



IMO
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**A LAW ON THE ACCESSION OF THE REPUBLIC OF
ALBANIA TO THE “PROTOCOL CONCERNING
COOPERATION IN PREVENTING POLLUTION FROM SHIPS
AND, IN CASES OF EMERGENCY, COMBATING POLLUTION
OF THE MEDITERRANEAN SEA” OF THE CONVENTION
“FOR THE PROTECTION OF THE MARINE ENVIRONMENT
AND THE COASTAL REGION OF THE MEDITERRANEAN”**

**A Legislation Drafting Project submitted in partial fulfillment of the
requirements for the award of the Degree of Master of Laws (LL.M.) in
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DEDICATION

To my dear Parents and my sister Nina,
Thank you for your continuous support and unconditional Love
through my best and hard times.

God Bless You.

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PART I

EXPLANATORY NOTE

1. INTRODUCTION

The Mediterranean Sea covers more than 2.5 million square kilometers (km), with a 46,000 km coastline. Mediterranean countries have a population of nearly 425 million, with an additional 170 million tourists visiting them each year. The average depth of the Mediterranean Sea is just 1.500 meters. It is a semi-enclosed sea with two main exits: the Gibraltar Strait, approximately 14 km wide, and the Suez Canal, only a few meters wide. As a result, it takes over a century for the Mediterranean waters to be renewed through inflows from other oceans. As far as biological diversity is concerned, it is one of the richest seas in the world, with 7.5 per cent of all animal species and 18 per cent of all marine flora in a sea that represents only 0.7 per cent of the total surface of the oceans. The Mediterranean's flora and fauna consist partly of temperate zone species and partly of subtropical species, of which 30 per cent are endemic. Its waters join the coastlines of countries in Europe, the Middle East and North Africa, making the region politically, economically and geographically complex as well as environmentally unique and diverse. The Mediterranean Sea has the largest traffic density of oil tankers of the globe. With 28 per cent of the world's sea-borne oil traffic transiting in its waters, some 200,000 crossings per year, up to 2000 ships are in the sea at any one time.¹

In such a complex scenario, it has been the concern of the Mediterranean countries, as well as of other important international initiatives, the preservation and healthy use of the Mediterranean Sea.

On 4 February 1975, the United Nations Environment Program (UNEP) adopted at the intergovernmental meeting convened in Barcelona a policy instrument, the Mediterranean Action Plan (MAP), which was the first regional seas action plan adopted under the auspices of UNEP.²

¹ http://www.unepmap.org/index.php?module=content2&catid=001003&ocat_id=001003, accessed on 20 December 2011.

² Scovazzi T.; "The Revision of MAP Legal framework: The Barcelona Convention and its Protocols", Kontorouris Bros. Graphic Arts, UNEP/Map, Athens 2002, p. 6.

The objectives of MAP were various, but mainly consisted in assisting the Mediterranean countries to assess and control marine pollution and formulate their national environmental policies. MAP helped the governments improve their ability to identify better development plans and optimize the choices for allocating resources. Indeed marine pollution was the initial focus point, later widened to include integrated coastal zone planning and management. It consisted of three components, namely: the scientific aspect of MAP which dealt with pollution assessment, the socio-economic aspect which dealt with prospects and integrated planning and the institutional and legal component. Regarding this last component, one of the main objectives of MAP was to promote the conclusion of a framework convention and related protocols with technical annexes for the protection of the Mediterranean environment.³

As a result, in 1976, 16 Mediterranean Coastal States and the European Community met in Barcelona to sign the Convention for the Protection of the Mediterranean Sea against Pollution (the Barcelona Convention).⁴

Following the adoption of the Barcelona Convention, the legal framework has been enhanced through the adoption of a number of Protocols,⁵ namely:

- “The Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft”, adopted in Barcelona, Spain on 16 February 1976 and entered in force on 12 February 1978, also known as *the Dumping Protocol*;⁶
- “The Protocol Concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and other Harmful Substances in Cases of Emergency”, adopted in Barcelona, Spain on 16 February 1976 and entered in force on 12 February 1978, also known as *the Emergency Protocol*.⁷

³ http://195.97.36.231/dbases/webdocs/BCP/MAPPhaseI_eng.pdf, accessed on 20 December 2011.

⁴ The Convention, which entered in force on 12 February 1978, was amended in Barcelona on 10 June 1995 and changed its name to the “Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean”. See <http://www.unepmap.org/index.php?module=content2&catid=001001004> accessed on 20 December 2011.

⁵ <http://www.unepmap.org/index.php?module=content2&catid=001001001>, accessed on 20 December 2011.

⁶ The Dumping Protocol, was amended on 10 June 1995, (not yet in force) and changed its name as “Protocol for the Prevention and Elimination of Pollution in the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea”.

⁷ The Emergency Protocol was replaced on 25 January 2002 by the “Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea”, also known as the Prevention and Emergency Protocol, which entered into force on 17 March 2004.

