



IMO
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**LEGISLATION DRAFTING PROJECT TO INCORPORATE
THE INTERNATIONAL CONVENTION ON OIL
POLLUTION PREPAREDNESS, RESPONSE AND CO-
OPERATION (OPRC CONVENTION) AND THE
PROTOCOL ON PREPAREDNESS, RESPONSE AND CO-
OPERATION TO POLLUTION INCIDENTS BY
HAZARDOUS AND NOXIOUS SUBSTANCES (OPRC-HNS
2000) INTO THE LAWS OF THE DOMINICAN REPUBLIC**

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I. Explanatory Note

A. The emergence of the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC Convention).

“Close to 09.00 hours on the morning of Saturday 18 March 1967 the 970 foot long tanker ‘Torrey Canyon’, bound from the Persian Gulf and carrying within her eighteen storage tanks some 117,000 tons of Kuwait crude oil, ran aground on the Pollard Rock of the Seven Stones 15 miles west of Land’s End and 7 miles north-east of the Isles of Scilly [...] Six of her tanks were reported as having been torn open by the impact and others were thought to be less severely damaged. Engines had failed to move the ship and she was to remain on the reef in progressive stages of disintegration until six weeks later, a submerged and broken wreck, she was declared to contain no more oil.”¹

The Torrey Canyon oil spill turned out to be the “biggest oil pollution incident ever recorded prior to that time.”² Despite efforts by scientists, managers, and volunteers, one hundred and forty miles of coastline were affected, including about forty holiday beaches.³ Thousands of seabirds and immense numbers of fish were killed. In addition, it threatened the livelihoods of many local people in the tourist season.⁴

The pollution caused by oil spillage at sea alters the fragile environment of the ocean. Depending on the magnitude of the event, many years after the disaster has occurred, important ‘tangible’ effects⁵ are apparent in the affected zones. It should be added that some impacts to the general conditions of fragile marine environments will only be appreciated in a much longer term.

¹ Smith, J.E.; ‘Torrey Canyon’, Pollution and Marine Life: A report by the Plymouth Laboratory of the Marine Biological Association of the United Kingdom, Cambridge Press, Cambridge, 1968, p. 1.

² Mensah, Thomas; “Prevention of Marine Pollution: Contribution of IMO”, in Basedow, Jürgen and Magnus, Ulrich (Eds); Pollution of the Sea- Prevention and Compensation, Springer, Heidelberg, 2007, p. 41, at 41.

³ Sheail, John; ‘Torrey Canyon’: The Political Dimension, Journal of Contemporary History, Vol. 42, No. 3, pp. 485, at 487.

⁴ P. 10 shipping and the environment

⁵ Forty two years after the spill, in 2009, the water level rose and the change in pressure released yet more crude from the bottom. In "Torrey Canyon Seabed Returns to Normal after Oil Spill" BBC, n.p., 07 May 2011, Web <http://www.bbc.com/news/science-environment-13280507>, accessed 16 February 2015.

After every oil spill incident, various legal questions are raised. In the case of the Torrey Canyon spill “the legal right of a state to intervene in response to an incident threatening to cause major pollution affecting its coast”⁶ was one of such questions raised, as well as the deficiency of the international legal framework to deal with emergency, preparedness and response to a major oil pollution disaster.

Eleven years later, in March 1978, the world witnessed another high-profile major spillage when the VLCC Amoco Cadiz broke apart and deluged over one hundred and eighty miles of Brittany’s coastline with the two hundred twenty thousand tons of crude oil that it was carrying from the Persian Gulf to Rotterdam.⁷

As a result from the oil pollution itself and the posterior clean-up process –which lasted over six months⁸–, twenty thousand birds and millions of mollusks, sea urchins, and clams died, agricultural fields were contaminated by oil residues that subsequently entered into the human food chain, and the people that helped in the clean-up process suffered heavy doses of dangerous toxic gases.⁹

The American tanker Exxon Valdez was another devastating oil spill in March 1989. The tanker ran aground when it hit Bligh Reef, Prince William Sound, Alaska, releasing more than ten million gallons¹⁰ of crude oil into the sea.

The effects of the Exxon Valdez spill disaster were particularly devastating to the habitat of wildlife, to the natives who were unable to fish to subsist and to the fishing industry in general.¹¹ This disaster reiterated the insufficiency of both the preparedness and the clean-up response of the international community when dealing with major pollution caused by oil spills.

In the light of these events, the need to work on a Convention which would provide the legal framework to facilitate co-operation within the international society as well

⁶ De la Rue, Colin and Anderson, Charles; *Shipping and the Environment*, 2nd Edition, Informa, London, 2009, p. 11.

⁷ Ibid, p. 27.

⁸ Ibid, p. 27.

⁹ Gillis, Carli; "Amoco Cadiz: A Brief Study" *Counterspill*, n.p., 10 April 2011, Web <http://www.counterspill.org/article#/article/amoco-cadiz-brief-history>, accessed 16 February 2015.

¹⁰ De La Rue, (n 6) p. 48.

¹¹ De La Rue, (n 6) p. 48.

as to help improve the preparedness and clean-up response capabilities of the States became evident.

The matter was brought to the International Maritime Organization (IMO), and it was dealt with in one of its Conferences, in 1990. The International Convention on Oil Pollution Preparedness, Response and Co-operation 1990¹² (OPRC Convention) was adopted as result of the Conference by the ninety States participating in it.

