HNS Fund may require.

2 The Director shall be the legal representative of the HNS Fund.

## **Article 30**

1 The Director shall be the chief administrative officer of the HNS Fund. Subject to the instructions given by the Assembly, the Director shall perform those functions which are assigned to the Director by this Convention, the internal regulations of the HNS Fund and the Assembly.

2 The Director shall in particular:

- (a) appoint the personnel required for the administration of the HNS Fund;
- (b) take all appropriate measures with a view to the proper administration of the assets of the HNS Fund;
- (c) collect the contributions due under this Convention while observing in particular the provisions of article 22, paragraph 2;
- (d) to the extent necessary to deal with claims against the HNS Fund and to carry out the other functions of the HNS Fund, employ the services of legal, financial and other experts;
- (e) take all appropriate measures for dealing with claims against the HNS Fund, within the limits and on conditions to be laid down in the internal regulations of the HNS Fund, including the final settlement of claims without the prior approval of the Assembly where these regulations so provide;
- (f) prepare and submit to the Assembly the financial statements and budget estimates for each calendar year;
- (g) prepare, in consultation with the President of the Assembly, and publish a report on the activities of the HNS Fund during the previous calendar year; and
- (h) prepare, collect and circulate the documents and information which may be required for the work of the Assembly and subsidiary bodies.

## **Article 31**

In the performance of their duties the Director and the staff and experts appointed by the Director shall not seek or receive instructions from any Government or from any authority external to the HNS Fund. They shall refrain from any action which might adversely reflect on their position as international officials. Each State Party on its part undertakes to respect the exclusively international character of the responsibilities of the Director and the staff and experts appointed by the Director, and not to seek to influence them in the discharge of their duties.

## **Finances**

### **Article 32**

1 Each State Party shall bear the salary, travel and other expenses of its own delegation to the Assembly and of its representatives on subsidiary bodies.

2 Any other expenses incurred in the operation of the HNS Fund shall be borne by the HNS Fund.

## Voting

### Article 33

The following provisions shall apply to voting in the Assembly:

- (a) each member shall have one vote;
- (b) except as otherwise provided in article 34, decisions of the Assembly shall be made by a majority vote of the members present and voting;
- (c) decisions where a two-thirds majority is required shall be a two-thirds majority vote of members present; and
- (d) for the purpose of this article the phrase "members present" means "members present at the meeting at the time of the vote", and the phrase "members present and voting" means "members present and casting an affirmative or negative vote". Members who abstain from voting shall be considered as not voting.

### Article 34

The following decisions of the Assembly shall require a two-thirds majority:

- (a) a decision under article 19, paragraphs 4 or 5 to suspend or reinstate the operation of a separate account;
- (b) a decision under article 22, paragraph 2, not to take or continue action against a contributor;
- (c) the appointment of the Director under article 26(d);
- (d) the establishment of subsidiary bodies, under article 26(i), and matters relating to such establishment; and
- (e) a decision under article 51, paragraph 1, that this Convention shall continue to be in force.

## Tax exemptions and currency regulations

### Article 35

1 The HNS Fund, its assets, income, including contributions, and other property necessary for the exercise of its functions as described in article 13, paragraph 1, shall enjoy in all States Parties exemption from all direct taxation.

2 When the HNS Fund makes substantial purchases of movable or immovable property, or of services which are necessary for the exercise of its official activities in order to achieve its aims as set out in article 13, paragraph 1, the cost of which include indirect taxes or sales taxes, the Governments of the States Parties shall take, whenever possible, appropriate measures for the remission or refund of the amount of such duties and taxes. Goods thus acquired shall not be sold against payment or given away free of charge unless it is done according to conditions approved by the Government of the State having granted or supported the remission or refund.

3 No exemption shall be accorded in the case of duties, taxes or dues which merely constitute payment for public utility services.



4 The HNS Fund shall enjoy exemption from all customs duties, taxes and other related taxes on articles imported or exported by it or on its behalf for its official use. Articles thus imported shall not be transferred either for consideration or gratis on the territory of the country into which they have been imported except on conditions agreed by the Government of that country.

5 Persons contributing to the HNS Fund as well as victims and owners receiving compensation from the HNS Fund shall be subject to the fiscal legislation of the State where they are taxable, no special exemption or other benefit being conferred on them in this respect.

6 Notwithstanding existing or future regulations concerning currency or transfers, States Parties shall authorize the transfer and payment of any contribution to the HNS Fund and of any compensation paid by the HNS Fund without any restriction.

### **Confidentiality of information**

#### **Article 36**

Information relating to individual contributors supplied for the purpose of this Convention shall not be divulged outside the HNS Fund except in so far as it may be strictly necessary to enable the HNS Fund to carry out its functions including the bringing and defending of legal proceedings.

## **Chapter IV - Claims And Actions**

### **Limitation of actions**

#### **Article 37**

1 Rights to compensation under chapter II shall be extinguished unless an action is brought there under within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage and of the identity of the owner.

2 Rights to compensation under chapter III shall be extinguished unless an action is brought there under or a notification has been made pursuant to article 39, paragraph 7, within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage.

3 In no case, however, shall an action be brought later than ten years from the date of the incident which caused the damage.

4 Where the incident consists of a series of occurrences, the ten-year period mentioned in paragraph 3 shall run from the date of the last of such occurrences.

### **Jurisdiction in respect of action against the owner**

#### **Article 38**

1 Where an incident has caused damage in the territory, including the territorial sea or in an area referred to in article 3(b), of one or more States Parties, or preventive measures have been taken to prevent or minimize damage in such territory including the territorial sea or in such area, actions for compensation may be brought against the owner or other person providing financial security for the owner's liability only in the courts of any such States Parties.

2 Where an incident has caused damage exclusively outside the territory, including the territorial sea, of any State and either the conditions for application of this Convention set out in article 3(c) have been fulfilled or preventive measures to prevent or minimize such damage have been taken, actions for compensation may be brought against the owner or other person providing financial security for the owner's liability only in the courts of:

(a) the State Party where the ship is registered or, in the case of an unregistered ship, the State Party whose flag the ship is entitled to fly; or

(b) the State Party where the owner has habitual residence or where the principal place of business of the owner is established; or

(c) the State Party where a fund has been constituted in accordance with article 9, paragraph 3. 3 Reasonable notice of any action taken under paragraph 1 or 2 shall be given to the defendant. 4 Each State Party shall ensure that its courts have jurisdiction to entertain actions for compensation under this Convention.

5 After a fund under article 9 has been constituted by the owner or by the insurer or other person providing financial security in accordance with article 12, the courts of the State in which such

fund is constituted shall have exclusive jurisdiction to determine all matters relating to the apportionment and distribution of the fund.

## **Jurisdiction in respect of action against the HNS Fund or taken by the HNS Fund**

### **Article 39**

1 Subject to the subsequent provisions of this article, any action against the HNS Fund for compensation under article 14 shall be brought only before a court having jurisdiction under article 38 in respect of actions against the owner who is liable for damage caused by the relevant incident or before a court in a State Party which would have been competent if an owner had been liable.

2 In the event that the ship carrying the hazardous or noxious substances which caused the damage has not been identified, the provisions of article 38, paragraph 1, shall apply *mutatis mutandis* to actions against the HNS Fund.

3 Each State Party shall ensure that its courts have jurisdiction to entertain such actions against the HNS Fund as are referred to in paragraph 1.

4 Where an action for compensation for damage has been brought before a court against the owner or the owner's guarantor, such court shall have exclusive jurisdiction over any action against the HNS Fund for compensation under the provisions of article 14 in respect of the same damage.

5 Each State Party shall ensure that the HNS Fund shall have the right to intervene as a party to any legal proceedings instituted in accordance with this Convention before a competent court of that State against the owner or the owner's guarantor.

6 Except as otherwise provided in paragraph 7, the HNS Fund shall not be bound by any judgement or decision in proceedings to which it has not been a party or by any settlement to which it is not a party.

7 Without prejudice to the provisions of paragraph 5, where an action under this Convention for compensation for damage has been brought against an owner or the owner's guarantor before a competent court in a State Party, each party to the proceedings shall be entitled under the national law of that State to notify the HNS Fund of the proceedings. Where such notification has been made in accordance with the formalities required by the law of the court seized and in such time and in such a manner that the HNS Fund has in fact been in a position effectively to intervene as a party to the proceedings, any judgement rendered by the court in such proceedings shall, after it has become final and enforceable in the State where the judgement was given, become binding upon the HNS Fund in the sense that the facts and findings in that judgement may not be disputed by the HNS Fund even if the HNS Fund has not actually intervened in the proceedings.

## **Recognition and enforcement**

### **Article 40**

1 Any judgement given by a court with jurisdiction in accordance with article 38, which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in any State Party, except:

- (a) where the judgement was obtained by fraud; or

(b) where the defendant was not given reasonable notice and a fair opportunity to present the case.

2 A judgement recognized under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

3 Subject to any decision concerning the distribution referred to in article 14, paragraph 6, any judgement given against the HNS Fund by a court having jurisdiction in accordance with article 39, paragraphs 1 and 3 shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each State Party.

### **Subrogation and recourse**

#### **Article 41**

1 The HNS Fund shall, in respect of any amount of compensation for damage paid by the HNS Fund in accordance with article 14, paragraph 1, acquire by subrogation the rights that the person so compensated may enjoy against the owner or the owner's guarantor.

2 Nothing in this Convention shall prejudice any rights of recourse or subrogation of the HNS Fund against any person, including persons referred to in article 7, paragraph 2(d), other than those referred to in the previous paragraph, in so far as they can limit their liability. In any event the right of the HNS Fund to subrogation against such persons shall not be less favourable than that of an insurer of the person to whom compensation has been paid.

3 Without prejudice to any other rights of subrogation or recourse against the HNS Fund which may exist, a State Party or agency thereof which has paid compensation for damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

### **Supersession clause**

#### **Article 42**

This Convention shall supersede any convention in force or open for signature, ratification or accession at the date on which this Convention is opened for signature, but only to the extent that such convention would be in conflict with it; however, nothing in this article shall affect the obligations of States Parties to States not party to this Convention arising under such convention.

## Chapter V - Transitional Provisions

### First session of the Assembly

#### Article 43

The Secretary-General shall convene the first session of the Assembly. This session shall take place as soon as possible after the entry into force of this Convention and, in any case, not more than thirty days after such entry into force.

#### **Final clauses of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010.**

#### Article 44<sup>4</sup>

The final clauses of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 2010 shall be the final clauses of the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.

<sup>4</sup> It may be noted that article 19 of the Protocol of 2010 inserts this article as number *44bis*; however, since article 16 of the Protocol of 2010 deletes article 43 of the Convention and renumbers article 44 as article 43, the Secretariat has renumbered this article as 44, instead of *44bis*.

## Chapter VI - Final Clauses

**[Articles 20 to 29 of the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996<sup>5</sup> ]**

### Signature, ratification, acceptance, approval and accession

#### [P20] Article 45

1 This Protocol shall be open for signature at the Headquarters of the Organization from 1 November 2010 to 31 October 2011 and shall thereafter remain open for accession.

2 Subject to the provisions in paragraphs 4 and 5, States may express their consent to be bound by this Protocol by:

- (a) signature without reservation as to ratification, acceptance or approval; or
- (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
- (c) accession.

3 Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

4 An expression of consent to be bound by this Protocol shall be accompanied by the submission to the Secretary-General of data on the total quantities of contributing cargo liable for contributions received in that State during the preceding calendar year in respect of the general account and each separate account.

5 An expression of consent which is not accompanied by the data referred to in paragraph 4 shall not be accepted by the Secretary-General.

6 Each State which has expressed its consent to be bound by this Protocol shall annually thereafter on or before 31 May until this Protocol enters into force for that State, submit to the Secretary-General data on the total quantities of contributing cargo liable for contributions received in that State during the preceding calendar year in respect of the general account and each separate account.

7 A State which has expressed its consent to be bound by this Protocol and which has not submitted the data on contributing cargo required under paragraph 6 for any relevant years shall, before the entry into force of the Protocol for that State, be temporarily suspended from being a Contracting State until it has submitted the required data.

**5** The Secretariat has renumbered the Final Clauses in accordance with the instruction in article 18, paragraph 2, of the 2010 HNS Protocol (text reproduced in footnote 1).

For ease of reference the corresponding numbers of the articles in the Protocol are shown in square brackets: e.g. [P20].

8 A State which has expressed its consent to be bound by the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 shall be deemed to have withdrawn this consent on the date on which it has signed this Protocol or deposited an instrument of ratification, acceptance, approval or accession in accordance with paragraph 2.

### **Entry into force**

#### **[P21] Article 46**

1 This Protocol shall enter into force eighteen months after the date on which the following conditions are fulfilled:

(a) at least twelve States, including four States each with not less than 2 million units of gross tonnage, have expressed their consent to be bound by it; and

(b) the Secretary-General has received information in accordance with article 45 [P20], paragraphs 4 and 6, that those persons in such States who would be liable to contribute pursuant to article 18, paragraphs 1(a) and (c), of the Convention, as amended by this Protocol, have received during the preceding calendar year a total quantity of at least 40 million tonnes of cargo contributing to the general account.

2 For a State which expresses its consent to be bound by this Protocol after the conditions for entry into force have been met, such consent shall take effect three months after the date of expression of such consent, or on the date on which this Protocol enters into force in accordance with paragraph 1, whichever is the later.

### **Revision and amendment**

#### **[P22] Article 47**

1 A conference for the purpose of revising or amending the Convention, as amended by this Protocol, may be convened by the Organization.

2 The Secretary-General shall convene a conference of the States Parties to this Protocol, for revising or amending the Convention, as amended by this Protocol, at the request of six States Parties or one third of the States Parties, whichever is the higher figure.

3 Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to the Convention, as amended by this Protocol, shall be deemed to apply to the Convention as amended.

### **Amendment of limits**

#### **[P23] Article 48**

1 Without prejudice to the provisions of article 47 [P22], the special procedure in this article shall apply solely for the purposes of amending the limits set out in article 9, paragraph 1, and article 14, paragraph 5, of the Convention, as amended by this Protocol.

2 Upon the request of at least one half, but in no case less than six, of the States Parties, any proposal to amend the limits specified in article 9, paragraph 1, and article 14, paragraph 5, of the

Convention, as amended by this Protocol, shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

3 Any amendment proposed and circulated in accordance with paragraph 2 shall be submitted to the Legal Committee of the Organization (the Legal Committee) for consideration at a date at least six months after the date of its circulation.

4 All Contracting States, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

5 Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided in paragraph 4, on condition that at least one half of the Contracting States shall be present at the time of voting.

6 When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents, in particular the amount of damage resulting there from, changes in the monetary values, and the effect of the proposed amendment on the cost of insurance. It shall also take into account the relationship between the limits established in article 9, paragraph 1, and those in article 14, paragraph 5, of the Convention, as amended by this Protocol.

7 (a) No amendment of the limits under this article may be considered less than five years from the date this Protocol was opened for signature nor less than five years from the date of entry into force of a previous amendment under this article.

(b) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Protocol increased by six per cent per year calculated on a compound basis from the date on which this Protocol was opened for signature.

(c) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Protocol multiplied by three.