- “Protocol for the Protection of the Mediterranean Sea Pollution from Land-Based Sources”, adopted in Athens, Greece on 17 May 1980 and entered in force on 17 June 1983, also known as *the LSB Protocol*;⁸
- “The Protocol Concerning Mediterranean Specially Protected Areas”, adopted in Geneva, Switzerland on 3 April 1982, and entered in force on 23 March 1986, also known as *the SPA Protocol*;⁹
- “The Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and Seabed and its Subsoil”, adopted in Madrid, Spain on 14 October 1994 and entered in force on 24 March 2011, also known as *the Offshore Protocol*;
- “The Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal”, adopted in Izmir, Turkey on 1 October 1996, and entered in force on 19 January 2008, also known as *the Hazardous Wastes Protocol*.
- “The Protocol on Integrated Coastal Zone Management in the Mediterranean” , adopted in Madrid, Spain on 21 January 2008 and entered in force on 24 March 2011, also known as *the ICZM Protocol* .

The 22 Contracting Parties to the Barcelona Convention are:

Albania, Algeria, Bosnia and Herzegovina, Croatia, Cyprus, Egypt, the European Community, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Montenegro, Morocco, Slovenia, Spain, Syria, Tunisia and Turkey.

Today, 36 years later, the Barcelona Convention and MAP are more active than ever. The Contracting Parties are determined to protect the Mediterranean marine and coastal environment while boosting regional and national plans to achieve sustainable development.

⁸ The LSB Protocol was replaced on 7 March 1996 by the “Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities”, which entered into force on 11 May 2008.

⁹ The SPA Protocol was replaced on 10 June 1995 by the “Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean” which entered into force on 12 December 1999.

1.1 Some Background of the Barcelona Convention

The main objectives of the Barcelona Convention are:

- to assess and control marine pollution;
- to ensure sustainable management of natural marine and coastal resources;
- to integrate the environment in social and economic development;
- to protect the marine environment and coastal zones through prevention and reduction of pollution, and as far as possible, elimination of pollution, whether land or sea-based;
- to protect the natural and cultural heritage;
- to strengthen solidarity among Mediterranean coastal States;
- to contribute to improvement of the quality of life.¹⁰

The preamble of the Barcelona Convention highlights the need for an international instrument, which should cover all aspects and sources of marine pollution and deals particularly with the special requirements of the Mediterranean Sea Area.

It also underlines the need for close cooperation among the States and international organizations concerned in a coordinated and comprehensive regional approach for the protection and the enhancement of the marine environment in the Mediterranean Sea Area.

The Barcelona Convention lays down in very general terms a variety of obligations for its State Parties.

It begins by determining the geographical area to which the Convention is applicable.

Article 1, paragraph 1, states:

“... that the Mediterranean Sea Area shall mean the maritime waters of the Mediterranean Sea proper, including its gulfs and seas, bounded to the west by the meridian passing

¹⁰ http://europa.eu/legislation_summaries/environment/water_protection_management/l28084_en.htm, accessed on 20 December 2011.

through Cape Spartel Lighthouse, at the entrance of the Straits of Gibraltar, and to the East by the southern limits of the Straits of the Dardanelles between Mehmetcik and Kumkale lighthouses...”

Article 2

The Convention provides a definition of the term pollution as stated in paragraph (a):

“Pollution” means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results, or is likely to result, in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of seawater and reduction of amenities.”

Article 3

General provisions are laid down in this article, which provides that State Parties in applying this Convention and its related Protocols shall act in conformity with international law. The Convention leaves it to State Parties to enter into other bilateral or multilateral agreements for the conservation and preservation of natural resources in the Mediterranean Sea provided that such agreements are consistent with the Convention and its Protocols and conform to international law.¹¹

Article 4

The general obligations of State Parties are laid down in this provision which consist in taking individually or jointly, all appropriate measures in accordance with the provisions of the Convention and its Protocols, to prevent, abate, combat and to the fullest extent possible eliminate pollution of the Mediterranean Sea Area. Another obligation regards the appropriate

¹¹ See article 3 of the Barcelona Convention for further details.

measures to be taken in order to further implement the MAP and to pursue the protection of the marine environment and the natural resources of the Mediterranean.

This article lays down a list of the various methods through which the Contracting Parties shall protect the marine environment and contribute to the sustainable development of the Mediterranean Sea Area. The first is through the application of the “precautionary principle”. In other words, it should be avoided the postponement of cost-effective measures for prevention of environmental degradation where it appears that there are threats of serious or irreversible damage.

Secondly, it underlines the importance of the “polluter pays” principle, by which the polluter is to bear the costs of pollution prevention, control and reduction measures, with due regard to the public interest.

Thirdly, it is provided the need to undertake environmental impact assessments for proposed activities which are likely to cause a significant adverse impact on the marine environment and are also subject to an authorization by competent national authorities.

Fourthly, the methods of notification, exchange of information and consultation should enhance the cooperation between and among States in environmental impact assessment procedures related to activities under their jurisdiction or control which are likely to have a significant adverse effect on the marine environment of other States or areas beyond the limits of national jurisdiction.