B. The OPRC 1990 Convention and its OPRC-HNS Protocol.

There is a constant growth in the production of petroleum and its movement, and this has an important effect on the pollution of the ocean.¹³ The OPRC Convention is a global attempt to clearly define the obligations in the case of an oil spill incident in the marine environment by establishing systems for preparedness and response on both a regional and global level.

The OPRC Convention deals solely with pollution caused by oil spillage incidents. For this reason, in March 2000 the Protocol on Preparedness, Response and Co-ordination to Pollution incidents by Hazardous and Noxious Substances (OPRC-HNS)¹⁴ was adopted in order to extend the scope of application of the OPRC Convention to the pollution incidents caused by Hazardous and Noxious Substances.

The importance of the Protocol lays on the fact that experience has shown that although oil is a devastating polluter of the seas, other hazardous and noxious substances can have equal or even more harmful effect. As in the Torrey Canyon incident, in which “Oil [...] was recognized from the outset of the [Torrey Canyon]

¹² 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC Convention), London, 30 November 1990, 104 Parties as of 12 February 2015, International Legal Materials, Vol. 30, No. 3 (MAY 1991), pp. 733-761.

¹³ Hepple, Peter; Pag. 5, Water pollution by oil; Proceedings of a Seminar Held at Aviemore, Inverness-shire, Scotland, Sponsored by the Institute of Water Pollution Control and the Institute of Petroleum, with the Assistance of the European Office of the World Health Organization, Institute of Petroleum, London, 1971, p 5.

¹⁴ 2000 Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances (OPRC-HNS 2000), 14 March 2000, 34 Parties as of 12 February 2015, (2003) ATNIF 9.

operations to be a pollutant mainly destructive of the amenities of shores and beaches; detergents, on the other hand, were known to be destructive of life.”¹⁵

In addition, it has to be taken into account the fact that “50% of package goods and bulk cargoes currently transported by sea can be regarded as dangerous, hazardous or harmful to the environment [...]”¹⁶ Consequently it could be said that without the OPRC-HNS Protocol, a high percent of possible dangerous spills would be ignored.

It has been argued that the occurrence of major oil spills is minimal. However, as it has been mentioned above, whenever a major oil disaster occurs, it destroys fragile environments, economies and, in general, the life of the people living on the involved areas.

The OPRC Convention and the OPRC-HNS Protocol together, provide a holistic legal framework to combat spillages (of oil or any other type of hazardous and noxious substance) in order to minimize the damages and contain the situation in the shortest time and in the most effective way possible.

It is often said that “the degree of a state’s preparedness for an oil pollution incident will clearly affect the efficiency and success of the clean-up operation.”¹⁷

Overview of the Provisions

The provisions of the Convention and the Protocol apply to ships flying the flag of States Parties to the conventions and to offshore units under the jurisdiction of such States,¹⁸ with the exception of warships, naval auxiliary or other ship owned or operated by a State used only on government non-commercial services.¹⁹

The wording of both the OPRC Convention and the OPRC-HNS Protocol is almost identical with the exception that while the former deals exclusively with oil pollution,

¹⁵ Smith (n 1) p. 176.

¹⁶ Güner, Meltem; Transport of Hazardous and Noxious Goods by Sea- The IMDG Code, in Basedow, Jürgen and Magnus, Ulrich (Eds); Pollution of the Sea- Prevention and Compensation, Springer, Heidelberg, 2007, p. 95.

¹⁷ Abecassis, D.W.; Oil Pollution from Ships. International, United Kingdom and United States Law and Practice, 2nd Edition, Jarashow, London, 1985, p.126.

¹⁸ Art. 3.1 (a), Art. 3.2 OPRC and Art. 3.1 OPRC-HNS.

¹⁹ Art. 1.3 OPRC and OPRC HNS.

the latter limits its application to cases of pollution by hazardous and noxious substances.

Hence the relevant provisions of both conventions will be analyzed jointly in this part.

In accordance with article 1, the parties undertake, individually or jointly, to take appropriate measures to prepare for and respond to pollution incidents by oil²⁰ and by hazardous and noxious substance²¹.

Article 2 includes relevant definitions for the purposes of the Agreements such as oil²², hazardous and noxious substances²³, oil pollution incident²⁴, pollution incident by hazardous and noxious substance,²⁵ sea ports and oil²⁶ or hazardous and noxious substances handling facilities.²⁷

Pursuant to article 3 of OPRC Convention each Party shall require that its sea ports and oil or hazardous and noxious substances facilities, ships, and offshore units have on board oil and hazardous and noxious pollution emergency plans as required by and in accordance with the provisions adopted by the IMO,²⁸ in the case of ships, or in accordance with the procedures established by the competent national authority, in the case of facilities, ports and offshore units. Regarding ships, the ‘provisions adopted by the IMO’ mean the regulation 26 of annex I of the International Convention for the Prevention of Pollution from ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78).

Article 4 of the OPRC Convention and article 3 of the OPRC-HNS Protocol establish the procedure for reporting without delay a discharge, probable discharge or presence of oil or hazardous and noxious substances from their ships, offshore units, seaports and oil handling facilities. The responsibility to promptly report is on the masters of

²⁰ Art. 1 OPRC.