8 Any amendment adopted in accordance with paragraph 5 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period no less than one-fourth of the States which were Contracting States at the time of the adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.

9 An amendment deemed to have been accepted in accordance with paragraph 8 shall enter into force eighteen months after its acceptance.

10 All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with article 49 [P24], paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

11 When an amendment has been adopted but the eighteen-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 8. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.



## **Denunciation**

### **[P24] Article 49**

1 This Protocol may be denounced by any State Party at any time after the expiry of one year following the date on which this Protocol comes into force for that State.

2 Denunciation shall be effected by the deposit of an instrument to that effect with the Secretary-General.

3 A denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, following its receipt by the Secretary-General.

4 Notwithstanding a denunciation by a State Party pursuant to this article, any provisions of this Protocol relating to obligations to make contributions under articles 18, 19 or article 21, paragraph 5, of the Convention, as amended by this Protocol, in respect of such payments of compensation as the Assembly may decide relating to an incident which occurs before the denunciation takes effect shall continue to apply.

## **Extraordinary sessions of the Assembly**

### **[P25] Article 50**

1 Any State Party may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions from the remaining States Parties, request the Director to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not less than sixty days after receipt of the request.

2 The Director may take the initiative to convene an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if the Director considers that such denunciation will result in a significant increase in the level of contributions from the remaining States Parties.

3 If the Assembly, at an extraordinary session convened in accordance with paragraph 1 or 2, decides that the denunciation will result in a significant increase in the level of contributions from the remaining States Parties, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Protocol with effect from the same date.

## **Cessation**

### **[P26] Article 51**

1 This Protocol shall cease to be in force:

(a) on the date when the number of States Parties falls below six; or

(b) twelve months after the date on which data concerning a previous calendar year were to be communicated to the Director in accordance with article 21 of the Convention, as amended by this Protocol, if the data show that the total quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(a) and (c), of the Convention, as amended by this Protocol, received in the States Parties in that preceding calendar year was less than 30 million tonnes.

Notwithstanding subparagraph (b), if the total quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(a) and (c), of the Convention, as amended by this Protocol, received in the States Parties in the preceding calendar year was less than 30 million tonnes but more than 25 million tonnes, the Assembly may, if it considers that this was due to exceptional circumstances and is not likely to be repeated, decide before the expiry of the above-mentioned twelve-month period that the Protocol shall continue to be in force. The Assembly may not, however, take such a decision in more than two subsequent years.

2 States which are bound by this Protocol on the day before the date it ceases to be in force shall enable the HNS Fund to exercise its functions as described under article 52 [P27] and shall, for that purpose only, remain bound by this Protocol.

### **Winding up of the HNS Fund**

#### **[P27] Article 52**

1 If this Protocol ceases to be in force, the HNS Fund shall nevertheless:

- (a) meet its obligations in respect of any incident occurring before this Protocol ceased to be in force; and
- (b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under (a), including expenses for the administration of the HNS Fund necessary for this purpose.

2 The Assembly shall take all appropriate measures to complete the winding up of the HNS Fund including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the HNS Fund.

3 For the purposes of this article the HNS Fund shall remain a legal person.

### **Depositary**

#### **[P28] Article 53**

1 This Protocol and any amendment adopted under article 48 [P23] shall be deposited with the Secretary-General.

2. The Secretary-General shall:

- (a) inform all States which have signed this Protocol or acceded thereto, and all Members of the Organization, of:
  - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof and data on contributing cargo submitted in accordance with article 45 [P20], paragraph 4;
  - (ii) data on contributing cargo submitted annually thereafter, in accordance with article 45 [P20], paragraph 6, until the date of entry into force of this Protocol;
  - (iii) the date of entry into force of this Protocol;

(iv) any proposal to amend the limits on the amounts of compensation which has been made in accordance with article 48 [P23], paragraph 2;

(v) any amendment which has been adopted in accordance with article 48 [P23], paragraph 5;

(vi) any amendment deemed to have been accepted under article 48 [P23], paragraph 8, together with the date on which that amendment shall enter into force in accordance with article 48 [P23], paragraph 9;

(vii) the deposit of any instrument of denunciation of this Protocol together with the date on which it is received and the date on which the denunciation takes effect; and

(viii) any communication called for by any article in this Protocol; and

(b) transmit certified true copies of this Protocol to all States that have signed this Protocol or acceded thereto.

3 As soon as this Protocol enters into force, a certified true copy thereof shall be transmitted by the depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

### **Languages**

#### **[P29] Article 54**

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT London this thirtieth day of April two thousand and ten.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Protocol.

## Annex I - Certificate Of Insurance Or Other Financial Security In Respect Of Liability For Damage Caused By Hazardous And Noxious Substances (HNS)

Issued in accordance with the provisions of Article 12 of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010

Name of ship	Distinctive number or letters	IM ship identification number	Port of registry	Name and address of the principal place of business of the owner

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article 12 of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010.

Type of Security \_\_\_\_\_

Duration of Security \_\_\_\_\_

Name and Address of the Insurer(s) and/or Name Guarantor(s) \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

This certificate is valid until \_\_\_\_\_

Issued or certified by the Government of \_\_\_\_\_

(Full designation of the State)

At \_\_\_\_\_ On \_\_\_\_\_  
(Place) (Date)

Signature and Title of issuing or certifying official \_\_\_\_\_

### Explanatory Notes:

1. If desired, the designation of the State may include a reference to the competent public authority of the country where the certificate is issued.
2. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.

3. If security is furnished in several forms, these should be enumerated.
4. The entry "Duration of the Security" must stipulate the date on which such security takes effect.
5. The entry "Address" of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.

## **Annex II - Regulations For The Calculation Of Annual Contributions To The General Account**

### **Regulation 1**

1 The fixed sum referred to in article 17, paragraph 3 shall be determined for each sector in accordance with these regulations.

2 When it is necessary to calculate contributions for more than one sector of the general account, a separate fixed sum per unit of contributing cargo shall be calculated for each of the following sectors as may be required:

- (a) solid bulk materials referred to in article 1, paragraph 5(a)(vii);
- (b) oil, if the operation of the oil account is postponed or suspended;
- (c) LNG, if the operation of the LNG account is postponed or suspended;
- (d) LPG, if the operation of the LPG account is postponed or suspended;
- (e) other substances.

### **Regulation 2**

1 For each sector, the fixed sum per unit of contributing cargo shall be the product of the levy per HNS point and the sector factor for that sector.

2 The levy per HNS point shall be the total annual contributions to be levied to the general account divided by the total HNS points for all sectors.

3 The total HNS points for each sector shall be the product of the total volume, measured in metric tonnes, of contributing cargo for that sector and the corresponding sector factor.

4 A sector factor shall be calculated as the weighted arithmetic average of the claims/volume ratio for that sector for the relevant year and the previous nine years, according to this regulation.

5 Except as provided in paragraph 6, the claims/volume ratio for each of these years shall be calculated as follows:

- (a) established claims, measured in units of account converted from the claim currency using the rate applicable on the date of the incident in question, for damage caused by substances in respect of which contributions to the HNS Fund are due for the relevant year; divided by
- (b) the volume of contributing cargo corresponding to the relevant year.

6 In cases where the information required in paragraphs 5(a) and (b) is not available, the following values shall be used for the claims/volume ratio for each of the missing years:

- (a) solid bulk materials referred to in article 1, paragraph 5 (a)(vii)      0
- (b) oil, if the operation of the oil account is postponed      0

(c) LNG, if the operation of the LNG account is postponed	0
(d) LPG, if the operation of the LPG account is postponed	0
(e) other substances	0.0001

7 The arithmetic average of the ten years shall be weighted on a decreasing linear scale, so that the ratio of the relevant year shall have a weight of 10, the year prior to the relevant year shall have a weight of 9, the next preceding year shall have a weight of 8, and so on, until the tenth year has a weight of 1.

8 If the operation of a separate account has been suspended, the relevant sector factor shall be calculated in accordance with those provisions of this regulation which the Assembly shall consider appropriate.

# United Nations Convention on the Law of the Sea, 1982 (UNCLOS) - Chapters 1 & 12.

Complete transcript of UNCLOS can be found at -  
[http://www.un.org/depts/los/convention\\_agreements/convention\\_overview\\_convention.htm](http://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm)

## Preamble

*The States Parties to this Convention,*

*Prompted* by the desire to settle, in a spirit of mutual understanding and cooperation, all issues relating to the law of the sea and aware of the historic significance of this Convention as an important contribution to the maintenance of peace, justice and progress for all peoples of the world,

*Noting* that developments since the United Nations Conferences on the Law of the Sea held at Geneva in 1958 and 1960 have accentuated the need for a new and generally acceptable Convention on the law of the sea,

*Conscious* that the problems of ocean space are closely interrelated and need to be considered as a whole,

*Recognizing* the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment,

*Bearing in mind* that the achievement of these goals will contribute to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries, whether coastal or land-locked,

*Desiring* by this Convention to develop the principles embodied in resolution 2749 (XXV) of 17 December 1970 in which the General Assembly of the United Nations solemnly declared *inter alia* that the area of the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as its resources, are the common heritage of mankind, the exploration and exploitation of which shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States,

*Believing* that the codification and progressive development of the law of the sea achieved in this Convention will contribute to the strengthening of peace, security, cooperation and friendly relations among all nations in conformity with the principles of justice and equal rights and will promote the economic and social advancement of all peoples of the world, in accordance with the Purposes and Principles of the United Nations as set forth in the Charter,

*Affirming* that matters not regulated by this Convention continue to be governed by the rules and principles of general international law, Have agreed as follows:



## Part I Introduction

### *Article 1 Use of terms and scope*

1. For the purposes of this Convention:

- (1) "Area" means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction;
- (2) "Authority" means the International Seabed Authority;
- (3) "activities in the Area" means all activities of exploration for, and exploitation of, the resources of the Area;
- (4) "pollution of the marine environment" means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;
- (5) (a) "dumping" means:
  - (i) any deliberate disposal of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;
  - (ii) any deliberate disposal of vessels, aircraft, platforms or other man-made structures at sea;
- (b) "dumping" does not include:
  - (i) the disposal of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or structures;
  - (ii) placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Convention.

2. (1) "States Parties" means States which have consented to be bound by this Convention and for which this Convention is in force.

- (2) This Convention applies *mutatis mutandis* to the entities referred to in article 305, paragraph 1(b), (c), (d), (e) and (f), which become Parties to this Convention in accordance with the conditions relevant to each, and to that extent "States Parties" refers to those entities.

## **Part XII Protection and Preservation of the marine environment**

### **Section 1. General Provisions**

#### ***Article 192 General obligation***

States have the obligation to protect and preserve the marine environment.

#### ***Article 193 Sovereign right of States to exploit their natural resources***

States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment.

#### ***Article 194 Measures to prevent, reduce and control pollution of the marine environment***

1. States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.
2. States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.
3. The measures taken pursuant to this Part shall deal with all sources of pollution of the marine environment. These measures shall include, *inter alia*, those designed to minimize to the fullest possible extent:
  - (a) the release of toxic, harmful or noxious substances, especially those which are persistent, from land-based sources, from or through the atmosphere or by dumping;
  - (b) pollution from vessels, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels;
  - (c) pollution from installations and devices used in exploration or exploitation of the natural resources of the seabed and subsoil, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices;
  - (d) pollution from other installations and devices operating in the marine environment, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices.
4. In taking measures to prevent, reduce or control pollution of the marine environment, States shall refrain from unjustifiable interference with activities carried out by other States in the exercise of their rights and in pursuance of their duties in conformity with this Convention.

5. The measures taken in accordance with this Part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.

***Article 195 Duty not to transfer damage or hazards or transform one type of pollution into another***

In taking measures to prevent, reduce and control pollution of the marine environment, States shall act so as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another.

***Article 196 Use of technologies or introduction of alien or new species***

1. States shall take all measures necessary to prevent, reduce and control pollution of the marine environment resulting from the use of technologies under their jurisdiction or control, or the intentional or accidental introduction of species, alien or new, to a particular part of the marine environment, which may cause significant and harmful changes thereto.

2. This article does not affect the application of this Convention regarding the prevention, reduction and control of pollution of the marine environment.

**Section 2. Global and regional Co-operation**

***Article 197 Cooperation on a global or regional basis***

States shall cooperate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features.

***Article 198 Notification of imminent or actual damage***

When a State becomes aware of cases in which the marine environment is in imminent danger of being damaged or has been damaged by pollution, it shall immediately notify other States it deems likely to be affected by such damage, as well as the competent international organizations.

***Article 199 Contingency plans against pollution***

In the cases referred to in article 198, States in the area affected, in accordance with their capabilities, and the competent international organizations shall cooperate, to the extent possible, in eliminating the effects of pollution and preventing or minimizing the damage. To this end, States shall jointly develop and promote contingency plans for responding to pollution incidents in the marine environment.

***Article 200 Studies, research programmes and exchange of information and data***

States shall cooperate, directly or through competent international organizations, for the purpose of promoting studies, undertaking programmes of scientific research and encouraging the exchange of information and data acquired about pollution of the marine environment. They shall endeavour to participate actively in regional and global programmes to acquire knowledge for the assessment of the nature and extent of pollution, exposure to it, and its pathways, risks and remedies.

### ***Article 201 Scientific criteria for regulations***

In the light of the information and data acquired pursuant to article 200, States shall cooperate, directly or through competent international organizations, in establishing appropriate scientific criteria for the formulation and elaboration of rules, standards and recommended practices and procedures for the prevention, reduction and control of pollution of the marine environment.

## **Section 3. Technical assistance**

### ***Article 202 Scientific and technical assistance to developing States***

States shall, directly or through competent international organizations:

(a) promote programmes of scientific, educational, technical and other assistance to developing States for the protection and preservation of the marine environment and the prevention, reduction and control of marine pollution. Such assistance shall include, *inter alia*:

- (i) training of their scientific and technical personnel;
- (ii) facilitating their participation in relevant international programmes;
- (iii) supplying them with necessary equipment and facilities;
- (iv) enhancing their capacity to manufacture such equipment;
- (v) advice on and developing facilities for research, monitoring, educational and other programmes;

(b) provide appropriate assistance, especially to developing States, for the minimization of the effects of major incidents which may cause serious pollution of the marine environment;

(c) provide appropriate assistance, especially to developing States, concerning the preparation of environmental assessments.

### ***Article 203 Preferential treatment for developing States***

Developing States shall, for the purposes of prevention, reduction and control of pollution of the marine environment or minimization of its effects, be granted preference by international organizations in:

- (a) the allocation of appropriate funds and technical assistance; and
- (b) the utilization of their specialized services.

## **Section 4. Monitoring and Environmental Assessment**

### ***Article 204 Monitoring of the risks or effects of pollution***

1. States shall, consistent with the rights of other States, endeavour, as far as practicable, directly or through the competent international organizations, to observe, measure, evaluate and analyse, by recognized scientific methods, the risks or effects of pollution of the marine environment.
2. In particular, States shall keep under surveillance the effects of any activities which they permit or in which they engage in order to determine whether these activities are likely to pollute the marine environment.

#### ***Article 205 Publication of reports***

States shall publish reports of the results obtained pursuant to article 204 or provide such reports at appropriate intervals to the competent international organizations, which should make them available to all States.