The last method contemplated is the commitment of State Parties to promote the integrated management of their coastal zones, taking into account the protection of areas of ecological and landscape interests and the rational use of natural resources.

Article 4 continues in stating that the Contracting Parties shall cooperate in the formulation and adoption of Protocols and promote measures with international bodies concerning the implementation of programs of sustainable development.

Articles 5 to 11 of the Barcelona Convention correspond to the titles of each of the seven Protocols¹² that constitute the structure of the Barcelona legal system.

The remaining articles of the Barcelona Convention deal with some other obligations of Contracting Parties and also with some procedural issues.

Article 12 provides for the establishment of a pollution monitoring system in the Mediterranean Sea and the designation of the competent authorities responsible for pollution monitoring within areas under their Contracting States jurisdiction, as well as for monitoring areas beyond national jurisdiction.

Attention is also directed towards scientific and technological cooperation, and drafting of environmental legislation, in order to implement the Barcelona Convention and its Protocols.¹³

Article 16 deals with liability and compensation and it states in general terms that Contracting Parties undertake to cooperate in the formulation and adoption of appropriate rules and procedures for the determination of liability and compensation for damage resulting from pollution to the marine environment in the Mediterranean Sea Area. Article 21 deals with the adoption of additional protocols and Article 22 lays down how amendments to the Convention and its Protocols should be adopted.

The amendments effectuated in 1995 to the Barcelona Convention included in its geographical coverage all maritime waters of the Mediterranean Sea Area irrespective of their legal conditions (be they maritime internal waters, territorial sea, fishing zones, exclusive economic zones or high seas). However, the sphere of territorial application of the Barcelona legal system is also flexible, in the sense that any Protocol may extend (but not restrict) the geographical coverage to which it applies. The application of the Convention may also be extended to “coastal areas as defined by each Contracting Party within its own territory.”¹⁴

¹² The seven Protocols to the Barcelona Convention in their abbreviated titles are: The Dumping Protocol, The Prevention and Emergency Protocol, The LBS Protocol, The SPA and Biodiversity Protocol, The Offshore Protocol, The Hazardous Wastes Protocol and the ICZM Protocol.

¹³ Article 13 and Article 14 of the Barcelona Convention.

¹⁴ Scovazzi T.; *op. cit.*, p. 6.

The preamble of the Barcelona Convention was also amended and it now makes reference to other international instruments, including the results of the United Nations Conference on Environment and Development held in Rio de Janeiro in 1992 and more importantly the relevant provisions of the United Nations Convention on the Law of the Sea (UNCLOS) adopted in Montego Bay, in 1982.

A new provision, namely Article 15, was added and relates to the right of the public to have access to information on the state of the environment and to participate in the decision-making process relevant to the field of application of the Convention and the Protocols.¹⁵

The main idea as it can be appreciated, with regard to the Barcelona Convention, was to set the necessary structures to monitor the state of the Mediterranean Sea; identify the major environmental issues and their causes; harmonize national legislations and raise them to the standards and objectives agreed.

¹⁵ Ibid.

1.2 The Prevention and Emergency Protocol

This project recommends to the Government of Albania to implement into the Laws of Albania the so-called Prevention and Emergency Protocol. For this purpose a detailed overview of the Protocol is provided below.

The original Protocol of the Barcelona Convention concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency (Emergency Protocol), adopted in 1976, focused primarily on preparedness for, response to and international co-operation in dealing with accidental marine pollution.

At the beginning of the 1990s, the process of building national and regional capacities to deal with accidental marine pollution has gained a steady momentum and the focus gradually started shifting towards prevention of pollution from ships. This aspect of the problem was recognized as becoming more and more important since all statistics indicated that operational pollution from ships has been responsible for the major part of the input of oils and other harmful substances into world oceans.¹⁶

When in Barcelona in June 1995,¹⁷ the Contracting Parties at the Conference of the Plenipotentiaries on the Convention for the Protection of the Mediterranean Sea against Pollution and its Protocols, adopted Phase II of MAP, and also decided to promote the regional cooperation for the control of the implementation of the relevant international conventions for the protection of the marine environment from pollution by ships. This decision was followed in 1997 by the adoption of the regional strategy on the prevention of pollution from ships in the

¹⁶ REMPEC: The Barcelona System, the New Prevention and Emergency Protocol, Medwaves 46-The Mediterranean Action Plan Magazine, UNEP/MAP, Athens, 2002, p.7.

¹⁷ The revision process of the Mediterranean Action Plan was kept in line with the provisions adopted at the United Nations Conference on Environment and Development (UNCED-Rio de Janeiro 1992), and in particular with the Action Program "Agenda 21". The Rio instruments have a general scope and provide guidance for any international action aiming at the protection of the environment, wherever it takes place.

Mediterranean, which led to the start of the revision of the Emergency Protocol.¹⁸ In order to reflect these new strategic orientations, the revision of the Emergency Protocol, which aimed at addressing the prevention of marine pollution, as well as at updating the text of the Protocol, was carried out between 1998 and 2002.