²¹ Art. 1 OPRC-HNS.

²² Art 2.1 OPRC.

²³ Art. 2.2 OPRC-HNS.

²⁴ Art. 2.2 OPRC.

²⁵ Art. 2.2 OPRC-HNS.

²⁶ Art. 2.5 OPRC.

²⁷ Art. 2.3 OPRC-HNS.

²⁸ Art. 3 OPRC and OPRC-HNS.

the ships, the persons having charge of ports and facilities, inspection vessels officials and pilots of civil aircraft. These reports have to be made in accordance with the requirements developed by the IMO (to be found in article 8 and Protocol I of MARPOL 73/78).

When receiving the above-mentioned reports, the Parties are required to assess the event in order to determine the type of incident in order to subsequently inform, without delay, all States concerned and the IMO with all the relevant information, including the actions that have been taken and those actions that they intend to take.²⁹

In accordance with article 6 of the OPRC Convention and article 4 of the OPRC-HNS Protocol, the Parties shall establish a national system for responding promptly and effectively to oil or hazardous and noxious substances pollution incidents. This system will include as minimum requirements: 1) national contingency plan for preparedness and response, 2) the designation of a national authority in charge of the preparedness and response, 3) a national contact point and 4) an authority entitled to act on behalf of the State to request assistance or to decide to render assistance. Furthermore, each State has to establish a minimum level of oil or hazardous and noxious substances combating equipment, a programme of exercises for oil and hazardous and noxious substances response organizations and personnel, a detailed plan and communication of capabilities for responding to an incident of this type, a mechanism to co-ordinate the response to such event.³⁰

Article 7 of both OPRC Convention and OPRC-HNS Protocol, states one of the main objectives of both instruments; that is the principle of international cooperation in pollution response. In this respect, the Parties agree to co-operate and provide assistance in the form of advisory services, technical support and equipment for the purpose of responding to a pollution incident. The costs for the above-mentioned assistance will be financed based on the provisions of the Annex to the instruments, which establishes the system for reimbursement of costs of assistance between the Party requesting assistance and the assisting Party.

²⁹ Art. 5 OPRC, Art. 3 OPRC-HNS.

³⁰ Art. 4 OPRC-HNS.

The Parties further agree to cooperate in the promotion and exchange of results of research and development programmes relating to the enhancement of technologies and techniques of oil or hazardous and noxious substances pollution preparedness and response.³¹

The importance of co-operation and assistance in preparedness and response to oil or hazardous and noxious substances spills is underlined in article 10 of the OPRC Convention and article 8 of its Protocol, which encourage the conclusion of bilateral or multilateral agreements on this matter and require that such agreements are communicated to the IMO for it to make them available to the Parties.

Under both instruments the parties undertake to provide support for those States which request technical assistance. This technical cooperation can be provided directly by the States or through the IMO and other international bodies.³²

Also under both, the OPRC Convention and the OPRC-HNS Protocol, the IMO is given the task of performing fundamental functions and activities with the purpose of strengthening the ability of States to prepare for and combat pollution incidents caused by oil or hazardous and noxious substances. Some of these functions are to promote training in the field of pollution preparedness and response, to facilitate co-operation in research and development, and to facilitate the provision of technical assistance to States establishing national or regional capabilities.³³

C. The importance for the Dominican Republic to accedes to the OPRC 1990 Convention and its HNS Protocol.

All the oil and oil products used in the Dominican Republic are imported from different parts of the world. It is therefore estimated that approximately 50 millions of barrels of oil and oil products are carried to the country by sea every year,³⁴ which means that there is an constant risk of oil or hazardous and noxious substances spill that cannot be ignored.

³¹ Art. 8 OPRC and Art. 6 OPRC-HNS.

³² Art. 9 OPRC and Art. 7 OPRC-HNS.

³³ Art. 12 OPRC and Art. 10 OPRC-HNS.

³⁴ Dominican Republic, Minister of Industry and Commerce, Importación de Petróleos y Derivados 2012, n.p., Web <http://www.seic.gov.do/media/12784/Importacion%20de%20petroleo%20y%20derivados%202012-1.pdf>, accessed 16 February 2015.

The Dominican Republic possesses unique marine ecosystems along its approximately one thousand six hundred and sixty eight kilometers of coastline of which about four hundred and ten are beaches.

The coastal marine biodiversity of the country is formed by four hundred fifty plant species and one thousand one hundred fifty nine animal species. Approximately ten percent of the greater animal species are corals, which are fundamental to the development of highly productive coastal ecosystems³⁵ and healthy beaches. If the corals are destroyed, one of the devastating consequences will be the rapid deterioration of the beaches.

The Dominican Republic recognizes the importance of its marine environment and has declared thirty three Marine Protected Areas (MPAs) covering an approximate forty six thousand six hundred sixty nine square kilometers of coastal marine area. One of these MPAs is a ‘Sanctuary for the Marine Mammals’, which is a zone for breeding and calving of the humpback whales, and serves not only as a tourist venue but also as a laboratory for research and conservation of the specie. It is to protect these sensitive areas that the OPRC 1990 Convention and OPRC-HNS Protocol are needed.