#### ***Article 206 Assessment of potential effects of activities***

When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments in the manner provided in article 205.

### **Section 5. International rules and National legislation to prevent, reduce and control pollution of the marine environment**

#### ***Article 207 Pollution from land-based sources***

1. States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from land-based sources, including rivers, estuaries, pipelines and outfall structures, taking into account internationally agreed rules, standards and recommended practices and procedures.
2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.
3. States shall endeavour to harmonize their policies in this connection at the appropriate regional level.
4. States, acting especially through competent international organizations or diplomatic conference, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment from land-based sources, taking into account characteristic regional features, the economic capacity of developing States and their need for economic development. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.
5. Laws, regulations, measures, rules, standards and recommended practices and procedures referred to in paragraphs 1, 2 and 4 shall include those designed to minimize, to the fullest extent possible, the release of toxic, harmful or noxious substances, especially those which are persistent, into the marine environment.

#### ***Article 208 Pollution from seabed activities subject to national jurisdiction***

1 Coastal States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment arising from or in connection with seabed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction, pursuant to articles 60 and 80.

2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.

3. Such laws, regulations and measures shall be no less effective than international rules, standards and recommended practices and procedures.

4. States shall endeavour to harmonize their policies in this connection at the appropriate regional level.

5. States, acting especially through competent international organizations or diplomatic conference, shall establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the marine environment referred to in paragraph 1. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.

#### ***Article 209 Pollution from activities in the Area***

1. International rules, regulations and procedures shall be established in accordance with Part XI to prevent, reduce and control pollution of the marine environment from activities in the Area. Such rules, regulations and procedures shall be re-examined from time to time as necessary.

2. Subject to the relevant provisions of this section, States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from activities in the Area undertaken by vessels, installations, structures and other devices flying their flag or of their registry or operating under their authority, as the case may be. The requirements of such laws and regulations shall be no less effective than the international rules, regulations and procedures referred to in paragraph 1.

#### ***Article 210 Pollution by dumping***

1. States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment by dumping.

2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.

3. Such laws, regulations and measures shall ensure that dumping is not carried out without the permission of the competent authorities of States.

4. States, acting especially through competent international organizations or diplomatic conference, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control such pollution. Such rules, standards and recommended practices and procedures shall be re-examined from time to time as necessary.

5. Dumping within the territorial sea and the exclusive economic zone or onto the continental shelf shall not be carried out without the express prior approval of the coastal State, which has the right to permit, regulate and control such dumping after due consideration of the matter with other States which by reason of their geographical situation may be adversely affected thereby.

6. National laws, regulations and measures shall be no less effective in preventing, reducing and controlling such pollution than the global rules and standards.

### *Article 211 Pollution from vessels*

1. States, acting through the competent international organization or general diplomatic conference, shall establish international rules and standards to prevent, reduce and control pollution of the marine environment from vessels and promote the adoption, in the same manner, wherever appropriate, of routing systems designed to minimize the threat of accidents which might cause pollution of the marine environment, including the coastline, and pollution damage to the related interests of coastal States. Such rules and standards shall, in the same manner, be re-examined from time to time as necessary.

2. States shall adopt laws and regulations for the prevention, reduction and control of pollution of the marine environment from vessels flying their flag or of their registry. Such laws and regulations shall at least have the same effect as that of generally accepted international rules and standards established through the competent international organization or general diplomatic conference.

3. States which establish particular requirements for the prevention, reduction and control of pollution of the marine environment as a condition for the entry of foreign vessels into their ports or internal waters or for a call at their off-shore terminals shall give due publicity to such requirements and shall communicate them to the competent international organization. Whenever such requirements are established in identical form by two or more coastal States in an endeavour to harmonize policy, the communication shall indicate which States are participating in such cooperative arrangements. Every State shall require the master of a vessel flying its flag or of its registry, when navigating within the territorial sea of a State participating in such cooperative arrangements, to furnish, upon the request of that State, information as to whether it is proceeding to a State of the same region participating in such cooperative arrangements and, if so, to indicate whether it complies with the port entry requirements of that State. This article is without prejudice to the continued exercise by a vessel of its right of innocent passage or to the application of article 25, paragraph 2.

4. Coastal States may, in the exercise of their sovereignty within their territorial sea, adopt laws and regulations for the prevention, reduction and control of marine pollution from foreign vessels, including vessels exercising the right of innocent passage. Such laws and regulations shall, in accordance with Part II, section 3, not hamper innocent passage of foreign vessels.

5. Coastal States, for the purpose of enforcement as provided for in section 6, may in respect of their exclusive economic zones adopt laws and regulations for the prevention, reduction and control of pollution from vessels conforming to and giving effect to generally accepted international rules and standards established through the competent international organization or general diplomatic conference.

6. (a) Where the international rules and standards referred to in paragraph 1 are inadequate to meet special circumstances and coastal States have reasonable grounds for believing that a particular, clearly defined area of their respective exclusive economic zones is an area where the adoption of special mandatory measures for the prevention of pollution from vessels is required for recognized technical reasons in relation to its oceanographical and ecological conditions, as well as its utilization or the protection of its resources and the particular character of its traffic, the coastal States, after appropriate consultations through

the competent international organization with any other States concerned, may, for that area, direct a communication to that organization, submitting scientific and technical evidence in support and information on necessary reception facilities. Within 12 months after receiving such a communication, the organization shall determine whether the conditions in that area correspond to the requirements set out above. If the organization so determines, the coastal States may, for that area, adopt laws and regulations for the prevention, reduction and control of pollution from vessels implementing such international rules and standards or navigational practices as are made applicable, through the organization, for special areas. These laws and regulations shall not become applicable to foreign vessels until 15 months after the submission of the communication to the organization.

(b) The coastal States shall publish the limits of any such particular, clearly defined area.

(c) If the coastal States intend to adopt additional laws and regulations for the same area for the prevention, reduction and control of pollution from vessels, they shall, when submitting the aforesaid communication, at the same time notify the organization thereof. Such additional laws and regulations may relate to discharges or navigational practices but shall not require foreign vessels to observe design, construction, manning or equipment standards other than generally accepted international rules and standards; they shall become applicable to foreign vessels 15 months after the submission of the communication to the organization, provided that the organization agrees within 12 months after the submission of the communication.

7. The international rules and standards referred to in this article should include *inter alia* those relating to prompt notification to coastal States, whose coastline or related interests may be affected by incidents, including maritime casualties, which involve discharges or probability of discharges.

#### ***Article 212 Pollution from or through the atmosphere***

1. States shall adopt laws and regulations to prevent, reduce and control pollution of the marine environment from or through the atmosphere, applicable to the air space under their sovereignty and to vessels flying their flag or vessels or aircraft of their registry, taking into account internationally agreed rules, standards and recommended practices and procedures and the safety of air navigation.

2. States shall take other measures as may be necessary to prevent, reduce and control such pollution.

3. States, acting especially through competent international organizations or diplomatic conference, shall endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control such pollution.

### **Section 6. Enforcement**

#### ***Article 213 Enforcement with respect to pollution from land-based sources***

States shall enforce their laws and regulations adopted in accordance with article 207 and shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic



conference to prevent, reduce and control pollution of the marine environment from land-based sources.

***Article 214 Enforcement with respect to pollution from seabed activities***

States shall enforce their laws and regulations adopted in accordance with article 208 and shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment arising from or in connection with seabed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction, pursuant to articles 60 and 80.

***Article 215 Enforcement with respect to pollution from activities in the Area***

Enforcement of international rules, regulations and procedures established in accordance with Part XI to prevent, reduce and control pollution of the marine environment from activities in the Area shall be governed by that Part.

***Article 216 Enforcement with respect to pollution by dumping***

1. Laws and regulations adopted in accordance with this Convention and applicable international rules and standards established through competent international organizations or diplomatic conference for the prevention, reduction and control of pollution of the marine environment by dumping shall be enforced:

- (a) by the coastal State with regard to dumping within its territorial sea or its exclusive economic zone or onto its continental shelf;
- (b) by the flag State with regard to vessels flying its flag or vessels or aircraft of its registry;
- (c) by any State with regard to acts of loading of wastes or other matter occurring within its territory or at its off-shore terminals.

2. No State shall be obliged by virtue of this article to institute proceedings when another State has already instituted proceedings in accordance with this article.

***Article 217 Enforcement by flag States***

1. States shall ensure compliance by vessels flying their flag or of their registry with applicable international rules and standards, established through the competent international organization or general diplomatic conference, and with their laws and regulations adopted in accordance with this Convention for the prevention, reduction and control of pollution of the marine environment from vessels and shall accordingly adopt laws and regulations and take other measures necessary for their implementation. Flag States shall provide for the effective enforcement of such rules, standards, laws and regulations, irrespective of where a violation occurs.

2. States shall, in particular, take appropriate measures in order to ensure that vessels flying their flag or of their registry are prohibited from sailing, until they can proceed to sea in compliance with the requirements of the international rules and standards referred to in paragraph 1, including requirements in respect of design, construction, equipment and manning of vessels.

3. States shall ensure that vessels flying their flag or of their registry carry on board certificates required by and issued pursuant to international rules and standards referred to in paragraph 1.

States shall ensure that vessels flying their flag are periodically inspected in order to verify that such certificates are in conformity with the actual condition of the vessels. These certificates shall be accepted by other States as evidence of the condition of the vessels and shall be regarded as having the same force as certificates issued by them, unless there are clear grounds for believing that the condition of the vessel does not correspond substantially with the particulars of the certificates.

4. If a vessel commits a violation of rules and standards established through the competent international organization or general diplomatic conference, the flag State, without prejudice to articles 218, 220 and 228, shall provide for immediate investigation and where appropriate institute proceedings in respect of the alleged violation irrespective of where the violation occurred or where the pollution caused by such violation has occurred or has been spotted.

5. Flag States conducting an investigation of the violation may request the assistance of any other State whose cooperation could be useful in clarifying the circumstances of the case. States shall endeavour to meet appropriate requests of flag States.

6. States shall, at the written request of any State, investigate any violation alleged to have been committed by vessels flying their flag. If satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, flag States shall without delay institute such proceedings in accordance with their laws.

7. Flag States shall promptly inform the requesting State and the competent international organization of the action taken and its outcome. Such information shall be available to all States.

8. Penalties provided for by the laws and regulations of States for vessels flying their flag shall be adequate in severity to discourage violations wherever they occur.

#### ***Article 218 Enforcement by port States***

1. When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State may undertake investigations and, where the evidence so warrants, institute proceedings in respect of any discharge from that vessel outside the internal waters, territorial sea or exclusive economic zone of that State in violation of applicable international rules and standards established through the competent international organization or general diplomatic conference.

2. No proceedings pursuant to paragraph 1 shall be instituted in respect of a discharge violation in the internal waters, territorial sea or exclusive economic zone of another State unless requested by that State, the flag State, or a State damaged or threatened by the discharge violation, or unless the violation has caused or is likely to cause pollution in the internal waters, territorial sea or exclusive economic zone of the State instituting the proceedings.

3. When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State shall, as far as practicable, comply with requests from any State for investigation of a discharge violation referred to in paragraph 1, believed to have occurred in, caused, or threatened damage to the internal waters, territorial sea or exclusive economic zone of the requesting State. It shall likewise, as far as practicable, comply with requests from the flag State for investigation of such a violation, irrespective of where the violation occurred.

4. The records of the investigation carried out by a port State pursuant to this article shall be transmitted upon request to the flag State or to the coastal State. Any proceedings instituted by the port State on the basis of such an investigation may, subject to section 7, be suspended at the request of the coastal State when the violation has occurred within its internal waters, territorial

sea or exclusive economic zone. The evidence and records of the case, together with any bond or other financial security posted with the authorities of the port State, shall in that event be transmitted to the coastal State. Such transmittal shall preclude the continuation of proceedings in the port State.

***Article 219 Measures relating to seaworthiness of vessels to avoid pollution***

Subject to section 7, States which, upon request or on their own initiative, have ascertained that a vessel within one of their ports or at one of their off-shore terminals is in violation of applicable international rules and standards relating to seaworthiness of vessels and thereby threatens damage to the marine environment shall, as far as practicable, take administrative measures to prevent the vessel from sailing. Such States may permit the vessel to proceed only to the nearest appropriate repair yard and, upon removal of the causes of the violation, shall permit the vessel to continue immediately.

***Article 220 Enforcement by coastal States***

1. When a vessel is voluntarily within a port or at an off-shore terminal of a State, that State may, subject to section 7, institute proceedings in respect of any violation of its laws and regulations adopted in accordance with this Convention or applicable international rules and standards for the prevention, reduction and control of pollution from vessels when the violation has occurred within the territorial sea or the exclusive economic zone of that State.

2. Where there are clear grounds for believing that a vessel navigating in the territorial sea of a State has, during its passage therein, violated laws and regulations of that State adopted in accordance with this Convention or applicable international rules and standards for the prevention, reduction and control of pollution from vessels, that State, without prejudice to the application of the relevant provisions of Part II, section 3, may undertake physical inspection of the vessel relating to the violation and may, where the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws, subject to the provisions of section 7.

3. Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation of applicable international rules and standards for the prevention, reduction and control of pollution from vessels or laws and regulations of that State conforming and giving effect to such rules and standards, that State may require the vessel to give information regarding its identity and port of registry, its last and its next port of call and other relevant information required to establish whether a violation has occurred.

4. States shall adopt laws and regulations and take other measures so that vessels flying their flag comply with requests for information pursuant to paragraph 3.

5. Where there are clear grounds for believing that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation referred to in paragraph 3 resulting in a substantial discharge causing or threatening significant pollution of the marine environment, that State may undertake physical inspection of the vessel for matters relating to the violation if the vessel has refused to give information or if the information supplied by the vessel is manifestly at variance with the evident factual situation and if the circumstances of the case justify such inspection.

6. Where there is clear objective evidence that a vessel navigating in the exclusive economic zone or the territorial sea of a State has, in the exclusive economic zone, committed a violation referred to in paragraph 3 resulting in a discharge causing major damage or threat of major damage to the

coastline or related interests of the coastal State, or to any resources of its territorial sea or exclusive economic zone, that State may, subject to section 7, provided that the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws.

7. Notwithstanding the provisions of paragraph 6, whenever appropriate procedures have been established, either through the competent international organization or as otherwise agreed, whereby compliance with requirements for bonding or other appropriate financial security has been assured, the coastal State if bound by such procedures shall allow the vessel to proceed.

8. The provisions of paragraphs 3, 4, 5, 6 and 7 also apply in respect of national laws and regulations adopted pursuant to article 211, paragraph 6.

#### ***Article 221 Measures to avoid pollution arising from maritime casualties***

1. Nothing in this Part shall prejudice the right of States, pursuant to international law, both customary and conventional, to take and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline or related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequences.

2. For the purposes of this article, "maritime casualty" means a collision of vessels, stranding or other incident of navigation, or other occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo.

#### ***Article 222 Enforcement with respect to pollution from or through the atmosphere***

States shall enforce, within the air space under their sovereignty or with regard to vessels flying their flag or vessels or aircraft of their registry, their laws and regulations adopted in accordance with article 212, paragraph 1, and with other provisions of this Convention and shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment from or through the atmosphere, in conformity with all relevant international rules and standards concerning the safety of air navigation.