As in the case of the SPA and Biodiversity Protocol,¹⁹ the changes with respect to the previous instrument were so extensive and substantive that the Parties decided to draft a new protocol, instead of merely amending the old text. In November 2001, the Contracting Parties (twenty Mediterranean countries and the European Community) decided to replace the original Emergency Protocol with the Protocol concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea, which was adopted in Malta on 25 January 2002 by a Conference of Plenipotentiaries.²⁰

The new Protocol, known as the “Prevention and Emergency Protocol” covers prevention, preparedness and response to marine pollution from sea-based sources. The text was modernized and harmonized with the texts of relevant International Maritime Organization (IMO) legal instruments, that deal with maritime safety, the prevention of pollution from ships, preparedness for the response to pollution incidents and liability and compensation for pollution damage, also taking into account the developments within the European Union regarding the implementation of international standards on maritime safety and prevention of pollution from ships.²¹

Minimizing and eventually eliminating chronic pollution of the Mediterranean Sea by illegal operational discharges from ships became the new challenge and the adoption of the new

¹⁸ REMPEC Booklet, 2005: Protocol concerning Cooperation in Preventing Pollution from Ships and, in cases of Emergency combating Pollution of the Mediterranean Sea.

¹⁹ See footnote 9.

²⁰ REMPEC Booklet, 2005: Final Act and Resolutions of the Conference of Plenipotentiaries on the Protocol concerning Cooperation in Preventing Pollution from Ships and, in cases of Emergency, Combating Pollution of the Mediterranean Sea.

²¹ Resolution 1, Annex, from the Final Act of the Conference of the Plenipotentiaries on the Prevention and Emergency Protocol, Malta, 25 January 2002. See <http://www.martrans.org/eu-mop/library/tactical%20strategic/rempec/rempec6.pdf>, accessed on 20 December 2011.

Prevention and Emergency Protocol gave REMPEC²² the necessary legal basis to concentrate its efforts on tackling this issue.²³

The preamble of the Prevention and Emergency Protocol makes specific reference to Articles 6 and 9 of the Barcelona Convention with regard to “Pollution from ships” and “Cooperation in dealing with pollution emergencies”. The Protocol also acknowledges, in its preamble, the role of IMO, which is generally considered the competent international organization in the field, and the importance of co-operating in promoting the adoption and the development of international rules and standards on pollution from ships within the framework of IMO. This is a clear reference to the various conventions which are already in force at the global level, such as MARPOL 73/78,²⁴ the OPRC 1990,²⁵ or the Anti-fouling Convention, 2001.²⁶ It is also a reference to the competences that IMO already exercises regarding the safety of shipping (such as decisions on traffic separation schemes, ships’ reporting systems, areas to be avoided, etc.).²⁷

The Protocol acknowledges the contribution of the European Community to the implementation of these international standards relative to maritime safety and the prevention of pollution from ships, and takes to consideration the principles emphasized in Article 4 of the Barcelona Convention regarding the methods of protection of the marine environment.

²² A Regional Centre, first established in Malta on 9 February 1976, (by Resolution 7) as ROCC (Regional Oil Combating Centre for the Mediterranean Sea) with the aim to facilitate the implementation of the Emergency Protocol 1976. It later changed the name into REMPEC (Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea).

²³ REMPEC: The Barcelona System, the new Prevention and Emergency Protocol, Medwaves 46-The Mediterranean Action Plan Magazine, UNEP/MAP, Athens, 2002, p.7.

²⁴ International Convention for the Prevention of Pollution from Ships, adopted in London, on 2 November 1973 as modified by the Protocol of 1978 relating thereto, adopted in London on 1 June 1978, entry into force on 2 October 1983.

²⁵ International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) adopted in London, on 30 November, 1990, entry into force on 13 May, 1995.

²⁶ International Convention on the Control of Harmful Anti-fouling Systems on Ships adopted in London, on 5 October 2001, entry into force on 17 September 2008.

²⁷ Scovazzi T.; *op. cit.*, p. 28.

Article 1 of the Prevention and Emergency Protocol gives certain definitions related to “Pollution incident”,²⁸ “Hazardous and noxious substances”²⁹ and “related interests”.³⁰

Article 2 of the Protocol defines the same area of application as the one stipulated in Article 1 of the Barcelona Convention.

Article 3 lays down the general provisions for the Parties to the Protocol with regard to cooperation for the implementation of international regulations and with regard to the necessary measures that should be taken in cases of pollution incidents, having in consideration the participation of local authorities, non-governmental organizations and socio-economic actors.

Article 4 provides for the means of prevention and preparedness against pollution incidents. It emphasizes the importance of the contingency plans as well as the existence of qualified personnel, equipment, aircrafts and ships for operations in cases of emergency. It also underlines the relevant role of the enactment of appropriate legislation for such a purpose and the strengthening of the capabilities to respond to a pollution incident and most of all the designation of a national authority or authorities responsible for the implementation of the Protocol.