For years, despite the privileged geographical location of the Dominican Republic, the productive activity, in relation to the sea, that received the biggest attention, from both public and private sector, was the tourism³⁶. Although many reasons could be stressed, the most important one is that the State focused its effort in the development of activities which traditionally were seen as main productive activities, such as agriculture and tourism.

Only in recent years, did the State start to consider the maritime field as a potential instrument for sustainable economic development, and it has therefore been working

³⁵ Shamir, Omar; Introduction: The Dominican Republic, CBD, n.p., Web <https://www.cbd.int/doc/meetings/mar/rwebsa-wcar-01/other/rwebsa-wcar-01-dominica-02-en.pdf>, accessed 16 February 2015.

³⁶ It should be noted that the Dominican Republic has a small-scale local fishing industry, which consists in small fishing communities in some coastal cities.

on the formulation of the national maritime strategies, mainly promoting the shipping industry, fisheries, the conservation of the marine environment and an efficient oceanic administration in general.

In the light of the interest of the State in turning maritime activities into one of the pillars of the national economy, together with the very singular ecosystems around the country, it becomes evident the need to consider acceding to and implementing a legal framework that not only helps to prevent the pollution of its marine environment in which these activities take place but also one that helps in placing the actors of the sector (both government and industry) in a position to be able to quickly and effectively respond to the incidents when they occur.

The concern of the State for the protection of the fragile environment that constitutes the archipelagic features and its population from accidental pollution, goes to the extent of stating in the Act 66-07 of 22 May 2007 that “[t]he Dominican Republic does not regard as innocent passage through its archipelagic and territorial waters, or its superjacent airspace, the movement of vessels and aircraft containing cargo consisting of radioactive substances or highly toxic chemicals which may [...] cause serious harm to human health or the environment.”³⁷ Although this provision may be considered as too stringent, it is useful to illustrate the concern of the country when it comes to protecting its marine environment from hazardous substances.

In addition, the concern is also exemplified in the Act No. 64-00 which states that in order to prevent pollution of the marine and coastal environment by oil or other hazardous and noxious substances, the dumping of waste produced by prospecting and exploitation of oil wells located in places that may affect the coastal zone is prohibited, as well the dumping of industrial waste which has in its content oil or other hazardous and noxious substances.³⁸

³⁷ Article 12 of the Act 66-07 declaring the Dominican Republic an Archipelagic State, Official Gazette No. 10419 of 22 May 2007.

³⁸ Article 152, Act 64-00 creating the Secretary of State for the Environment and National Resources, Official Gazette No. 10056 of 24 August 2000.

Nonetheless, there are no regulations concerning the preparedness for and response to accidents involving oil or other hazardous and noxious substances, and as it has been mentioned above, pollution incidents occur. In other words, accidental pollution caused by oil or other dangerous substances are hazards which must be accepted and dealt with as the occasion arises and in the best possible way.³⁹ In these situations the ‘best possible way’ includes an identified plan on how to respond to these incidents.

D. Process of Incorporation of the International Conventions in the Dominican Republic.

The Constitution of the Dominican Republic⁴⁰ states in article 128.1(d) that it is the prerogative of the President to sign, ratify or accede to treaties or international conventions and submit them first to the Constitutional tribunal, and thereafter to the National Congress for its approval.

Under Article 185.2 of the Constitution, the Constitutional Tribunal is the Competent to exercise preventive control of constitutionality of international treaties prior to their submission for approval to the National Congress.

Article 93.1 (l) gives powers to the National Congress to approve international treaties and conventions signed by the President. Without this approval from the Congress the signed conventions and treaties would not be binding on the Republic.

Following the approval of the National Congress, the President is the competent authority to submit the instrument of ratification or accession of an international convention to the relevant depositary.

The Dominican Republic follows the monist system of application of international law in its national system. In this sense, once a convention is signed by the President, approved by the National Congress and published in an official manner—generally in the official gazette—, it is binding on the domestic sphere without the need of an additional or separate law.

³⁹ Smith (n 1) p. 183.

⁴⁰ Constitution of the Dominican Republic, proclaimed on January 26. Published in Official Gazette No. 10561 of January 26, 2010.

With the exception of treaties related to human rights, the Constitution does not state the position of international treaties in relation to the constitution itself. The Supreme Court has nonetheless held on many occasions that the Constitution of the Republic has primacy over international conventions and treaties, which in turn have a superior ranking over municipal law.⁴¹

E. How to fully implement the OPRC Convention and OPRC-HNS in the Dominican Republic.

For the mere incorporation of these instruments, after the decision of the Constitutional Tribunal on the constitutionality of these instruments, the National Congress will have to enact a resolution approving the accession to the Convention and the Protocol (which includes the texts of the Conventions in-extenso) and thenceforth the President will submit the instrument of accession to the Secretary General of the IMO.

However, some international conventions are not self-executives and need additional enactments of laws or regulations in order to be fully implemented. In the case of OPRC 1990 and OPRC-HNS, many of their obligations need to be further developed in an additional instrument so that they can be fully implemented (e.g. the instruments require the adoption of a national contingency plan and, although the minimum the requirements are stated in the provisions, the integral plan has to be determined by each Party).

For this purpose, a presidential decree is needed to designate a commission, which will be empowered to design a proposal of an Act to establish, in accordance with the provisions of the OPRC Convention and the OPRC-HNS Protocol, a regulatory framework for the applicability of the said Convention and Protocol.