### **Section 7. Safeguards**

#### ***Article 223 Measures to facilitate proceedings***

In proceedings instituted pursuant to this Part, States shall take measures to facilitate the hearing of witnesses and the admission of evidence submitted by authorities of another State, or by the competent international organization, and shall facilitate the attendance at such proceedings of official representatives of the competent international organization, the flag State and any State affected by pollution arising out of any violation. The official representatives attending such proceedings shall have such rights and duties as may be provided under national laws and regulations or international law.

#### ***Article 224 Exercise of powers of enforcement***

The powers of enforcement against foreign vessels under this Part may only be exercised by officials or by warships, military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

***Article 225 Duty to avoid adverse consequences in the exercise of the powers of enforcement***

In the exercise under this Convention of their powers of enforcement against foreign vessels, States shall not endanger the safety of navigation or otherwise create any hazard to a vessel, or bring it to an unsafe port or anchorage, or expose the marine environment to an unreasonable risk.

***Article 226 Investigation of foreign vessels***

1. (a) States shall not delay a foreign vessel longer than is essential for purposes of the investigations provided for in articles 216, 218 and 220. Any physical inspection of a foreign vessel shall be limited to an examination of such certificates, records or other documents as the vessel is required to carry by generally accepted international rules and standards or of any similar documents which it is carrying; further physical inspection of the vessel may be undertaken only after such an examination and only when:

(i) there are clear grounds for believing that the condition of the vessel or its equipment does not correspond substantially with the particulars of those documents;

(ii) the contents of such documents are not sufficient to confirm or verify a suspected violation; or

(iii) the vessel is not carrying valid certificates and records.

(b) If the investigation indicates a violation of applicable laws and regulations or international rules and standards for the protection and preservation of the marine environment, release shall be made promptly subject to reasonable procedures such as bonding or other appropriate financial security.

(c) Without prejudice to applicable international rules and standards relating to the seaworthiness of vessels, the release of a vessel may, whenever it would present an unreasonable threat of damage to the marine environment, be refused or made conditional upon proceeding to the nearest appropriate repair yard. Where release has been refused or made conditional, the flag State of the vessel must be promptly notified, and may seek release of the vessel in accordance with Part XV.

2. States shall cooperate to develop procedures for the avoidance of unnecessary physical inspection of vessels at sea.

***Article 227 Non-discrimination with respect to foreign vessels***

In exercising their rights and performing their duties under this Part, States shall not discriminate in form or in fact against vessels of any other State.

***Article 228 Suspension and restrictions on institution of proceedings***

1. Proceedings to impose penalties in respect of any violation of applicable laws and regulations or international rules and standards relating to the prevention, reduction and control of pollution from vessels committed by a foreign vessel beyond the territorial sea of the State instituting proceedings shall be suspended upon the taking of proceedings to impose penalties in respect of corresponding charges by the flag State within six months of the date on which proceedings were first instituted, unless those proceedings relate to a case of major damage to the coastal State or the flag State in question has repeatedly disregarded its obligation to enforce effectively the applicable international rules and standards in respect of violations committed by its vessels. The flag State shall in due course make available to the State previously instituting proceedings a full

dossier of the case and the records of the proceedings, whenever the flag State has requested the suspension of proceedings in accordance with this article. When proceedings instituted by the flag State have been brought to a conclusion, the suspended proceedings shall be terminated. Upon payment of costs incurred in respect of such proceedings, any bond posted or other financial security provided in connection with the suspended proceedings shall be released by the coastal State.

2. Proceedings to impose penalties on foreign vessels shall not be instituted after the expiry of three years from the date on which the violation was committed, and shall not be taken by any State in the event of proceedings having been instituted by another State subject to the provisions set out in paragraph 1.

3. The provisions of this article are without prejudice to the right of the flag State to take any measures, including proceedings to impose penalties, according to its laws irrespective of prior proceedings by another State.

#### ***Article 229 Institution of civil proceedings***

Nothing in this Convention affects the institution of civil proceedings in respect of any claim for loss or damage resulting from pollution of the marine environment.

#### ***Article 230 Monetary penalties and the observance of recognized rights of the accused***

1. Monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels beyond the territorial sea.

2. Monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels in the territorial sea, except in the case of a wilful and serious act of pollution in the territorial sea.

3. In the conduct of proceedings in respect of such violations committed by a foreign vessel which may result in the imposition of penalties, recognized rights of the accused shall be observed.

#### ***Article 231 Notification to the flag State and other States concerned***

States shall promptly notify the flag State and any other State concerned of any measures taken pursuant to section 6 against foreign vessels, and shall submit to the flag State all official reports concerning such measures. However, with respect to violations committed in the territorial sea, the foregoing obligations of the coastal State apply only to such measures as are taken in proceedings. The diplomatic agents or consular officers and where possible the maritime authority of the flag State, shall be immediately informed of any such measures taken pursuant to section 6 against foreign vessels.

#### ***Article 232 Liability of States arising from enforcement measures***

States shall be liable for damage or loss attributable to them arising from measures taken pursuant to section 6 when such measures are unlawful or exceed those reasonably required in the light of available information. States shall provide for recourse in their courts for actions in respect of such damage or loss.

#### ***Article 233 Safeguards with respect to straits used for international navigation***

Nothing in sections 5, 6 and 7 affects the legal regime of straits used for international navigation. However, if a foreign ship other than those referred to in section 10 has committed a violation of the laws and regulations referred to in article 42, paragraph 1(a) and (b), causing or threatening major damage to the marine environment of the straits, the States bordering the straits may take appropriate enforcement measures and if so shall respect *mutatis mutandis* the provisions of this section.

## **Section 8. Ice-Covered areas**

### ***Article 234 Ice-covered areas***

Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence.

## **Section 9. Responsibilities and Liability**

### ***Article 235 Responsibility and liability***

1. States are responsible for the fulfillment of their international obligations concerning the protection and preservation of the marine environment. They shall be liable in accordance with international law.
2. States shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction.
3. With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall cooperate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds.

## **Section 10. Sovereign immunity**

### ***Article 236 Sovereign immunity***

The provisions of this Convention regarding the protection and preservation of the marine environment do not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service. However, each State shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is reasonable and practicable, with this Convention.

## **Section 11. Obligations under other conventions on the protection and preservation of the marine environment**

### ***Article 237 Obligations under other conventions on the protection and preservation of the marine environment***

1. The provisions of this Part are without prejudice to the specific obligations assumed by States under special conventions and agreements concluded previously which relate to the protection and preservation of the marine environment and to agreements which may be concluded in furtherance of the general principles set forth in this Convention.

2. Specific obligations assumed by States under special conventions, with respect to the protection and preservation of the marine environment, should be carried out in a manner consistent with the general principles and objectives of this convention.

\*\*\*\*\*



## **Part II. Pacific Islands Regional Marine Pollution Conventions**

# **Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, 1986 (NOUMEA Convention).**

## **THE PARTIES,**

**FULLY AWARE** of the economic and social value of the natural resources of the environment of the South Pacific Region;

**TAKING INTO ACCOUNT** the traditions and cultures of the Pacific people as expressed in accepted customs and practices;

**CONSCIOUS** of their responsibility to preserve their natural heritage for the benefit and enjoyment of present and future generations;

**RECOGNIZING** the special hydrological, geological and ecological characteristics of the region which requires special care and responsible management;

**RECOGNIZING FURTHER** the threat to the marine and coastal environment, its ecological equilibrium, resources and legitimate uses posed by pollution and by the insufficient integration of an environmental dimension into the development process;

**SEEKING TO ENSURE** that resource development shall be in harmony with the maintenance of the unique environmental quality of the region and the evolving principles of sustained resource management;

**REALIZING FULLY** the need for co-operation amongst themselves and with competent international, regional and sub-regional organisations in order to ensure a co-ordinated and comprehensive development of the natural resources of the region;

**RECOGNIZING** the desirability for the wider acceptance and national implementation of international agreements already in existence concerning the marine and coastal environment;

**NOTING**, however, that existing international agreements concerning the marine and coastal environment do not cover, in spite of the progress achieved, all aspects and sources of marine pollution and environmental degradation and do not entirely meet the special requirements of the South Pacific Region;

**DESIROUS** to adopt the regional convention to strengthen the implementation of the general objectives of the Action Plan for Managing the Natural Resources and Environment of the South Pacific Region adopted at Rarotonga, Cook Islands, on 11 March 1982;

**HAVE AGREED** as follows:

## **Article 1 Geographical coverage**

1. This Convention shall apply to the South Pacific Region, hereinafter referred to as "the Convention Area" as defined in paragraph (a) of article 2.

2. Except as may be otherwise provided in any Protocol to this Convention, the Convention Area shall not include internal waters or archipelagic waters of the Parties as defined in accordance with international law.

## **Article 2 Definitions**

For the purposes of this Convention and its Protocols unless otherwise defined in any such Protocol:

(a) the "Convention Area" shall comprise:

(i) the 200 nautical mile zones established in accordance with international law off:

- American Samoa,
- Australia (East Coast and Islands to eastward including Macquarie Island),
- Cook Islands,
- Federated States of Micronesia,
- Fiji,
- French Polynesia,
- Guam,
- Kiribati,
- Marshall Islands,
- Nauru,
- New Caledonia and Dependencies,
- New Zealand,
- Niue,
- Northern Mariana Islands,
- Palau,
- Papua New Guinea,
- Pitcairn Islands,
- Solomon Islands,
- Tokelau,

- Tonga,
- Tuvalu,
- Vanuatu,
- Wallis and Futuna, and
- Western Samoa.

(ii) those areas of high seas which are enclosed from all sides by the 200 nautical mile zones referred to in sub-paragraph (i);

(iii) areas of the Pacific Ocean which have been included in the Convention Area pursuant to article 3;

(b) "dumping" means:

- any deliberate disposal at sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;
- any deliberate disposal at sea of vessels, aircraft, platforms or other man-made structures at sea;

"dumping" does not include:

- the disposal of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or structures;
- placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Convention;

(c) "wastes or other matter" means material and substances of any kind, form or description;

(d) the following wastes or other matter shall be considered to be non-radioactive: sewage sludge, dredge spoil, fly ash, agricultural wastes, construction materials, vessels, artificial reef building materials and other such materials, provided that they have not been contaminated with radio nuclides of anthropogenic origin (except dispersed global fallout from nuclear weapons testing), nor are potential sources of naturally occurring radio nuclides for commercial purposes, nor have been enriched in natural or artificial radio nuclides;

if there is a question as to whether the material to be dumped should be considered non-radioactive, for the purposes of this Convention, such material shall not be dumped unless the appropriate national authority of the proposed dumper confirms that such dumping would not exceed the individual and collective dose limits of the International Atomic Energy Agency general principles for the exemption of radiation sources and practices from regulatory control. The national authority shall also take into account the relevant recommendations, standards and guidelines developed by the International Atomic Energy Agency;

(e) "vessels" and "aircraft" means waterborne or airborne craft of any type whatsoever. This expression includes air cushioned craft and floating craft, whether self-propelled or not;

(f) "pollution" means the introduction by man, directly or indirectly, of substances or energy into the marine environment (including estuaries) which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;

in applying this definition to the Convention obligations, the Parties shall use their best endeavours to comply with the appropriate standards and recommendations established by competent international organisations, including the International Atomic Energy Agency;

(g) "Organisation" means the South Pacific Commission;

(h) "Director" means the Director of the South Pacific Bureau for Economic Co-operation.

### **Article 3 Addition to the Convention Area**

Any Party may add areas under its jurisdiction within the Pacific Ocean between the Tropic of Cancer and 60 degrees South latitude and between 130 degrees East longitude and 120 degrees West longitude to the Convention Area. Such addition shall be notified to the Depositary who shall promptly notify the other Parties and the Organisation. Such areas shall be incorporated within the Convention Area ninety days after notification to the Parties by the Depositary, provided there has been no objection to the proposal to add new areas by any Party affected by that proposal. If there is any such objection the Parties concerned will consult with a view to resolving the matter.

### **Article 4 General provisions**

1. The Parties shall endeavour to conclude bilateral or multilateral agreements, including regional or sub-regional agreements, for the protection, development and management of the marine and coastal environment of the Convention Area. Such agreements shall be consistent with this Convention and in accordance with international law. Copies of such agreements shall be communicated to the Organisation and through it to all Parties to this Convention.

2. Nothing in this Convention or its Protocols shall be deemed to affect obligations assumed by a Party under agreements previously concluded.

3. Nothing in this Convention and its Protocols shall be construed to prejudice or affect the interpretation and application of any provision or term in the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972.

4. This Convention and its Protocols shall be construed in accordance with international law relating to their subject matter.

5. Nothing in this Convention and its Protocols shall prejudice the present or future claims and legal views of any Party concerning the nature and extent of maritime jurisdiction.

6. Nothing in this Convention shall affect the sovereign right of States to exploit, develop and manage their own natural resources pursuant to their own policies, taking into account their duty to protect and preserve the environment. Each Party shall ensure that activities within its jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of its national jurisdiction.

## **Article 5 General obligations**

1. The Parties shall endeavour, either individually or jointly, to take all appropriate measures in conformity with international law and in accordance with this Convention and those Protocols in force to which they are party to prevent, reduce and control pollution of the Convention Area, from any source, and to ensure sound environmental management and development of natural resources, using for this purpose the best practicable means at their disposal, and in accordance with their capabilities. In doing so the Parties shall endeavour to harmonise their policies at the regional level.
2. The Parties shall use their best endeavours to ensure that the implementation of this Convention shall not result in an increase in pollution in the marine environment outside the Convention Area.
3. In addition to the Protocol for the Prevention of Pollution of the South Pacific Region by Dumping and the Protocol Concerning Co-operation in Combating Pollution Emergencies in the South Pacific Region, the Parties shall co-operate in the formulation and adoption of other Protocols prescribing agreed measures, procedures and standards to prevent, reduce and control pollution from all sources or in promoting environmental management in conformity with the objectives of this Convention.
4. The Parties shall, taking into account existing internationally recognised rules, standards, practices and procedures, co-operate with competent global, regional and sub-regional organisations to establish and adopt recommended practices, procedures and measures to prevent, reduce and control pollution from all sources and to promote sustained resource management and to ensure the sound development of natural resources in conformity with the objectives of this Convention and its Protocols, and to assist each other in fulfilling their obligations under this Convention and its Protocols.
5. The Parties shall endeavour to establish laws and regulations for the effective discharge of the obligations prescribed in this Convention. Such laws and regulations shall be no less effective than international rules, standards and recommended practices and procedures.

## **Article 6 Pollution from vessels**

The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area caused by discharges from vessels, and to ensure the effective application in the Convention Area of the generally accepted international rules and standards established through the competent international organisation or general diplomatic conference relating to the control of pollution from vessels.

## **Article 7 Pollution from land-based sources**

The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area caused by coastal disposal or by discharges emanating from rivers, estuaries, coastal establishments, outfall structures, or any other sources in their territory.