The stress is also put to the effective implementation of the relevant international conventions through the functions of Flag State Control and Port State Control and the development of national capacities for this purpose through cooperation among State Parties by bilateral or multilateral agreements. A particular role is given in this context to REMPEC, which will constitute the regional center for the feedback of all the information collected by the Parties with regard to the implementation of this Article.

²⁸ According to Article 1/b of the Prevention and Emergency Protocol Pollution incident means “an occurrence or series of occurrences having the same origin, which results or may result in a discharge of oil and /or 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 other immediate response”.

²⁹ According to Article 1/c of the Prevention and Emergency Protocol 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”.

³⁰ The definition of the “related interests” of a coastal State has been enlarged to include also “the cultural, aesthetic, scientific and educational value of the area” and “the conservation of biological diversity and the sustainable use of marine and coastal biological resources”.

While it can hardly be denied that pollution from ships is a typical area where global regulation is most appropriate, it should also be added that, for certain aspects of the matter, regional co-operation also has a role to play. For instance, it is evident that prompt and effective action in taking emergency measures to fight pollution arising from maritime accidents needs to be organized at the national, sub-regional and regional levels. But the Prevention and Emergency Protocol is not limited (as the former instrument was) in dealing only with emergency situations. It also covers the aspect of the prevention of pollution from ships with the purpose of striking a fair balance between action at the global and action at the regional level.³¹

In this line follow the subsequent articles, from 5 to 8, and article 12 emphasizing the importance of cooperation in: monitoring activities covering the Mediterranean Sea Area; in the salvage and recovery of hazardous and noxious substances; in the exchange of information regarding national authorities with their respective functions, as well as on new ways, measures or developments for combating pollution; in the communication of information and reports concerning pollution incidents; in the assistance to deal with a pollution incident in the form of expert advice, required specialized personnel, products, equipment and nautical facilities.³²

Article 9 gives a detailed description of the Reporting Procedure that relates to incidents which result or may result in a discharge of oil or hazardous and noxious substances and to the presence of such substances observed at sea which may become a threat to the marine environment or to the coast or related interests of the State Parties. The procedure requires a wide involvement of entities, bodies and persons³³ that should respect and fulfill the requirements of this procedure with the final aim to communicate the information collected to the other Parties likely to be affected by a pollution incident.

³¹ Scovazzi T.; *op. cit.*, p. 28.

³² See articles 5, 6, 7, 8 and 12 of the Prevention and Emergency Protocol.

³³ The Protocol sets forth some obligations directed to the masters of every ship sailing in the territorial sea of the Parties to report incidents; to provide the proper authorities detailed information about the ship and its cargo, and to co-operate with these authorities. Where the Parties cannot agree on the organization of an operation to combat pollution, REMPEC may, with the approval of all the Parties involved, co-ordinate the activity of the facilities put into operation by these Parties.

Article 10 provides the obligation of taking operational measures when facing a pollution incident with due regard to assessments to be made on the nature, extent and possible consequences of the pollution incident; measures to be taken to prevent, reduce and eliminate the effects of the pollution incident; the exchange of information about this assessment and measures with the Parties and REMPEC.

Article 11 concentrates on the emergency measures on board ships, on offshore installations and in ports in forms of pollution emergency plans or contingency plans and stipulates that they should be in accordance with the relevant international regulations and with procedures established by the competent national authority.

An interesting provision of the Prevention and Emergency Protocol is elaborated in Article 13, which details the reimbursement of the costs of assistance. The provision recognizes the right of compensation for costs incurred in cases of action taken in dealing with pollution incidents to the assisting Parties, emphasizing the consideration that should be taken towards developing countries in accepting their request for postponement of the reimbursement of such costs, as well as the right of the Parties to deal with the financial issues through bilateral or multilateral agreements concluded prior to the pollution incidents.

Article 14 elaborates the issue of port reception facilities, which has considerable economic implications, and is already the subject of provisions set forth in MARPOL 73/78 and a European Community Directive. Under the Prevention and Emergency Protocol, Parties shall ensure that such facilities are available and are used efficiently without causing undue delay to ships.

The Prevention and Emergency Protocol also recognizes that regional co-operation is important in promoting the effective implementation of international regulations in this field. A notable instance of such a spirit of harmonization of the global and regional levels of regulation and action is Article 15, dealing with the environmental risk of maritime traffic. The Article provides that “in conformity with generally accepted international rules and standards and the global mandate of the International Maritime Organization, the Parties shall individually, bilaterally or

multilaterally take the necessary steps to assess the environmental risks of the recognized routes used in maritime traffic and shall take the appropriate measures aimed at reducing the risks of accidents or the environmental consequences thereof”.

The lessons arising from the *Erika*³⁴ accident are particularly evident in the article 16 of the Protocol according to which the Parties shall define strategies concerning reception in places of refuge, including ports, of ships in distress presenting a threat to the marine environment.

Finally, the Protocol in Article 20 stipulates that its provisions do not affect the right of Parties to adopt stricter domestic measures or other measures in conformity with international law in the matters covered by the Protocol. This provision may apply also to rules adopted by the European Union and binding on its member States.