⁴¹ Judgment of the Supreme Court of Justice of the Dominican Republic SCJ, 9 Feb 2005, B.J. 1131 and SCJ 21 Jul 2010 B.J.1196.

II. Incorporation and Implementation of the OPRC 1990 Convention and the OPRC-HNS Protocol.

A. Resolution of the Congress approving the Conventions.

Res. No. ___ approving the accession to the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC 1990), adopted by the Member States of the International Maritime Organization (IMO), in London, the United Kingdom, on the 30th of November 1990, and its Protocol on Preparedness, Response and Co-ordination to Pollution incidents by Hazardous and Noxious Substances (OPRC-HNS), adopted by the Member States of the International Maritime Authority (IMO), in London, the United Kingdom, on the 15th of March 2000.

**THE NATIONAL CONGRESS
On behalf of the Republic**

Res. No. ___

Whereas, the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC 1990) acknowledges the serious threat posed to the marine environment by oil pollution incidents involving ships, offshore units, sea ports and oil handling facilities;

Whereas, the OPRC 1990 endeavors to emphasize the importance of effective preparation for combating oil pollution incidents;

Whereas, together with the OPRC Convention, the Protocol on Preparedness, Response and Co-ordination to Pollution incidents by Hazardous and Noxious Substances (OPRC-HNS) provide a framework to facilitate international co-operation in establishing systems for preparedness and response at the national, regional and

global levels; in improving scientific and technological understanding and knowledge in this field; in promoting technical co-operation in response techniques; and, in developing specialized training programmes;

Whereas, the Dominican Republic recognizes that, in the event of a pollution incident by oil or hazardous and noxious substances, national, regional and international action is of utmost importance in order to minimize the damage that may result;

Whereas, pursuant to Article 93 of the Constitution of the Republic, said international conventions in order to be effective in the Dominican Republic, require approval by resolution of the Congress of the Dominican Republic;

NOW THEREFORE BE IT RESOLVED:

FIRST: TO APPROVE the accession of the Dominican Republic to the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC 1990) and its Protocol on Preparedness, Response and Co-ordination to Pollution incidents by Hazardous and Noxious Substances (OPRC-HNS), which copied in extenso are as follows:

International Convention on Oil Pollution Preparedness, Response and Co-Operation, 1990

(London, 30 November 1990)

Text adopted by the Conference

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 co-ordinated 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 co-ordinated 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.⁹

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 co-operation 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 co-operation

(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 the 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. Signature, 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, 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.

**PROTOCOL ON PREPAREDNESS, RESPONSE AND
CO-OPERATION TO POLLUTION INCIDENTS BY
HAZARDOUS AND NOXIOUS SUBSTANCES, 2000**

(London, 14 March 2000)

Text adopted by the Conference

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* means 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 coordinated 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 co-operation 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 endeavor 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, 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.

* Signatures omitted.

Annex

Reimbursement of costs of assistance

(a) 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 bear the costs of their respective actions in dealing with pollution in accordance with subparagraph (i) of 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 costs 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.

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.

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.

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.

SECOND: That the Executive shall elaborate the relevant regulations to enforce the Conventions approved by the present Resolution.

THIRD: That certified copy of this resolution be transmitted to the President of the Dominican Republic.

PASSED in the **Assembly Hall of the Chamber of Deputies**, Palace of the National Congress, in Santo Domingo de Guzmán, National District, capital of the Dominican Republic, on the ____ () day of ____ of the year two thousand and fifteen; one hundred and seventy one years of the National Independence, and one hundred and fifty two years of the Restoration of the Republic.

President

Secretary

Secretary

PASSED in the **Assembly Hall of the Senate**, Palace of the National Congress, in Santo Domingo de Guzmán, National District, capital of the Dominican Republic, on the ____ () day of ____ of the year two thousand and fifteen; one hundred and seventy one years of the National Independence, and one hundred and fifty two years of the Restoration of the Republic.

President

Secretary

Secretary

(NAME OF THE PRESIDENT)

President of the Dominican Republic

Acting by virtue of the authority vested in me by Article 128 of the Constitution of the Republic.

PROMULGATE this resolution, and instruct that it be published in the Official Gazette, so that it may come to the knowledge of all, and obeyed by all.

ISSUED in the city of Santo Domingo de Guzmán, National District, Capital of the Dominican Republic, this _____ () day of _____ of the year two thousand and fifteen; one hundred and seventy one years of the National Independence, and one hundred and fifty two years of the Restoration of the Republic.

(Signature)

(NAME OF THE PRESIDENT)

B. Instrument of Accession

(Name of the President)

President of The Dominican Republic

Accession Instrument

Whereas: The International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC 1990) was adopted by the Member States of the International Maritime Organization (IMO), in London, the United Kingdom, on the 30th of November 1990, and the Protocol on Preparedness, Response and Co-ordination to Pollution incidents by Hazardous and Noxious Substances (OPRC-HNS) was adopted by the Member States of the International Maritime Authority (IMO), in London, the United Kingdom, on the 15th of March 2000.

Whereas: The National Congress approved the text of the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC 1990), and the Protocol on Preparedness, Response and Co-ordination to Pollution incidents by Hazardous and Noxious Substances (OPRC-HNS), by Resolution No. _____, passed in the Assembly Hall of the Chamber of Deputies on the _____, in the Assembly Hall of the Senate on the _____ and enacted by the Executive Power on the _____.