## **Article 8 Pollution from sea-bed activities**

The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area resulting directly or indirectly from exploration and exploitation of the sea-bed and its subsoil.

### **Article 9 Airborne pollution**

The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area resulting from discharges into the atmosphere from activities under their jurisdiction.

### **Article 10 Disposal of wastes**

1. The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area caused by dumping from vessels, aircraft, or man-made structures at sea, including the effective application of the relevant internationally recognised rules and procedures relating to the control of dumping of wastes and other matter. The Parties agree to prohibit the dumping of radioactive wastes or other radioactive matter in the Convention Area. Without prejudice to whether or not disposal into the seabed and subsoil of wastes or other matter is "dumping", the Parties agree to prohibit the disposal into the seabed and subsoil of the Convention area of radioactive wastes or other radioactive matter.

2. This article shall also apply to the continental shelf of a Party where it extends, in accordance with international law, outward beyond the Convention Area.

### **Article 11 Storage of toxic and hazardous wastes**

The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area resulting from the storage of toxic and hazardous wastes. In particular, the Parties shall prohibit the storage of radioactive wastes or other radioactive matter in the Convention Area.

### **Article 12 Testing of nuclear devices**

The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area which might result from the testing of nuclear devices.

### **Article 13 Mining and coastal erosion**

The Parties shall take all appropriate measures to prevent, reduce and control environmental damage in the Convention Area, in particular coastal erosion caused by coastal engineering, mining activities, sand removal, land reclamation and dredging.

### **Article 14 Specially protected areas and protection of wild flora and fauna**

The Parties shall, individually or jointly, take all appropriate measures to protect and preserve rare or fragile ecosystems and depleted, threatened or endangered flora and fauna as well as their habitat in the Convention Area. To this end, the Parties shall, as appropriate, establish protected areas, such as parks and reserves, and prohibit or regulate any activity likely to have adverse effects on the species, ecosystems or biological processes that such areas are designed to protect. The establishment of such areas shall not affect the rights of other Parties or third States under international law. In addition, the Parties shall exchange information concerning the administration and management of such areas.

### **Article 15 Co-operation in combating pollution in cases of emergency**

1. The Parties shall co-operate in taking all necessary measures to deal with pollution emergencies in the Convention Area, whatever the cause of such emergencies, and to prevent, reduce and control pollution or the threat of pollution resulting there from. To this end, the Parties shall develop and promote individual contingency plans and joint contingency plans for responding to incidents involving pollution or the threat thereof in the Convention Area.

2. When a Party becomes aware of a case in which the Convention Area is in imminent danger of being polluted or has been polluted, it shall immediately notify other countries and territories it deems likely to be affected by such pollution, as well as the Organisation. Furthermore it shall inform, as soon as feasible, such other countries and territories and the Organisation of any measures it has itself taken to reduce or control pollution or the threat thereof.

### **Article 16 Environmental impact assessment**

1. The Parties agree to develop and maintain, with the assistance of competent global, regional and sub-regional organisations as requested, technical guidelines and legislation giving adequate emphasis to environmental and social factors to facilitate balanced development of their natural resources and planning of their major projects which might affect the marine environment in such a way as to prevent or minimise harmful impacts on the Convention Area.

2. Each Party shall, within its capabilities, assess the potential effects of such projects on the marine environment, so that appropriate measures can be taken to prevent any substantial pollution of, or significant and harmful changes within, the Convention Area.

3. With respect to the assessment referred to in paragraph 2, each Party shall, where appropriate, invite:

(a) public comment according to its national procedures,

(b) other Parties that may be affected to consult with it and submit comments.

The results of these assessments shall be communicated to the Organisation, which shall make them available to interested Parties.

### **Article 17 Scientific and technical co-operation**

1. The Parties shall co-operate, either directly or with the assistance of competent global, regional and sub-regional organisations, in scientific research, environmental monitoring, and the exchange of data and other scientific and technical information related to the purposes of the Convention.

2. In addition, the Parties shall, for the purposes of this Convention, develop and co-ordinate research and monitoring programmes relating to the Convention Area and co-operate, as far as practicable, in the establishment and implementation of regional, sub-regional and international research programmes.

### **Article 18 Technical and other assistance**

The Parties undertake to co-operate, directly and when appropriate through the competent global, regional and sub-regional organisations, in the provision to other Parties of technical and other



assistance in fields relating to pollution and sound environmental management of the Convention Area, taking into account the special needs of the island developing countries and territories.

### **Article 19 Transmission of information**

The Parties shall transmit to the Organisation information on the measures adopted by them in the implementation of this Convention and of Protocols to which they are Parties, in such form and at such intervals as the Parties may determine.

### **Article 20 Liability and compensation**

The Parties shall co-operate in the formulation and adoption of appropriate rules and procedures in conformity with international law in respect of liability and compensation for damage resulting from pollution of the Convention Area.

### **Article 21 Institutional arrangements**

1. The Organisation shall be responsible for carrying out the following secretariat functions:

- (a) to prepare and convene the meetings of Parties;
- (b) to transmit to the Parties notifications, reports and other information received in accordance with this Convention and its Protocols;
- (c) to perform the functions assigned to it by the Protocols to this Convention;
- (d) to consider enquiries by, and information from, the Parties and to consult with them on questions relating to this Convention and the Protocols;
- (e) to co-ordinate the implementation of co-operative activities agreed upon by the Parties;
- (f) to ensure the necessary co-ordination with other competent global, regional and sub-regional bodies;
- (g) to enter into such administrative arrangements as may be required for the effective discharge of the secretariat functions;
- (h) to perform such other functions as may be assigned to it by the Parties; and
- (i) to transmit to the South Pacific Conference and the South Pacific Forum the reports of ordinary and extraordinary meetings of the Parties.

2. Each Party shall designate an appropriate national authority to serve as the channel of communication with the Organisation for the purposes of this Convention.

### **Article 22 Meetings of the Parties**

1. The Parties shall hold ordinary meetings once every two years. Ordinary meetings shall review the implementation of this Convention and its Protocols and, in particular, shall:

- (a) assess periodically the state of the environment in the Convention Area;
  - (b) consider the information submitted by the Parties under article 19;
  - (c) adopt, review and amend as required annexes to this Convention and to its Protocols, in accordance with the provisions of article 25;
  - (d) make recommendations regarding the adoption of any Protocols or any amendments to this Convention or its Protocols in accordance with the provisions of articles 23 and 24;
  - (e) establish working groups as required to consider any matters concerning this Convention and its Protocols;
  - (f) consider co-operative activities to be undertaken within the framework of this Convention and its Protocols, including their financial and institutional implications and to adopt decisions relating thereto;
  - (g) consider and undertake any additional action that may be required for the achievement of the purposes of this Convention and its Protocols; and
  - (h) adopt by consensus financial rules and budget, prepared in consultation with the Organisation, to determine, *inter alia*, the financial participation of the Parties under this Convention and those Protocols to which they are party.
2. The Organisation shall convene the first ordinary meeting of the Parties not later than one year after the date on which the Convention enters into force in accordance with article 31.
3. Extraordinary meetings shall be convened at the request of any Party or upon the request of the Organisation, provided that such requests are supported by at least two-thirds of the Parties. It shall be the function of an extraordinary meeting of the Parties to consider those items proposed in the request for the holding of the extraordinary meeting and any other items agreed to by all the Parties attending the meeting.
4. The Parties shall adopt by consensus at their first ordinary meeting, rules of procedure for their meetings.

### **Article 23 Adoption of Protocols**

1. The Parties may, at a conference of plenipotentiaries, adopt Protocols to this Convention pursuant to paragraph 3 of article 5.
2. If so requested by a majority of the Parties, the Organisation shall convene a conference of plenipotentiaries for the purpose of adopting Protocols to this Convention.

### **Article 24 Amendment of the Convention and its Protocols**

1. Any Party may propose amendments to this Convention. Amendments shall be adopted by a conference of plenipotentiaries which shall be convened by the Organisation at the request of two-thirds of the Parties.

2. Any Party to this Convention may propose amendments to any Protocol. Such amendments shall be adopted by a conference of plenipotentiaries which shall be convened by the Organisation at the request of two-thirds of the Parties to the Protocol concerned.

3. A proposed amendment to the Convention or any Protocol shall be communicated to the Organisation, which shall promptly transmit such proposal for consideration to all the other Parties.

4. A conference of plenipotentiaries to consider a proposed amendment to the Convention or any Protocol shall be convened not less than ninety days after the requirements for the convening of the Conference have been met pursuant to paragraphs 1 or 2, as the case may be.

5. Any amendment to this Convention shall be adopted by a three-fourths majority vote of the Parties to the Convention which are represented at the conference of plenipotentiaries and shall be submitted by the Depositary for acceptance by all Parties to the Convention. Amendments to any Protocol shall be adopted by a three-fourths majority vote of the Parties to the Protocol which are represented at the conference of plenipotentiaries and shall be submitted by the Depositary for acceptance by all Parties to the Protocol.

6. Instruments of ratification, acceptance or approval of amendments shall be deposited with the Depositary. Amendments shall enter into force between Parties having accepted such amendments on the thirtieth day following the date of receipt by the Depositary of the instruments of at least three-fourths of the Parties to this Convention or to the Protocol concerned, as the case may be. Thereafter the amendments shall enter into force for any other Party on the thirtieth day after the date on which that Party deposits its instrument.

7. After the entry into force of an amendment to this Convention or to a Protocol, any new Party to the Convention or such protocol shall become a Party to the Convention or Protocol as amended.

## **Article 25 Annexes and amendment of Annexes**

1. Annexes to this Convention or to any Protocol shall form an integral part of the Convention or such Protocol respectively.

2. Except as may be otherwise provided in any Protocol with respect to its annexes, the following procedures shall apply to the adoption and entry into force of any amendments to annexes to this Convention or to annexes to any Protocol:

(a) any Party may propose amendments to the annexes to this Convention or annexes to any Protocol;

(b) any proposed amendment shall be notified by the Organisation to the Parties not less than sixty days before the convening of a meeting of the Parties unless this requirement is waived by the meeting;

(c) such amendments shall be adopted at a meeting of the Parties by a three-fourths majority vote of the Parties to the instrument in question;

(d) the Depositary shall without delay communicate the amendments so adopted to all Parties;

(e) any Party that is unable to approve an amendment to the annexes to this Convention or to annexes to any Protocol shall so notify in writing to the Depositary within one hundred days from the date of the communication of the amendment by the Depositary. A Party may at any

time substitute an acceptance for a previous declaration of objection, and the amendment shall thereupon enter into force for that Party;

(f) the Depositary shall without delay notify all Parties of any notification received pursuant to the preceding sub-paragraph; and

(g) on expiry of the period referred to in sub-paragraph (e) above, the amendment to the annex shall become effective for all Parties to this Convention or to the Protocol concerned which have not submitted a notification in accordance with the provisions of that sub-paragraph.

3. The adoption and entry into force of a new annex shall be subject to the same procedure as that for the adoption and entry into force of an amendment to an annex as set out in the provisions of paragraph 2, provided that, if any amendment to the Convention or the Protocol concerned is involved, the new annex shall not enter into force until such time as that amendment enters into force.

4. Amendments to the Annex on Arbitration shall be considered to be amendments to this Convention or its Protocols and shall be proposed and adopted in accordance with the procedures set out in article 24.

### **Article 26 Settlement of disputes**

1. In case of a dispute between Parties as to the interpretation or application of this Convention or its Protocols, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice. If the Parties concerned cannot reach agreement, they should seek the good offices of, or jointly request mediation by, a third Party.

2. If the Parties concerned cannot settle their dispute through the means mentioned in paragraph 1, the dispute shall, upon common agreement, except as may be otherwise provided in any Protocol to this Convention, be submitted to arbitration under conditions laid down in the Annex on Arbitration to this Convention. However, failure to reach common agreement on submission of the dispute to arbitration shall not absolve the Parties from the responsibility of continuing to seek to resolve it by means referred to in paragraph 1.

3. A Party may at any time declare that it recognizes as compulsory ipso facto and without special agreement, in relation to any other Party accepting the same obligation, the application of the arbitration procedure set out in the Annex on Arbitration. Such declaration shall be notified in writing to the Depositary who shall promptly communicate it to the other Parties.

### **Article 27 Relationship between this Convention and its Protocols**

1. No State may become a Party to this Convention unless it becomes at the same time a Party to one or more Protocols. No State may become a Party to a Protocol unless it is, or becomes at the same time, a Party to this Convention.

2. Decisions concerning any Protocol pursuant to articles 22, 24 and 25 of this Convention shall be taken only by the Parties to the Protocol concerned.

### **Article 28 Signature**

This Convention, the Protocol Concerning Co-operation in Combating Pollution Emergencies in the South Pacific Region, and the Protocol for the Prevention of Pollution of the South Pacific Region by Dumping shall be open for signature at the South Pacific Commission Headquarters in

Noumea, New Caledonia on 25 November 1986 and at the South Pacific Bureau for Economic Co-operation Headquarters, Suva, Fiji from 26 November 1986 to 25 November 1987 by States which were invited to participate in the Plenipotentiary Meeting of the High Level Conference on the Protection of the Natural Resources and Environment of the South Pacific Region held at Noumea, New Caledonia from 24 November 1986 to 25 November 1986.

### **Article 29 Ratification, acceptance or approval**

This Convention and any Protocol thereto shall be subject to ratification, acceptance or approval by States referred to in article 28. Instruments of ratification, acceptance or approval shall be deposited with the Director who shall be the Depositary.

### **Article 30 Accession**

1. This Convention and any Protocol thereto shall be open to accession by the States referred to in article 28 as from the day following the date on which the Convention or Protocol concerned was closed for signature.

2. Any State not referred to in paragraph 1 may accede to the Convention and to any Protocols subject to prior approval by three-fourths of the Parties to the Convention or the Protocol concerned.

3. Instruments of accession shall be deposited with the Depositary.

### **Article 31 Entry into force**

1. This Convention shall enter into force on the thirtieth day following the date of deposit of at least ten instruments of ratification, acceptance, approval or accession.

2. Any Protocol to this Convention, except as otherwise provided in such Protocol, shall enter into force on the thirtieth day following the date of deposit of at least five instruments of ratification, acceptance or approval of such Protocol, or of accession thereto, provided that no Protocol shall enter into force before the Convention. Should the requirements for entry into force of a Protocol be met prior to those for entry into force of the Convention pursuant to paragraph 1, such Protocol shall enter into force on the same date as the Convention.

3. Thereafter, this Convention and any Protocol shall enter into force with respect to any State referred to in articles 28 or 30 on the thirtieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

### **Article 32 Denunciation**

1. At any time after two years from the date of entry into force of this Convention with respect to a Party, that Party may denounce the Convention by giving written notification to the Depositary.

2. Except as may be otherwise provided in any Protocol to this Convention, any Party may, at any time after two years from the date of entry into force of such Protocol with respect to that Party, denounce the Protocol by giving written notification to the Depositary.

3. Denunciation shall take effect ninety days after the date on which notification of denunciation is received by the Depositary.

4. Any Party which denounces this Convention shall be considered as also having denounced any Protocol to which it was a Party.

5. Any Party which, upon its denunciation of a Protocol, is no longer a Party to any Protocol to this Convention, shall be considered as also having denounced this Convention.