³⁴ *Erika* was the name of a tanker built in 1975 and last chartered by Total-Fina-Elf. She sank off the coast of France in 1999, causing a major environmental disaster. The accident triggered new EU-legislation as regard to transport by sea. See IOPC Funds, Annual Report 2002, p. 95.

2. THE NEED OF ALBANIA FOR THE ACCESSION TO AND IMPLEMENTATION OF THE PREVENTION AND EMERGENCY PROTOCOL

Albania is situated in a very favourable geographical position, in the South-East part of the Balkans, whose 1/3 of the border line is sea, with a coastline of about 440 kilometers. Maritime transport and its related matters play a major role in the economic activities of the country. Therefore, Albania is in the process of developing several projects to enhance its maritime sector as follows:

- Development of Ports;
- Encouragement of competitive maritime transport;
- Focus on port safety and navigational safety;
- Environmental protection;
- Adoption of national maritime legislation;
- Implementation of the provisions of international maritime conventions.

Albania has acceded to several international maritime conventions and adopted respective national legislation.

Those international maritime conventions include, *inter alia*, the following:

- The United Nations Convention on Law of the Sea, 1982 (UNCLOS)
- The International Convention on Safety of Life at Sea, 1974 (SOLAS)
- The International Convention on Load Lines, 1966.
- The International Convention on Standards of Training, Certification, and Watchkeeping (STCW), 1995
- Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG)

- International Convention for the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978 (MARPOL 73/78).
- International Convention on Tonnage Measurement of Ships, 1969.
- The international Convention on Limitation of Liabilities on Maritime Claims, 1976 (LLMC), as amended by the Protocol of 1996.
- The International Convention on Civil Liability for oil Pollution Damage, 1992, (CLC)

Most of the above conventions have been translated into the domestic legislation which reads as follows:

- The Albanian Maritime Code (AMC) adopted by Law no. 9251, dated 08.07.2004, provides for the competencies, tasks, responsibilities and structure of the maritime sector, as well as the relations between political bodies and governmental agencies.
- The Law on Port Authority No.9130, dated 08.09.2003 provides for the specific organization and management of ports in Albania.
- Law on Security on Ships and Ports No.9281, dated 23.09.2006, provides the legal basis for the implementation of the requirements laid down by the ISPS Code for Ships/Ferries engaged in international maritime transport.
- Law on Maritime Administration No.10109, dated 02.04.2009, provides for the specific organization and management of the Maritime Administration in Albania.

The Maritime Administration in Albania is represented by the General Maritime Directorate (GDM), that falls under the direct competence of the Minister of Public Works and Transport. The GDM is responsible for, among other important issues, to the implementation of the international legislation in the maritime field to which Albania has acceded and its enforcement. It is composed of two structures the Directorate of Maritime Safety and Security and the General Harbor Master.³⁵

In Albania there are four (4) State owned and two (2) private-managed ports opened for international traffic: Durres (in the central part of the coast), Vlore (in the south), Shengjin (in

³⁵ <http://www.dpdetare.gov.al/> acceded on 26 December 2011.

the north), Saranda (in the southern part of the coast) and Porto Romano (near Durres) and PIA - Petrolifera Italo Albanese (near Vlore).

The Port of Durres is the only Albanian port managed by the Port Authority, which was created by a special law (Law No. 9130, dated 8.9.2003, on Port Authority). According to Article 40 of the Law on Port Authority, the Port Authority should have in its structure *inter alia*, an Environment Protection Department. The tasks of the Environmental Protection Department include the preparation of the Durres Port contingency plan for the protection of the environment from pollution during carriage, transfer or storage of substances that pose a risk to the environment.³⁶ Such contingency plan should be in line with the national contingency plan to be developed by the Maritime Administration of Albania in cooperation with the relevant Agency of the Ministry of Environment.

The other Albanian ports (Vlore, Shengjin, Sarande) are managed by joint stock companies which are owned by the Ministry of Economy, Trade and Energy (i.e. 100% State owned), whereas the two oil terminals, Porto Romano (near Durres) and PIA - Petrolifera Italo Albanese (near Vlore), also referred to as Vlore 1, are managed by private companies and the management is monitored by a board composed of the representatives of different ministries including the Ministry of Public Works and Transport, the Ministry of Economy, Trade and Energy and the Ministry of Environment, Forests and Water Administration. The concession agreements concerning these terminals were signed in 2004 and these were based on BOO (build-own-operate) and BOT (build-operate-transfer) models of project financing. PIA Terminal started operating in June/July 2009.³⁷

The ports in Albania play a crucial role in contributing to the economy of the country. Approximately 75 per cent of the import and export commodities are transported by the sea. The ports in Albania have a capacity to accommodate passenger ferries, Ro-Ro vessels, container ships, general cargo ships, bulk cargoes and fuel. There are no bunkering activities in the Albanian ports. The development of the infrastructure and the superstructure of the ports are strongly supported by the national maritime policy. The improvement of port facilities will

³⁶ Article 40.4(a), Law No. 9130, dated 8.9.2003, on Port Authority.