Whereas: I do not object the accession of the Dominican Republic to the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC 1990) and to the Protocol on Preparedness, Response and Co-ordination to Pollution incidents by Hazardous and Noxious Substances (OPRC-HNS).

I hereby issue and sign the present instrument of accession in Santo Domingo de Guzmán, National District, Capital of the Dominican Republic, sealed with the Great Seal of the Nation, this ----- (--) day of ----- of the year two thousand and fifteen; one hundred and seventy one years of the National Independence, and one hundred and fifty two years of the Restoration of the Republic.

(Signature of the President of the Republic)

C. Presidential Decree creating the Commission on the National System for Preparedness and Response.

Decree No. _____

(Name of the President)

PRESIDENT OF THE DOMINICAN REPUBLIC

NUMBER _____

Whereas, on the _____ of _____ of the year two thousand fifteen were promulgated the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC Convention), adopted by the Member States of the International Maritime Organization (IMO), in London, the United Kingdom, on the 30th of November 1990, and its Protocol on Preparedness, Response and Co-ordination to Pollution incidents by Hazardous and Noxious Substances (OPRC-HNS), adopted by the Member States of the International Maritime Authority (IMO), in London, the United Kingdom, on the 15th of March 2000.

Whereas, when the Dominican Republic agreed to become party to the OPRC 1990 Convention and the OPRC-HNS Protocol, it also agreed to make them part of its municipal law and to implement them as such;

Whereas, in order to fully implement the OPRC 1990 Convention and the OPRC-HNS Protocol further regulations need to be enacted;

Whereas, a National System for responding promptly and effectively to oil or hazardous and noxious substances pollution incidents is required;

Whereas by virtue of the powers in me vested by article 128 of the Constitution of the Republic,

THEREFORE I DECREE

Article 1. There shall be established the National Commission on the National System for preparedness and response.

Article 2. The membership of the Commission shall be as follows:

- a) The President of the Dominican Maritime Authority, who will hold the presidency of the Commission;
- b) The Minister of Environment;
- c) The Minister of Defense;
- d) The Minister of Industry and Commerce;
- e) The Director of the Dominican Port Authority;
- f) The Minister of Transport;
- g) The Minister of Tourism; and
- h) The Minister of Energy and Mine;

Additional paragraph. The members of the Commission may designate qualified and competent representatives to act in their behalf.

Article 2. The Commission shall be responsible for the creation of the national system for responding promptly and effectively to oil or hazardous and noxious substances pollution incidents.

Article 3. The Commission shall include in the proposal of national system for responding promptly and effectively to oil or hazardous and noxious substances pollution incidents the following minimum requirements:

- a) The national authority or authorities which will have the responsibility for oil or hazardous and noxious substances pollution preparedness and response;
- b) The operational contact point or points which will be responsible for the management of the oil or hazardous and noxious substances pollution reporting procedures;
- c) The authority which will be entitled on behalf of the State to request regional or international assistance or to decide to render assistance when requested from other State;

- d) A national contingency plan for preparedness and response which includes the organizational relationship of the various bodies involved, whether public or private, taking into consideration the guidelines developed by the International Maritime Organization to this end;
- e) The minimum level of pre-positioned oil or hazardous and noxious substances spill combating equipment, commensurated with the risk involved, and programmes for its use;
- f) A programme of exercises for oil or hazardous and noxious substances response training of the relevant personnel;
- g) A detailed plan and communication capabilities for responding to an oil hazardous and noxious substances pollution incident; and
- h) A mechanism to coordinate the response to an oil or hazardous and noxious substances pollution incident with the capabilities to mobilize the necessary resources.

Additional paragraph. The Commission shall present the proposed document to the President of the Republic within a period of seven (7) months after the publication of this Decree.

Article 4. This Decree shall be published in the Official Gazette of the Dominican Republic.

Issued in the city of Santo Domingo de Guzmán, National District, Capital of the Dominican Republic, this _____ (____) day of _____ of the year two thousand and fifteen; one hundred and seventy one years of the National Independence, and one hundred and fifty two years of the Restoration of the Republic.

(NAME OF THE PRESIDENT)

D. Draft Act on Oil and Hazardous and Noxious Substances Pollution Preparedness, Response and Cooperation.

Act No. ___ on Oil and Hazardous and Noxious Substances Pollution Preparedness, Response and Cooperation.

THE NATIONAL CONGRESS

On behalf of the Republic

Whereas, on the _____ of _____ of the year two thousand fifteen were promulgated the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC 1990), adopted by the Member States of the International Maritime Organization (IMO), in London, United Kingdom, on the 30th of November 1990, and its Protocol on Preparedness, Response and Co-ordination to Pollution incidents by Hazardous and Noxious Substances (OPRC-HNS), adopted by the Member States of the International Maritime Authority (IMO), in London, United Kingdom, on the 15th of March 2000.