#### Article 33 Responsibilities of the Depositary

1. The Depositary shall inform the Parties, as well as the Organisation:

(a) of the signature of this Convention and of any Protocol thereto and of the deposit of instruments of ratification, acceptance, approval, or accession in accordance with articles 29 and 30;

(b) of the date on which the Convention and any Protocol will come into force in accordance with the provisions of article 31;

(c) of notification of denunciation made in accordance with article 32;

(d) of notification of any addition to the Convention Area in accordance with article 3;

(d) of the amendments adopted with respect to the Convention and to any Protocol, their acceptance by the Parties and the date of their entry into force in accordance with the provisions of article 24; and

(f) of the adoption of new annexes and of the amendments of any annex in accordance with article 25.

2. The original of this Convention and of any Protocol thereto shall be deposited with the Depositary who shall send certified copies thereof to the Signatories, the Parties, to the Organisation and to the Secretary-General of the United Nations for registration and publication in accordance with article 102 of the United Nations Charter.

**IN WITNESS WHEREOF** the undersigned, being duly authorised by their respective Governments, have signed this Convention.

**DONE** at Noumea, New Caledonia on the twenty-fourth day of November in the year one thousand nine hundred and eighty-six in a single copy in the English and French languages, the two texts being equally authentic.

## **Annex on Arbitration**

### **Article 1**

Unless the agreement referred to in article 26 of the Convention provides otherwise, the arbitration procedure shall be in accordance with the rules set out in this Annex.

### **Article 2**

The claimant Party shall notify the Organisation that the Parties have agreed to submit the dispute to arbitration pursuant to paragraph 2, or that paragraph 3 of article 26 of the Convention is applicable. The notification shall state the subject matter of the arbitration and include the provisions of the Convention or any Protocol thereto, the interpretation or application of which is the subject of disagreement. The Organisation shall transmit this information to all Parties to the Convention or Protocol concerned.

### **Article 3**

1. The Tribunal shall consist of a single arbitrator if so agreed between the Parties to the dispute within thirty days from the date of receipt of the notification for arbitration.
2. In the case of the death, disability or default of the arbitrator, the Parties to a dispute may agree upon a replacement within thirty days of such death, disability or default.

### **Article 4**

1. Where the Parties to a dispute do not agree upon a Tribunal in accordance with article 3 of this Annex, the Tribunal shall consist of three members:

- (i) one arbitrator nominated by each Party to the dispute, and
- (ii) a third arbitrator who shall be nominated by agreement between the two first named and who shall act as its Chairman.

2. If the Chairman of a Tribunal is not nominated within thirty days of nomination of the second arbitrator, the Parties to a dispute shall, upon the request of one Party, submit to the Secretary-General of the Organisation within a further period of thirty days, an agreed list of qualified persons. The Secretary-General shall select the Chairman from such list as soon as possible. He shall not select a Chairman who is, or has been, a national of one Party to the dispute except with the consent of the other Party to the dispute.

3. If one Party to a dispute fails to nominate an arbitrator as provided in subparagraph 1(i) within sixty days from the date of receipt of the notification for arbitration, the other Party may request the submission to the Secretary-General of the Organisation within a period of thirty days of an agreed list of qualified persons. The Secretary-General shall select the Chairman of the Tribunal from such list as soon as possible. The Chairman shall then request the Party which has not nominated an arbitrator to do so. If this Party does not nominate an arbitrator within fifteen days of such request, the Secretary-General shall, upon request of the Chairman, nominate the arbitrator from the agreed list of qualified persons.

4. In the case of the death, disability or default of an arbitrator, the Party to the dispute who nominated him shall nominate a replacement within thirty days of such death, disability or default.

If the Party does not nominate a replacement, the arbitration shall proceed with the remaining arbitrators. In the case of the death, disability or default of the Chairman, a replacement shall be nominated in accordance with paragraphs 1(ii) and 2 within ninety days of such death, disability or default.

5. A list of arbitrators shall be maintained by the Secretary-General of the Organisation and composed of qualified persons nominated by the Parties. Each Party may designate for inclusion in the list four persons who shall not necessarily be its nationals. If the Parties to the dispute have failed within the specified time limits to submit to the Secretary-General an agreed list of qualified persons as provided for in paragraphs 2, 3 and 4, the Secretary-General shall select from the list maintained by him the arbitrator or arbitrators not yet nominated.

#### **Article 5**

The Tribunal may hear and determine counter-claims arising directly out of the subject matter of the dispute.

#### **Article 6**

The Tribunal may, at the request of one of the Parties to the dispute, recommend interim measures of protection.

#### **Article 7**

Each Party to the dispute shall be responsible for the costs entailed by the preparation of its own case. The remuneration of the members of the Tribunal and of all general expenses incurred by the arbitration shall be borne equally by the Parties to the dispute. The Tribunal shall keep a record of all its expenses and shall furnish a final statement thereof to the Parties.

#### **Article 8**

Any Party which has an interest of a legal nature which may be affected by the decision in the case may, after giving written notice to the Parties to the dispute which have originally initiated the procedure, intervene in the arbitration procedure with the consent of the Tribunal which should be freely given. Any intervenor shall participate at its own expense. Any such intervenor shall have the right to present evidence, briefs and oral arguments on the matter giving rise to its intervention, in accordance with procedures established pursuant to article 9 of this Annex but shall have no rights with respect to the composition of the Tribunal.

#### **Article 9**

A Tribunal established under the provisions of this Annex shall decide its own rules of procedure.

#### **Article 10**

1. Unless a Tribunal consists of a single arbitrator, decisions of the Tribunal as to its procedure, its place of meeting, and any question related to the dispute laid before it, shall be taken by majority vote of its members. However, the absence or abstention of any member of the Tribunal who was nominated by a Party to the dispute shall not constitute an impediment to the Tribunal reaching a decision. In case of equal voting, the vote of the Chairman shall be decisive.

2. The Parties to the dispute shall facilitate the work of the Tribunal and in particular shall, in accordance with their legislation and using all means at their disposal:



(i) provide the Tribunal with all necessary documents and information, and

(ii) enable the Tribunal to enter their territory, to hear witnesses or experts, and to visit the scene of the subject matter of the arbitration.

3. The failure of a Party to the dispute to comply with the provisions of paragraph 2 or to defend its case shall not preclude the Tribunal from reaching a decision and rendering an award.

#### **Article 11**

The Tribunal shall render its award within five months from the time it is established unless it finds it necessary to extend that time limit for a period not to exceed five months. The award of the Tribunal shall be accompanied by a statement of reasons for the decision. It shall be final and without appeal and shall be communicated to the Secretary-General of the Organisation who shall inform the Parties. The Parties to the dispute shall immediately comply with the award.

# PROTOCOL FOR THE PREVENTION OF POLLUTION OF THE SOUTH PACIFIC REGION BY DUMPING

The Parties to the Protocol,

*Being* Parties to the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, adopted in Noumea, New Caledonia on the twenty-fourth day of November in the year one thousand nine hundred and eighty-six;

*Desiring* to make this Protocol consistent with the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 as envisaged by Article 12 of that Protocol;

*Taking into account* relevant international agreements and actions, especially the United Nations Convention on the Law of the Sea, 1982 (UNCLOS), the Rio Declaration on Environment and Development and Agenda 21;

*Recognising* the danger posed to the marine environment by pollution caused by the dumping and incineration at sea of wastes or other matter;

*Considering* that they have a common interest to protect the Pacific region from this danger, taking into account the unique environmental quality of the region;

*Recognising* the special needs and limited resources of Small Island Developing States with regard to the promotion of international and regional co-operation concerning the prevention of marine pollution by dumping or incineration of wastes;

*Applying* a precautionary approach to environmental protection from dumping or incineration at sea of wastes or other matter, and taking into account the approach that the polluter should, in principle, bear the cost of pollution;

*Aware* of the need to promote access to

and the transfer of environmentally sound technology, including clean production technology;

*Have agreed* as follows:

## Article 1 Definitions

For the purposes of this Protocol:

(1) "Convention" means the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region adopted in Noumea, New Caledonia on the twenty-fourth day of November in the year one thousand nine hundred and eighty-six;

(2) (a) "Dumping" means:

(i) any deliberate disposal into the sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;

(ii) any deliberate disposal into the sea of vessels, aircraft, platforms or other man-made structures at sea;

(iii) any storage of wastes or other matter in the seabed and the subsoil thereof from vessels, aircraft, platforms or other man-made structures at sea; and

(iv) any abandonment or toppling at site of platforms or other man-made structures at sea, for the sole purpose of deliberate disposal.

(b) “Dumping” does not include:

(i) the disposal into the sea of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other manmade structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or other man-made structures;

(ii) placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Protocol; and

(iii) notwithstanding paragraph 2(a)(iv) abandonment in the sea of matter (e.g., cables, pipelines and marine research devices) placed for a purpose other than the mere disposal thereof.

(c) The disposal or storage of wastes or other matter directly arising from, or related to the exploration, exploitation and associated off-shore processing of seabed mineral resources is not covered by the provisions of this Protocol.

(3) “Incineration at sea” means the combustion on board a vessel, platform or other manmade structure at sea of wastes or other matter for the purpose of their deliberate disposal by thermal destruction. “Incineration at sea” does not include the incineration of wastes or other matter on board a vessel, platform, or other man-made structure at sea if such wastes or other matter were generated during the normal operation of that vessel, platform or other man-made structure at sea.

(4) “Organisation” means the Secretariat for the Pacific Regional Environment Programme.

(5) “Permit” means permission granted in advance and in accordance with this Protocol for the disposal of wastes or other matter at sea.

(6) “Sea” means all marine waters other than the internal waters of Member States, as well as the seabed and the subsoil thereof; it does not include sub-seabed repositories accessed only from land.

## **Article 2 General Application Provisions**

(1) The area to which this Protocol applies (hereinafter referred to as the “Protocol Area”) shall be the Convention Area as defined in Article 2 of the Convention together with the continental shelf of a Party where it extends, in accordance with international law, outward beyond the Convention Area.

(2) Notwithstanding any other provision of this Protocol, this Protocol shall relate to internal waters only to the extent provided for in sub-paragraphs (a) and (b).

(a) Each Party shall at its discretion either apply the provisions of this Protocol or adopt other effective permitting and regulatory measures to control the deliberate disposal of wastes or other matter in marine internal waters where such disposal would be “dumping” or “incineration at sea” within the meaning of article 1, if conducted at sea.

(b) Each Party should provide the Organisation with information on legislation and institutional mechanisms regarding implementation, compliance and enforcement in marine internal waters. Parties should also use their best efforts to provide on a voluntary basis summary reports on the type and nature of the materials dumped in marine internal waters.

### **Article 3 General Obligations**

(1) Consistent with their technical, economic and scientific capabilities, the Parties shall take all appropriate measures to effectively prevent, reduce and where practicable eliminate pollution in the Protocol Area by the dumping and incineration of wastes and other matter at sea.

(2) Dumping and incineration of wastes and other matter within the territorial sea and the exclusive economic zone or onto the continental shelf of a Party as defined in international law shall not be carried out without the express prior approval of that Party, which has the right to permit, regulate and control such activities taking fully into account the provisions of this Protocol, and after due consideration of the matter with other Parties which by reason of their geographical situation may be adversely affected thereby.

(3) National laws, regulations and measures adopted by the Parties shall be no less effective in preventing, reducing and where practicable eliminating pollution by dumping or incineration than the rules and procedures provided for in the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972.

(4) When implementing the provisions of this Protocol, the Parties shall act so as to ensure that:

(a) there is no direct or indirect transfer of the damage or likelihood of damage from one part of the environment to another; and

(b) the nature of the pollution is not transformed from one type to another.

(5) In implementing this Protocol, Parties shall apply a precautionary approach to environmental protection from dumping of wastes or other matter whereby appropriate preventative measures are taken when there is reason to believe that wastes or other matter introduced into the marine environment are likely to cause harm even when there is no conclusive evidence to prove a causal relation between inputs and their effects.

(6) Taking into account the approach that the polluter should, in principle, bear the cost of pollution, each Party shall endeavour to promote practices whereby those it has authorised to engage in dumping or incineration at sea bear the cost of meeting the pollution prevention and control requirements for the authorised activities, having due regard to the public interest.

### **Article 4 Dumping Of Wastes And Other Matter And Exceptions**

(1) Each Party shall establish and implement legislative and administrative arrangements to give effect to this Protocol.

(2) Parties shall ensure that the issuance of permits, and the permit conditions, comply with the provisions of Annexes I and II. The dumping of wastes or other matter listed in Annex I shall require a permit issued in accordance with this Protocol.

(3) Special attention shall be paid to opportunities to avoid dumping and to apply environmentally preferable alternatives.

(4) The Parties shall prohibit the following activities:

(a) the dumping of wastes or other matter at sea, other than those listed in Annex I;

(b) the incineration of wastes or other matter at sea; and

(c) the exportation of wastes and other matter for the purpose of dumping or incineration at sea.

(5) The provisions of paragraph 4(a) and (b) shall not apply when it is necessary to secure the safety of human life or of vessels, aircraft, platforms or other man-made structures at sea in cases of *force majeure* caused by stress of weather, or in any case which constitutes a danger to human life or a real threat to vessels, aircraft, platforms or other man-made structures at sea, if dumping or incineration at sea appears to be the only way of averting the threat and if there is every probability that the damage consequent upon such dumping or incineration at sea will be less than would otherwise occur. Such dumping or incineration at sea shall be so conducted as to minimise the likelihood of damage to human or marine life and shall be reported forthwith to the Organisation.

(6) A Party may issue a permit as an exception to paragraph 4(a) and (b), in emergencies posing an unacceptable threat to human health, safety, or the marine environment and admitting of no other feasible solution. Before doing so the Party shall consult any other country or countries that are likely to be affected and the Organisation which, after consulting other Parties, and competent international organisations as appropriate, shall, in accordance with article 12(2)(e) promptly recommend to the Party the most appropriate procedures to adopt. The Party shall follow these recommendations to the maximum extent feasible consistent with the time within which action must be taken and with the general obligation to avoid damage to the marine environment and shall inform the Organisation of the action it takes. The Parties pledge themselves to assist one another in such situations.

(7) Any Party may waive its rights under paragraph 6 at the time of, or subsequent to ratification, acceptance or approval of, or accession to this Protocol.

(8) No provision of this Protocol shall be interpreted as preventing a Party from prohibiting, insofar as that Party is concerned, the dumping of wastes or other matter listed in Annex I. That Party shall notify the Organisation of any such prohibition.