³⁷ www.mppt.gov.al acceded on 26 December 2011.

increase their handling capacity and will enhance the profile of the ports to be an attractive destination for a large number of ships engaged in international trade. This development will certainly have a very positive impact in the economy of the country.

During the 1990s, Albania experienced economic political and social transition. With regard to economic matters, it transformed from centralized economy, to the free market economy. This process affected many sectors of the economy including the Albanian Merchant fleet. Consequently, the merchant shipping is decentralized and now the merchant fleet is owned mainly by private companies.

The fact that the ships are now privately owned, however, has not improved their technical and management conditions. The Albanian shipowners continue to purchase second hand tonnage with a high level of depreciation. It has been envisaged also that most of the foreign ships entering the Albanian ports or offshore terminals are of the same substandard conditions.

It is apparent from the facts above that the Albanian waters and marine environment are exposed to serious marine and environmental dangers. It has been fortunate that, irrespective of its situation, there has been no serious marine incidents in the Albanian territorial sea. However, the fact that such incidents have not occurred does not mean that Albania is immune from eventualities and the important role of the maritime sector in the economy of the country and the need for the development of the shipping industry cannot be overemphasized.

The engagement of the country in the national and international arena requires an effective balance between the development of the shipping industry on one hand and the safety of navigation and protection of marine environment on the other. The balance between these two interests has been seen to incline more in favour of the shipping industry in order to protect and promote the national shipping interests. The Albanian Government and the public however, have become aware of the important role of the navigational safety and security and especially the environmental protection in the sustainable development of the Albanian economy. The Albanian maritime policy has started to focus on fostering a qualitative competitive and environmental-friendly shipping industry.

As stated earlier, Albania has adhered to all major conventions on safety of navigation at sea and marine environmental protection adopted by IMO and thus committed itself to the fulfillment of the duties and obligations under these conventions.

In Albania, the protection of the marine environment is not only the responsibility of the Ministry of Environment but falls as well upon the Ministry of Transport and Telecommunication. The Ministry of Transport has delegated such powers to the Albanian Maritime Administration. The main goal of the Albanian Maritime Administration is to ensure safety of life and property at sea, prevent pollution of the maritime environment from ships and promote the shipping industry.³⁸

One of the main Conventions for the purpose of protecting the marine environment, to which Albania has acceded to, is also the Barcelona Convention and its related Protocols.³⁹ After this accession, the Albanian Parliament adopted the Law No.8905, dated 6.6.2002 “For the protection of the marine environment from pollution and damage” and other relevant environmental legal acts in general. Through Law No.10234, dated 18.02.2010, Albania has acceded also to the last Protocol of the Barcelona Convention adopted, the Protocol “On the Integrated Coastal Zone Management in the Mediterranean (ICZM Protocol).”

The fact remains that the Emergency Protocol of 1976 acceded to under Law No. 8690, dated 16.11.2000, is no longer in force as it has been superseded by the Prevention and Emergency Protocol 2002. Albania is not a Party to this Protocol remaining the only Protocol of the Barcelona Convention to which the country has not yet acceded.

In order for the whole framework of the Barcelona Convention to be implemented in its entirety in the Albanian Legislation, it exists the need of acceding to the Preventive and Emergency Protocol 2002 as well. But this is not the main reason why Albania should accede to this Protocol.

³⁸ Law on Maritime Administration No.10109, dated 02.04.2009, Article 14.

³⁹ Albanian Law of accession to the Barcelona Convention and its related Protocols, No.8690, dated 16.11.2000.

What is more important is that the accession to the Preventive and Emergency Protocol of 2002, would also accelerate and facilitate the proper implementation, not only of the other Protocols of the Barcelona Convention, into the Albanian legislation, but it will create the possibility to have a well-established background for the enforcement of other conventions related to the protection of the marine environment. The establishment of a proper authority related directly to the attempts of preventing incidents and protecting the marine environment through consolidated initiatives in this aspect is the primary goal to which the attention should be directed and to where this draft project proposes to concentrate.

Under Article 4 of the Barcelona Convention is already laid down the obligation to take all appropriate measures in accordance with the provisions of the Convention and its Protocols, to prevent, abate, combat and to the fullest extent possible, eliminate pollution of the Mediterranean Sea Area. It emphasizes the commitment of State Parties to promote the integrated management of their coastal zones, taking into account the protection of areas of ecological and landscape interests and the rational use of natural resources. Furthermore it evidences the relevance of impact assessment procedures related to activities under their jurisdiction or control which are likely to have a significant adverse effect on the marine environment of other States or areas beyond the limits of national jurisdiction.

Currently it does not exist in the Albanian Maritime Administration, an authority which can deal directly with tasks of this type, because the needs of the maritime Albanian reality are more basic ones. The effective implementation of the relevant international conventions for the protection of the marine environment through the functions of Flag State Control and Port State Control and the development of national capacities for this purpose, are of a most urgent need.