Whereas, when the Dominican Republic agreed to become party to the OPRC 1990 Convention and the OPRC-HNS Protocol, it also agreed to make it part of its municipal law and to implement it as such;

Whereas, a National System for responding promptly and effectively to oil or hazardous and noxious substances pollution incidents is required;

Having seen Article 93 (1) of the Constitution of the Dominican Republic;

Having seen the Decree No. _____ creating the Commission on the National System for Preparedness and Response;

HAS ENACTED THE FOLLOWING ACT

Article 1. Objectives

The objective of this Act is:

- 1) To establish, in accordance with the provisions of the OPRC Convention and the OPRC-HNS Protocol, a regulatory framework for the applicability of the said Convention and Protocol.
- 2) To make provisions with respect to the applicability of the Contingency Plan and for the requirement to have in place marine pollution response emergency plans for marine terminals, marine facilities, offshore installations and ports.

Article 2. Definitions

In this Act, unless the context requires otherwise:

“the National Competent Authority” means the competent Authority designated in Article 4.

“the Authority” means the Dominican Port Authority.

“Hazardous and noxious substances” (hereinafter referred to as “HNS”) 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.

“National Contingency Plan” means the emergency plan as prepared and amended by the National Competent Authority, which sets out the response to pollution incidents with a view to preventing the pollution or minimizing its effect.

“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.

“Oil or HNS pollution incident” (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 of oil or discharge or release or emission of HNS 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.

“Oil” means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products.

“OPRC Convention” means the International Convention on Oil Pollution, preparedness and Response and Cooperation signed in London on the 30th of November 1990.

“OPRC-HNS Protocol” means the Protocol of 200 to the International Convention on Oil Pollution Preparedness, Response and Cooperation relating to Pollution Incidents by Hazardous and Noxious Substances, 1990 signed in London on the 15th of March 2000.

“Organization” means the International Maritime Organization.

“Sea ports and oil or HNS 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.

“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.

Article 3. Scope of application

1) This Act shall apply to:

- a) All Dominican ships wherever they are;
- b) All foreign ships in Dominican waters;
- c) All offshore units within Dominican jurisdiction;
- d) All sea ports and oil or HNS handling facilities.

2) This Act shall not apply to:

- a) Ships belonging to or operated by a State and being engaged in public non-commercial service, which shall as far as seems reasonable and practicable, comply with provisions of the present Act when this does not hinder or impede the operation or operational ability of the ship; and
- b) Any warship, naval auxiliary or other ship owned or operated by the Government of non-commercial service

Article 4. National Competent Authority

The National Competent Authority responsible to implement, maintain, update and enforce the Contingency Plan shall be the Dominican Maritime Authority.

Article 5. Functions of the Competent Authority

The Competent Authority shall have the power to:

- 1) Advise, liaise and consult with shipowners, masters of ship operators, marine terminals, marine facilities and offshore installation operators in the development, implementation, maintenance and updating of their pollution emergency plans;
- 2) Approve the pollution emergency plans of ships, marine terminals, marine facilities and offshore installations;
- 3) Monitor marine terminals, marine facilities and offshore installations in the effective development, implementation, update and maintenance of their pollution emergency plans;

- 4) Monitor marine terminals, marine facilities and offshore installations and coordinate with them the organization of pollution response and emergency training exercise and drills;
- 5) Organize periodical national pollution response and emergency training exercises and drills;
- 6) Approve and coordinate training of the marine terminals, marine facilities and offshore installations personnel in pollution response;
- 7) Make sure that the plans of the marine terminals, marine facilities and offshore installations are consistent with and part of the National Contingency Plan; and
- 8) Publish additional plans, from time to time, that compliment with and give better effect to the National Contingency Plan.

Article 6. Obligations of the Authority

- 1) The Authority shall be responsible for preparing pollution emergency plans for the ports and harbors under its jurisdiction, administration, management and control.
- 2) The pollution emergency plans shall be reviewed every five years.
- 3) Where any major changes occur which affect or could affect the validity of effectiveness of the pollution emergency plans to a material extent, the port or harbour authorities in question shall submit a new plan, or amendments to the existing plan, within three months of such change becoming known.
- 4) A port or harbor operator shall:
 - a) Organize periodical exercise and drills in pollution incident preparedness, which exercise and drills shall take place at least once a year. A yearly schedule with the date and time of such exercise and drills shall be given to the Competent Authority by not later than the 31st January of every calendar year.
 - b) Participate, when requested to do so by the Competent Authority, at least once a year in the national pollution response and emergency training exercises and drills organized periodically by the Competent Authority.

Article 7. Obligations of ships and terminals

- 1) There shall be an emergency pollution plan for any ship entitled to fly the flag of Dominican Republic, and for any marine terminal, marine facility and offshore installation within its jurisdiction.

There are may be joint plants between the Authority and operator of marine terminals and marine facilities in the port areas; and between offshore installations and facilities which are pipelines associated with that installation