## **Article 5 Responsibilities Of Designated Authorities**

(1) Each Party shall designate an appropriate authority or authorities to:

(a) issue permits in accordance with this Protocol;

(b) keep records of the nature and quantities of all wastes or other matter for which dumping permits have been issued and where practicable the quantities actually dumped and the location, time and method of dumping; and

- (c) monitor individually, or in collaboration with other Parties and competent international organisations, the condition of the sea for the purposes of this Protocol.
- (2) The appropriate authority or authorities of each Party shall issue the permits under paragraph 1 and in the emergency circumstances provided for in Article 4, in respect of the wastes or other matter intended for dumping or incineration at sea:
- (a) loaded in its territory; or
  - (b) loaded onto vessels and aircraft registered in its territory or flying its flag when the loading occurs in the territory of a State not Party to this Protocol.
- (3) In issuing permits under this Protocol the appropriate authority or authorities shall comply with Article 4 and Annex II together with such additional criteria, measures and requirements, as they may consider relevant.
- (4) Each Party shall report to the Organisation, and where appropriate to the other Parties:
- (a) the information specified in paragraph 1(b) and (c), which shall be submitted annually;
  - (b) any administrative and legislative measures taken to implement the provisions of this Protocol, including a summary of enforcement measures; and
  - (c) any problems experienced in the application of the administrative and legislative measures, and any matter related to their effectiveness.
- (5) The information referred to in paragraph 4(b) and (c) shall be submitted on a regular basis for evaluation by an appropriate subsidiary body determined by the Meeting of the Parties. This body shall regularly report to Meetings or Special Meetings of the Parties.

## **Article 6 Implementation And Enforcement**

- (1) Each Party shall apply the measures required to implement this Protocol to all:
- (a) vessels and aircraft registered in its territory or flying its flag;
  - (b) vessels and aircraft loading in its territory wastes or other matter which are to be dumped or incinerated at sea; and
  - (c) vessels, aircraft and fixed or floating platforms or other man-made structures believed to be engaged in dumping or incineration at sea in areas within which it is entitled to exercise jurisdiction in accordance with international law.
- (2) Each Party shall take in its territory appropriate measures in accordance with international law to prevent and if necessary punish conduct in contravention of the provisions of this Protocol.
- (3) The Parties agree to co-operate in the development of procedures for the effective application of this Protocol particularly on the high seas, including procedures for the reporting of vessels and aircraft observed dumping or incinerating at sea wastes or other matter in contravention of the Protocol.

(4) This Protocol shall not apply to those vessels and aircraft entitled to sovereign immunity under international law. However, each Party shall ensure by the adoption of appropriate measures that such vessels and aircraft owned or operated by it act in a manner consistent with the object and purpose of this Protocol, and shall inform the Organisation accordingly.

(5) A State may at the time it expresses its consent to be bound by this Protocol, or at any time thereafter, declare that it shall apply the provisions of this Protocol to its vessels and aircraft referred to in paragraph 4, recognising that only that State may enforce those provisions against its vessels and aircraft.

### **Article 7 Compliance Procedures**

The Meeting of the Parties shall establish procedures and mechanisms necessary to assess and promote compliance with this Protocol. Such procedures and mechanisms shall be developed with a view to allowing for the full and open exchange of information in a constructive manner. Where appropriate, the Meeting of the Parties may provide for the provision of information, advice and assistance to countries which are Parties or non-Parties to the Convention.

### **Article 8 Adoption Of Other Measures**

Nothing in this Protocol shall affect the right of each Party to adopt more stringent measures in accordance with the principles of international law to prevent dumping or incineration of wastes or other matter at sea.

### **Article 9 Reporting Of Unauthorised Dumping And Incineration Incidents**

Each Party undertakes to issue instructions to its maritime inspection vessels and aircraft and to other appropriate services to report to its authorities any incidents or conditions in the Protocol Area which give rise to suspicions that dumping or incineration at sea in contravention of the provisions of this Protocol has occurred or is about to occur. Parties shall, if they consider it appropriate, report accordingly to the Organisation and to any other Party concerned.

### **Article 10 Technical Cooperation And Assistance**

The Parties, in consultation with the Organisation, shall cooperate with a view to formulating and as far as practicable implementing programs of assistance for the prevention, reduction and where practicable elimination of pollution caused by dumping and incineration of wastes and other matter at sea, including the provision of:

- (a) training programs for scientific and technical personnel relating to research, monitoring and enforcement;
- (b) as appropriate, necessary equipment and facilities with a view to strengthening national capabilities;
- (c) advice on the implementation of this Protocol;
- (d) information and technical cooperation relating to the disposal and treatment of wastes and other measures to prevent, reduce and where practicable eliminate pollution caused by dumping and incineration at sea; and

(e) access to and transfer of environmentally sound technologies and corresponding know-how, in particular to Small Island Developing States on favorable terms, including on concessional and preferential terms, as mutually agreed, taking into account the need to protect intellectual property rights as well as the special needs of Small Island Developing States.

## **Article 11 Institutional Arrangements**

The Parties designate the Organisation to carry out the following functions:

- (a) to assist the Parties, upon request, in the communication of reports in accordance with this Protocol;
- (b) to convey to the Parties concerned all notifications received by the Organisation in accordance with the provisions of this Protocol;
- (c) to transmit to the International Maritime Organization as the organisation responsible for the secretariat functions under the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 and the 1996 Protocol thereto, reports of dumping or incineration at sea and any other records and information submitted under this Protocol which the Organisation considers should be provided;
- (d) to foster cooperation with the International Maritime Organization with a view to promoting capacity building of Parties and non-Parties, and achieving a more effective implementation of this Protocol and use of resources;
- (e) to keep itself informed on evolving international standards and the results of research and investigation, and to advise Meetings of the Parties to this Protocol of such developments and any modification of the Annexes which may become desirable;
- (f) to provide policy and technical advice including guidelines taking into account that developed by the International Maritime Organization; and
- (g) to carry out other duties assigned to it by the Parties.

## **Article 12 Meeting Of The Parties**

(1) Ordinary meetings of the Parties to this Protocol shall be held in conjunction with ordinary meetings of the Parties to the Convention held pursuant to Article 22 of the Convention. The Parties to this Protocol may also hold extraordinary meetings in conformity with Article 22 of the Convention.

(2) It shall be the function of the meetings of the Parties to this Protocol to:

- (a) keep under review the implementation of this Protocol, and to consider the efficacy of the measures adopted and the need for any other measures, in particular in the form of Annexes;
- (b) study and consider the records of the permits issued in accordance with Article 5 and the emergency situation in Article 4 and of the dumping or incineration at sea which has taken place;
- (c) review and amend as required any Annex to this Protocol;



(d) adopt as necessary guidelines for the preparation of records and procedures to be followed in submitting reports and records in accordance with this Protocol, taking into account the guidelines and procedures adopted by the International Maritime Organization;

(e) develop, adopt and implement in consultation with the Organisation and other competent international organisations procedures pursuant to Article 4 including basic criteria for determining emergency circumstances and procedures for consultative advice and the safe disposal, storage or destruction of matter in such circumstances;

(f) invite, as necessary, the appropriate scientific body or bodies to collaborate with and to advise the Parties and the Organisation on any scientific or technical aspects relevant to this Protocol, including particularly the content and applicability of the Annexes; and

(g) perform such other functions as may be appropriate for the implementation of this Protocol.

(3) The adoption of amendments to the Annexes to this Protocol pursuant to Article 25 of the Convention shall require a three-fourths majority vote of the Parties to this Protocol.

### **Article 13 Relationship Between This Protocol And The Convention**

(1) The provisions of the Convention relating to any Protocol shall apply with respect to the present Protocol.

(2) The rules of procedures and the financial rules adopted pursuant to Article 22 of the Convention shall apply with respect to this Protocol, unless the Parties to this Protocol agree otherwise.

## **ANNEX I WASTES OR OTHER MATTER THAT MAY BE CONSIDERED FOR DUMPING**

1. Taking into consideration the provisions of Article 4 of this Protocol a Party may consider the following wastes or other matter for dumping:

- (a) dredged material;
- (b) sewage sludge;
- (c) fish waste, or material resulting from industrial fish processing operations;
- (d) vessels and platforms or other man-made structures at sea;
- (e) inert, inorganic geological material;
- (f) organic material of natural origin; and
- (g) bulky items primarily comprising iron, steel, concrete and similarly un-harmful 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.

2. The wastes or other matter referred to in paragraph 1(d) and (g) may be considered for dumping, provided that material capable of creating floating debris or otherwise contributing to pollution of the marine environment has been removed to the maximum extent and provided that the material dumped poses no serious obstacle to fishing or navigation.

3 Notwithstanding the above, materials listed in paragraphs 1(a)–(g) containing levels of radioactivity greater than *de minimis* (exempt) concentrations as defined by the International Atomic Energy Agency and adopted by Parties, shall not be considered eligible for dumping; provided further that within 25 years of 20 February 1994, and at each 25 year interval thereafter, Parties shall complete a scientific study relating to all radioactive wastes and other radioactive matter other than high level wastes or matter, taking into account such other factors as Parties consider appropriate and shall review the prohibition on dumping of such substances in accordance with the procedures set forth in article 25 of the Convention.

## **ANNEX II ASSESSMENT OF WASTES OR OTHER MATTER THAT MAY BE CONSIDERED FOR DUMPING GENERAL**

1. The acceptance of dumping under certain circumstances shall not remove the obligations under this Annex to make further attempts to reduce the necessity for dumping.

### **Waste Prevention Audit**

2. The initial stages in assessing alternatives to dumping should, as appropriate, include an evaluation of:

- (a) types, amounts and relative hazard of wastes generated;
- (b) details of the production process and the sources of wastes within that process; and
- (c) feasibility of the following waste reduction/prevention techniques -
  - (i) product reformulation;
  - (ii) clean production technologies;
  - (iii) process modification;
  - (iv) input substitution; and
  - (v) on site, close-loop recycling.

3. In general terms, if the required audit reveals that opportunities exist for waste prevention at source, an applicant is expected to formulate and implement a waste prevention strategy, in collaboration with relevant local and national agencies, which includes specific waste reduction targets and provision for further waste prevention audits to ensure that these targets are being met. Permit issuance or renewal decisions shall assure compliance with any resulting waste reduction and prevention requirements.

4. For dredged material and sewage sludge, the goal of waste management should be to identify and control the sources of contamination. This should be achieved through implementation of waste prevention strategies and requires collaboration between the relevant local and national agencies involved with the control of point and non-point sources of pollution. Until this objective is met, the problems of contaminated dredged material may be addressed by using disposal management techniques at sea or on land.

### **Consideration Of Waste Management Options**

5. Applications to dump wastes or other matter shall demonstrate that appropriate consideration has been given to the following hierarchy of waste management options, which implies an order of increasing environmental impact:

- (a) re-use;
- (b) off-site recycling;

- (c) destruction of hazardous constituents;
- (d) treatment to reduce or remove the hazardous constituents; and
- (e) disposal on land, into air and in water.

6. A permit to dump wastes or other matter shall be refused if the permitting authority determines that appropriate opportunities exist to re-use, recycle or treat the waste without undue risks to human health or the environment or disproportionate costs. The practical availability of other means of disposal should be considered in the light of a comparative risk assessment involving both dumping and the alternatives.

### **Chemical, Physical, And Biological Properties**

7. Parties shall consider whether an adequate scientific basis and sufficient knowledge of the composition and characteristics of the wastes or other matter proposed for dumping exist for assessing the impact of such material on the marine environment and human health. This information will be the basis for a decision to consider the practical availability of alternatives or whether a waste may be dumped. If a waste is so poorly characterised that proper assessment cannot be made of its potential impacts on human health and the environment, that waste shall not be dumped.

8. Characterisation of the wastes and their constituents shall take into account:

- (a) Origin, total amount and average composition of matter;
- (b) Form (e.g. solid, sludge, liquid, or gaseous);
- (c) Properties: physical (e.g. solubility and density), chemical and biochemical (e.g. oxygen demand, nutrients) and biological (e.g. presence of viruses, bacteria, yeasts, parasites);
- (d) Persistence: physical, chemical and biological;
- (e) Toxicity;
- (f) Accumulation and biotransformation in biological materials or sediments;
- (g) Susceptibility to physical, chemical and biochemical changes and interaction in the aquatic environment with other dissolved organic and inorganic materials;
- (h) Probability of production of taints or other changes reducing marketability of resources (e.g. fish, shellfish).

### **Action List**

9. Each Party shall develop a National Action List to provide a mechanism for screening candidate wastes and their constituents on the basis of their potential effects on human health and the marine environment. In selecting substances for consideration in an Action List, priority shall be given to toxic, persistent and bioaccumulative substances from anthropogenic sources (e.g. cadmium, mercury, organohalogenes, petroleum hydrocarbons, and, whenever relevant, arsenic, lead, copper, zinc, beryllium, chromium, nickel and vanadium, organosilicon compounds, cyanides, fluorides

and pesticides or their by-products other than organohalogenes). An Action list can also be used as a trigger mechanism for further waste prevention considerations.

10. An Action List shall specify an upper level, and may also specify a lower level. The upper level should be set so as to avoid acute or chronic effects on human health or on sensitive marine organisms representative of the marine ecosystem. Application of an Action List will result in three possible categories of waste:

(a) Wastes which contain specified substances, or which cause biological responses, exceeding the relevant upper level shall not be dumped, unless made acceptable for dumping through the use of management techniques or processes;

(b) Wastes which contain specified substances, or which cause biological responses, below the relevant lower levels should be considered to be of little environmental concern in relation to dumping; and

(c) Wastes which contain specified substances, or which cause biological responses, below the upper level but above the lower level require more detailed assessment before their suitability for dumping can be determined.

### **Dump Site Selection**

11. Information required to select a dump-site shall include:

(a) physical, chemical and biological characteristics of the water-column and the seabed;

(b) location of amenities, values and other uses of the sea in the area under consideration;

(c) assessment of the constituent fluxes associated with dumping in relation to existing fluxes of substances in the marine environment; and

(d) economic and operational feasibility.

### **Assessment Of Potential Effects**

12. Assessment of potential effects should lead to a concise statement of the expected consequences of the sea or land disposal options, i.e. the "Impact Hypothesis". It provides a basis for deciding whether to approve or reject the proposed disposal option and for defining environmental monitoring requirements.

13. The assessment for dumping should integrate information on waste characteristics, conditions at the proposed dump-site(s), fluxes, and proposed disposal techniques and specify the potential effects on human health, living resources, amenities and other legitimate uses of the sea. It should define the nature, temporal and spatial scales and duration of expected impacts based on reasonably conservative assumptions.

14. An analysis of each disposal option should be considered in the light of a comparative assessment of the following concerns: human health risks, environment costs, hazards, (including accidents), economics and exclusion of future uses. If this assessment reveals that adequate information is not available to determine the likely effects of the proposed disposal option then this option should not be considered further. In addition, if the interpretation of the comparative

assessment shows the dumping option to be less preferable, a permit for dumping should not be given.

15. Each assessment should conclude with a statement supporting a decision to issue or refuse a permit for dumping.

### **Monitoring**

16. Monitoring is used to verify that permit conditions are met – compliance monitoring – and that the assumptions made during the permit review and site selection process were correct and sufficient to protect the environment and human health – field monitoring. It is essential that such monitoring programs have clearly defined objectives.

### **Permit And Permit Conditions**

17. A decision to issue a permit should only be made if all impact evaluations are completed and the monitoring requirements are determined. The provisions of the permit shall ensure, as far as practicable, that environmental disturbance and detriment are minimised and the benefits maximised. Any permit issued shall contain data and information specifying:

- (a) the types and sources of materials to be dumped;
- (b) the location of the dump-site(s)
- (c) the method of dumping; and
- (d) monitoring and reporting requirements.

18. Permits should be reviewed at regular intervals, taking into account the results of monitoring and the objectives of monitoring programs. Review of monitoring results will indicate whether field programs need to be continued, revised or terminated and will contribute to informed decisions regarding the continuance, modification or revocation of permits. This provides an important feedback mechanism for the protection of human health and the marine environment.

# **PROTOCOL CONCERNING CO-OPERATION IN COMBATING POLLUTION EMERGENCIES IN THE SOUTH PACIFIC REGION**

The Parties to this Protocol

*Being* Parties to the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region adopted in Noumea, New Caledonia on the twenty-fourth day of November in the year one thousand nine hundred and eighty-six;

*Desiring* to make this Protocol consistent with the provisions of the International Convention on Oil Pollution Preparedness, Response and Cooperation 1990 (OPRC Convention 90) as envisaged by Article 10 of that Convention and any other relevant International Maritime Organization (IMO) agreements;

*Conscious* that oil pollution arising from ships, off-shore units, sea ports and oil handling facilities pose the threat of significant pollution incidents in the Pacific Region;

*Aware* that the islands of the region are particularly vulnerable to damage resulting from significant pollution due to the sensitivity of their ecosystems and their economic reliance on the continuous utilisation of their coastal areas and marine environment;

*Mindful* of the importance of precautionary measures and prevention in avoiding oil pollution in the first instance, and the need for strict application of existing international instruments dealing with maritime safety and marine pollution prevention, particularly the International Convention for the Safety of Life at Sea, 1974 (SOLAS), as amended, and the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78) relating thereto, as amended, and also the speedy development of enhanced standards for the design, operation and maintenance of ships carrying oil, and of offshore units;

*Recognising* further the importance of rational preparation and mutual co-operation and assistance in responding effectively to pollution incidents or the threat thereof;

*Determined* to avert ecological damage to the marine environment and coastal areas of the Pacific Region through the adoption of national contingency plans and the promotion of bilateral and multilateral co-operation in preparedness and response to pollution incidents involving oil;

*Recognising* the special needs and limited resources of Pacific Small Island Developing States with regard to the promotion of international and regional co-operation concerning preparedness and response, and further noting the provisions herein regarding the reimbursement of the cost of assistance provided;

*Emphasising* the importance of effective preparation for combating oil pollution incidents and the important role which the oil and shipping industries have in this regard;

*Recognising* that in the event of an oil pollution incident, prompt and effective action is essential and should be taken initially at the national level to organise and coordinate prevention, response, mitigation and cleanup activities;

*Reaffirming* the approach that the polluter should, in principle, bear the cost of pollution;

*Bearing in mind* the relevant provisions of the United Nations Convention on the Law of the Sea;

*Have agreed* as follows:

## **Article 1 Definitions**

For the purposes of this Protocol:

(a) “Convention” means the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region adopted in Noumea, New Caledonia on the twenty-fourth day of November in the year one thousand nine hundred and eighty-six;

(b) “Offshore unit” means any fixed or floating offshore installation or structure engaged in gas or oil exploration, exploitation or production activities, or loading or unloading of oil;

(c) “oil” means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products;

(d) “Organisation” means the Secretariat for the Pacific Regional Environment Programme;

(e) “pollution incident” means an occurrence, or series of occurrences having the same origin which results or may result in a discharge of oil and which poses or may pose a threat to the marine environment, or to the coastline or related interests of one or more States, and which requires emergency action or other immediate response;

(f) “related interests” of a Party refer, inter alia, to:

(i) maritime, coastal, port, or estuarine activities;

(ii) fishing activities and the management and conservation of living and non-living marine resources, including coastal ecosystems;

(iii) the cultural value of the area concerned and the exercise of traditional customary rights therein;

(iv) the health of the coastal population; and

(v) tourist and recreational activities;

(g) “Sea ports and oil handling facilities” means those facilities which present a risk of an oil pollution incident and includes, inter alia, sea ports, oil terminals, pipelines and other oil handling facilities;

(h) “Pacific Region” means the Convention Area as defined in Article 2 of the Convention and adjacent coastal areas.

## **Article 2 Application**

1. This Protocol applies to pollution incidents in the Pacific Region.

2. Each Party shall apply this Protocol without prejudice to the sovereignty or the jurisdiction of other Parties or other States. Any measure taken by a Party to apply this Protocol shall be in accordance with international law.



### **Article 3 Planning And Response Provisions**

1. The Parties to this Protocol shall, within their respective capabilities, co-operate in taking all necessary measures for the protection of the Pacific Region from the threat and effects of pollution incidents.

2. The Parties shall, within their respective capabilities, establish and maintain, or continue the establishment and maintenance of national systems aimed at preventing, responding to and combating pollution incidents, and reducing the risk thereof. Such means shall include:

(a) the enactment, as necessary, of relevant legislation;

(b) the designation of:

(i) a competent national authority or authorities with responsibility for pollution preparedness and response;

(ii) a national operational contact point or points, which shall be responsible for the receipt and transmission of pollution incident reports; and

(iii) an authority which is entitled to act on behalf of the State to request assistance, or to decide to render any assistance requested;

(c) a national contingency plan for preparedness and response which includes the organisational relationship of the various bodies involved, whether public or private, taking into account guidelines developed by the Organisation and the International Maritime Organization.

3. Each Party shall require that ships entitled to fly its flag have on board a shipboard pollution emergency pollution plan in accordance with the provisions developed by the International Maritime Organization.

4. Each Party shall require that authorities or operators in charge of such sea ports and oil handling facilities under its jurisdiction as it deems appropriate have pollution incident plans or similar arrangements which are co-ordinated with the national system established and approved in accordance with procedures established by the competent national authority.

5. In addition, each Party, within its capabilities either individually or through bilateral or multilateral cooperation and, as appropriate, in cooperation with the oil and shipping industries, port authorities and other relevant entities, shall establish:

(a) a minimum level of pre-positioned equipment for responding to pollution incidents, commensurate with the risk involved, and programmes for its use;

(b) a programme of exercises for pollution incident response organisations and training of relevant personnel;

(c) detailed plans and communication capabilities for responding to a pollution incident. Such capabilities should be continuously available; and

(d) a mechanism or arrangement to coordinate the response to a pollution incident with, if appropriate, the capabilities to mobilise the necessary resources.

### **Article 4 Exchange Of Information**

1. Each Party shall periodically exchange with other Parties, either directly or through the Organisation, current information relating to the implementation of this Protocol, including the identification of the officials charged with carrying out the activities covered by it, and information on its laws, regulations, institutions and operational procedures relating to the prevention and the means of reducing and combating the harmful effects of pollution incidents.

2. In particular each Party shall ensure that current information is provided to the Organisation concerning:

(a) the location, telecommunication data and, if applicable, areas of responsibility of authorities and entities responsible for pollution preparedness and response;

(b) information concerning pollution response equipment and expertise in disciplines related to pollution incident response and marine salvage which may be made available to other States, upon request; and

(c) its national contingency plan.

### **Article 5 Reporting Of Pollution Incidents**

1. Each Party shall within its respective capability establish appropriate procedures to ensure that information regarding pollution incidents is reported as rapidly as possible and shall, inter alia:

(a) require masters or other persons having charge of ships flying its flag and persons having charge of offshore units under its jurisdiction to report without delay any event on their ship or offshore unit involving a discharge or probable discharge of oil:

(i) in the case of a ship, to the nearest coastal State;

(ii) in the case of an offshore unit, to the coastal State to whose jurisdiction the unit is subject;

(b) require masters or other persons having charge of ships flying its flag and persons having charge of offshore units under its jurisdiction to report without delay any observed event at sea involving a discharge of oil or the presence of oil:

(i) in the case of a ship, to the nearest coastal State;

(ii) in the case of an offshore unit, to the coastal State to whose jurisdiction the unit is subject;

(c) require persons having charge of sea ports and oil handling facilities under its jurisdiction to report without delay any event involving a discharge or probable discharge of oil or the presence of oil to the competent national authority;

(d) instruct its maritime inspection vessels or aircraft and other appropriate services or officials to report without delay any observed event at sea or at a sea port or oil handling facility involving a discharge of oil or the presence of oil to the competent national authority or, as the case may be, to the nearest coastal State;

(e) request the pilots of civil aircraft to report without delay any observed event at sea involving a discharge of oil or the presence of oil to the nearest coastal State.

2. Reports made under this Article shall be required to conform with any applicable international requirements, and in particular shall be made in accordance with the requirements of the Organisation and taking into account the guidelines and general principles adopted by the International Maritime Organization.

3. In the event of receiving a report regarding a pollution incident, each Party shall promptly inform all other Parties whose interests are likely to be affected by such incident as well as the flag State of any vessel involved in it. Each Party shall also inform the Organisation and, directly or through the Organisation, the competent international organisations. Furthermore, it shall inform, as soon as feasible, such other Parties and organisations of any measures it has itself taken to minimise or reduce pollution or the threat thereof.

## **Article 6 Operational Measures**

Each Party shall, within its capabilities, take steps including those outlined below in responding to a pollution incident:

(a) make a preliminary assessment of the pollution incident, including the type and extent of existing or likely pollution incident effects;

(b) promptly communicate information concerning the situation to other Parties, any other State likely to be affected by the pollution incident and the Organisation, consistent with Article 5.3;

(c) promptly determine its ability to take effective measures to respond to the pollution incident and the assistance that might be required and to communicate any request for such assistance to the Party or Parties concerned or the Organisation in accordance with Article 7;

(d) consult, as appropriate, with other affected or concerned Parties or the Organisation in determining the necessary response to a pollution incident; and

(e) carry out the necessary measures to prevent, eliminate or control the effects of the pollution incident, including surveillance and monitoring of the situation.

## **Article 7 Mutual Assistance**

1. Each Party requiring assistance to deal with a pollution incident may request, either directly or through the Organisation, the assistance of the other Parties. The assistance sought may be in the nature of advisory services, technical support or the provision of equipment. The Party requesting assistance shall specify the type of assistance it requires. The Parties whose assistance is requested under this Article shall, within their capabilities, provide this assistance based on an agreement with the requesting Party or Parties and taking into account the technological means available to them. If the Parties responding jointly within the framework of this Article so request, the Organisation may co-ordinate the activities undertaken as a result.

2. Each Party shall facilitate the movement of technical personnel, equipment and material necessary for responding to a pollution incident, into, out of and through its territory.

## **Article 8 Reimbursement Of Costs Of Assistance**

Unless an agreement concerning the financial arrangements governing actions of Parties to deal with pollution incidents has been concluded on a bilateral or multilateral basis prior to the pollution incident, Parties shall apply the following principles in relation to the bearing and reimbursement of all costs involved in the response:

(a) If the action was taken by a Party on its own initiative, that Party shall bear the costs of its action;

(b) If the action was taken by one Party at the express request of another Party, the requesting Party shall reimburse to the assisting Party the cost of its actions;

(c) The requesting Party may cancel its request at any time, but in that case it shall bear the costs already incurred or committed by the assisting Party;

(d) Nothing in paragraphs (b) or (c) shall affect any agreement made between Parties that makes alternative arrangements for any individual case;

(e) Unless otherwise agreed, the costs of action taken by a Party at the request of another Party shall be fairly calculated according to the law and current practice of the assisting Party concerning the reimbursement of such costs;

(f) The Party requesting assistance and the assisting Party shall, where appropriate, co-operate in concluding any action in response to a compensation claim. To that end, they shall give due consideration to existing legal regimes. Where the action thus concluded does not permit full compensation for expenses incurred in the assistance operation, the Party requesting assistance may ask the assisting Party to waive reimbursement of the expenses exceeding the sums compensated or to reduce the costs which have been calculated in accordance with paragraph (e). It may also request a postponement of the reimbursement of such costs. In considering such a request, assisting Parties shall give due consideration to the needs of the developing countries; and

(g) The provisions of this Protocol shall not be interpreted as in any way prejudicing the rights of Parties to recover from third parties the costs of actions to deal with pollution or the threat of pollution under other applicable provisions and rules of national and international law. Special attention shall be paid to relevant International Maritime Organization liability and compensation agreements.

## **Article 9 Sub-Regional Arrangements**

1. The Parties should develop and maintain appropriate sub-regional arrangements, bilateral or multilateral, in particular to facilitate the steps provided for in Articles 6 and 7 and taking into account the general provisions of this Protocol.

2. The Parties to any arrangements shall notify the other Parties to this Protocol as well as the Organisation of the conclusion of such sub-regional arrangements and the provisions thereof.

## **Article 10 Institutional Arrangements**

The Parties designate the Organisation to carry out the following functions:

- (a) assisting Parties, upon request, in the communication of reports of pollution incidents in accordance with Article 5;
- (b) assisting Parties, upon request, in the organisation of a response action to a pollution incident, in accordance with Article 7;
- (c) assisting Parties, upon request, in the following areas:
  - (i) the preparation, periodic review, and updating of the contingency plans, referred to in paragraph 2 of Article 3, with a view, inter alia, to promoting the compatibility of the plans of the Parties; and
  - (ii) the identification of training courses and programmes;
- (d) assisting the Parties upon request, on a regional or sub-regional basis, in the following areas:
  - (i) the co-ordination of pollution incident response activities; and
  - (ii) the provision of a forum for discussions concerning pollution incident response and other related topics;
  - (iii) the provision of policy and technical advice including guidelines.
- (e) establishing and maintaining liaison with:
  - (i) the relevant regional and international organisations; and
  - (ii) relevant private organisations, including producers and transporters of substances which could give rise to a pollution incident in the Pacific Region and clean-up contractors and cooperatives;
- (f) maintaining an appropriate current inventory of available pollution incident response equipment;
- (g) disseminating information related to the prevention and control of pollution incidents and the removal of pollutants resulting there from;
- (h) identifying or maintaining pollution incident response communications systems;
  - (i) encouraging research by the Parties, as well as by relevant international and private organisations, on the environmental effects of pollution incidents, the environmental effects of pollution incident control materials and other matters related to pollution incidents;
- (j) assisting Parties in the exchange of information pursuant to Article 4; and
- (k) preparing reports and carrying out other duties assigned to it by the Parties.

## **Article 11 Meetings Of The Parties**

1. Ordinary meetings of the Parties to this Protocol shall be held in conjunction with ordinary meetings of the Parties to the Convention, held pursuant to Article 22 of the Convention. The

Parties to this Protocol may also hold extraordinary meetings as provided for in Article 22 of the Convention.

2. It shall be the function of the meetings of the Parties:

(a) to review the operation of this Protocol and to consider special technical arrangements and other measures to improve its effectiveness;

(b) to consider any measures to improve cooperation under this Protocol including, in accordance with Article 24 of the Convention, amendments to this Protocol.

### **Article 12 Relationship Between This Protocol And The Convention**

1. The provisions of the Convention relating to any Protocol shall apply with respect to the present Protocol.

2. The rules of procedure and the financial rules adopted pursuant to Article 22 of the Convention shall apply with respect to this Protocol, unless the Parties to this Protocol agree otherwise.

**IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Protocol.**

Done at Noumea, New Caledonia on the seventh day of September two thousand and six, in a single copy in the English and French languages, the two texts being equally authentic.

**ISBN 978-982-04-0511-0**



**9 789820 405110**