- 2) Any shipowner or ship operator, and any marine terminal, marine facility and offshore installation operator shall:
 - a) Develop, implement and maintain a pollution emergency plan;
 - b) Update their pollution emergency plan;
 - c) Appoint and keep in place a person, and inform the Competent Authority of such appointment and any changes thereto, responsible for the development, implementation, maintenance and updating of their pollution emergency plan and liaison with the Competent Authority regarding such:
 - i) Provided that such plans shall be prepared and submitted to the Competent Authority within twelve months from the coming into force this Act;
 - ii) Provided further that when a ship becomes entitled to fly the flag of the Dominican Republic, when it was not so previously entitled, the shipowner, master or ship operator of the respective ship shall prepare and submit its pollution emergency plan to eh Competent Authority no later than one month from the date of registration.
 - iii) Provided further that where, after the coming into force of this Act, a marine terminal, marine facility or offshore installation comes into being, such plans shall be prepared and submitted to the Competent Authority at least three months before activities are commenced.
- 3) A pollution emergency plan or amendments thereto shall be approved by the Competent Authority before effect may be given to that plan or amendments thereto.
- 4) A pollution emergency plan shall incorporate any guidance issued by the Competent Authority.
- 5) The pollutions emergency plans shall be reviewed every five years.
- 6) Where any major changes occur which affect or could affect the validity or effectiveness of the pollution emergency plan to a material extent, the shipowner,

master or ship operator, marine terminal, marine facility or offshore installation operator in question shall submit a new plan, or amendments to the existing plan, within three months of such change becoming known.

- 7) Where the Competent Authority considers that any pollution emergency plan or amendments thereto are:
 - a) Not compatible with the Competent Authority Plan for the time being in force; or
 - b) Not appropriate for dealing with oil and hazardous and noxious substances pollution which may occur in the area in which the marine terminal, marine facility or offshore installation operates, has jurisdiction or exercises responsibility;

The Competent Authority may, after consultation with the terminal, facility or installation, direct that the plan shall be altered accordingly. It shall be the duty of the operator or such marine terminal, marine facility or offshore installation to alter the plan in accordance with any such direction.

- 8) It shall be the duty of any master or ship operator, and of any marine terminal, marine facility and offshore installation operator to implement the approved pollution emergency plan in the event of a pollution incident.
- 9) Any shipowner or ship operator, and any marine terminal, marine facility and offshore installation operator shall:
 - a) Organize periodical exercises and drills in pollution incidents preparedness, which exercises and drills shall take place at least once a year;
Provided that a yearly schedule with the date and time of such exercise and drills shall be given to the Competent Authority by not later than the 31st January of every calendar year and
 - b) Shall participate, when requested to do so by the Competent Authority, at least once a year in the national pollution response and emergency training exercises and drills organized periodically by the Competent Authority

Article 8. Fees.

The fees payable under this Act in respect of any approval of a pollution emergency plan and any renewal, amendments and late submission thereto, and any inspection

conducted by the Competent Authority, shall be as established, from time to time, by the Competent Authority.

Article 9. Duties of operators and masters.

It shall be the duty of any master or ship operator, and of any marine terminal, marine facility and offshore installation operator who observes or is made aware of any event involving a discharge of or probable discharge of oil or hazardous and noxious substances in the sea, to report without delay the event or the presence of such oil or hazardous and noxious, as the case may be.

Article 10. Inspections.

Any ship entering or leaving a port or harbor, or offshore installation, shall be subject to inspections by the officers duly authorized by the Competent Authority in order to verify that the emergency pollution plan is on board, in line with the requirements of this Act.

Article 11. Offences by shipowners, masters and operators.

Any shipowner, master or ship operator, marine terminal, marine facility or offshore installation operator who fails to comply with the provisions of these regulations commits an offence and is liable, upon conviction, to a fine (multa) not exceeding XXXX (XXXX) euro, and in the case of a continuing offence, to a further fine (multa) not exceeding XXXX (XXXX) euro for every day during which the offence continues.

Article 12. Provisions with respects to offences.

- 1) The provisions of this Act establishing offences and punishments in respect thereof shall be without prejudice to any liability arising under any other law, and shall not bar the infliction of further punishments contemplated by such other law.

2) In particular, the provisions referred to in Article 12.1 of this Act shall not affect the application of any higher punishment under any other law.

Article 13. Saving.

Nothing in this Law shall be construed as affecting the validity of any other law or regulations laying down obligations on marine terminals, marine facilities and offshore installation operators with respect to pollution emergency plans, as far as they are not inconsistent with the provisions of this Act.

Article 14. Repealing clause.

All provisions of existing laws, orders, decrees, rules and regulations inconsistent with this Act, are hereby repealed and replaced.

PASSED in the **Assembly Hall of the Chamber of Deputies**, Palace of the National Congress, in Santo Domingo de Guzmán, National District, capital of the Dominican Republic, on the ____ () day of ____ of the year two thousand and fifteen; one hundred and seventy one years of the National Independence, and one hundred and fifty two years of the Restoration of the Republic.

President

Secretary

Secretary

PASSED in the **Assembly Hall of the Senate**, Palace of the National Congress, in Santo Domingo de Guzmán, National District, capital of the Dominican Republic, on the ____ () day of ____ of the year two thousand and fifteen; one hundred and seventy one years of the National Independence, and one hundred and fifty two years of the Restoration of the Republic.

President

Secretary

Secretary

(NAME OF THE PRESIDENT)
President of the Dominican Republic

Acting by virtue of the authority vested in me by Article 128 of the Constitution of the Republic.

PROMULGATE this Act, and ordered that it be published in the Official Gazette, so that it may come to the knowledge of all, and obeyed by all.

ISSUED in the city of Santo Domingo de Guzmán, National District, Capital of the Dominican Republic, this _____ (___) day of _____ of the year two thousand and fifteen; one hundred and seventy one years of the National Independence, and one hundred and fifty two years of the Restoration of the Republic.

(Signature)

(NAME OF THE PRESIDENT)