The fact that apart from the preventive measures in the field of the protection of the marine environment, response measures include to the national scenario other institutions like environmental agencies, the Albanian Coast Guard or specialized units within the National Emergency Committee, emphasizes more the need for an authority that deals with the means of prevention and preparedness against pollution incidents, as well as it satisfies the need of cooperation for the protection of the marine environment.

The Preventive and Emergency Protocol in its Article 4 emphasizes the importance of the contingency plans, underlines the relevant role of the enactment of appropriate legislation for the purpose of the protection of the marine environment and the strengthening of the capabilities to respond to a pollution incident and most of all the development of national capacities as regards the implementation of the international conventions for the protection of the marine environment.

This is why the designation of an authority responsible to deal with the coordination of all the above-stated issues should be taken in consideration.

3. THE PROCESS OF RATIFICATION, ACCESSION TO AND IMPLEMENTATION OF INTERNATIONAL CONVENTIONS IN THE ALBANIAN LEGAL SYSTEM.

The Albanian legal system is a monist system. According to Article 121/1 of the Albanian Constitution the ratification of or accession to an international convention becomes effective and binding with the approval of the Albanian Parliament.

Article 122 in its first and second paragraphs respectively states that any international convention that has been ratified or acceded to constitutes part of the internal juridical system after it is published in the Official Gazette of the Republic of Albania. It is implemented directly except for cases when it is not self-executing and its implementation requires the adoption of a law or bylaw.

An international convention that has been ratified or acceded to by Albania has precedence over the domestic laws that are in conflict with such convention. The Albanian legal procedures do not provide for enactment of the provisions of the convention into domestic law. Consequently, the provisions of the convention itself are applicable and enforceable as law. The text of the Convention is translated to Albanian language and is attached to the law approved by the Albanian Parliament.

The ratification of or accession to an international convention is undertaken by the Ministry responsible for the respective matters that the international convention regulates. With regard to the ratification of or accession of the IMO Conventions, the responsible Ministry is the Ministry of Public Works and Transport(The Ministry). As the relevant Protocol which deals with Prevention and Emergency has many issues that are mostly related with the Maritime Administration, the accession process should be followed by the Ministry of Transport.

Usually regarding the procedure of IMO conventions, the Ministry of Transport assesses if the convention complies with the objectives of the national maritime policy. Then, the Department of Maritime Transport Policies, within the Ministry, will commence the necessary internal

consultation process which includes the drafting of the respective law. The draft law together with an explanatory note, which summarizes the provisions and the scope of application of the convention (the Protocol in this case), and the reasons as to why the country needs to ratify or accede to such convention, is circulated to other relevant Ministries for their opinion and comments.

After receiving the opinions and comments from other Ministries, the relevant inputs will be incorporated in the explanatory note and forwarded to the Council of Ministers for approval. When the draft law is approved by the Council of Ministers, it will be introduced, together with the explanatory note, to the Albanian Parliament.

Once the draft law is introduced to the Albanian Parliament, it will be circulated to the Technical Commissions of the Parliament for their opinion and comments. If the Technical Commissions find that the draft law complies with the national maritime policy and with the relevant legal procedures, the draft law will be introduced for approval of the General Assembly of the Albanian Parliament.

After the draft law has been approved by the General Assembly, it becomes law and it will be applicable and enforceable 15 days after its publication in the Official Gazette.

Should the Protocol require the implementation of certain provisions to be regulated by adequate national legislation (law or by-law), then the Ministry of Transport, as the responsible Authority for the implementation of the Protocol, will undertake the necessary initiatives for the drafting of the law or by-law.

The adoption, incorporation and implementation of the Prevention and Emergency Protocol of the Barcelona Convention will follow the same procedures as the ones explained above. The Albanian Parliament will adopt the Law on the Accession to the Prevention and Emergency Protocol of the Barcelona Convention. This law will serve as the instrument which will incorporate the Emergency Protocol into the national legislation and will come into force 15 days after its publication in the Official Gazette.

Considering that the Prevention and Emergency Protocol stipulates in its article 4 the need for the designation of a national authority responsible for the implementation of the Protocol, and taking in consideration the arguments introduced previously about the designation of an authority responsible for the coordination of activities in the protection of the marine environment, it will be necessary for the Albanian Parliament to adopt a law which will amend the relevant legal acts, that have created national structures working in the maritime field, to add to them as well the necessary aspects contemplated in the Protocol. These amendments will facilitate the translation of the relevant provisions of the Prevention and Emergency Protocol into the laws of Albania. In this case the most relevant act which may be affected is the Law on Maritime Administration No.10109, dated 02.04.2009, where a national authority with the task prescribed above should be organized.

After the adoption of the amending Law the Ministry will draft the necessary Decree to regulate the implementation of the provisions regarding the competencies of the national authority that relates to the Prevention and Emergency Protocol. The decree will be circulated to other relevant Ministries for their opinion and comments. After receiving the opinion and the comments from other Ministries, the relevant input will be incorporated to the Decree and forwarded to the Council of Ministers for approval.

The Decree will be approved by the Council of Ministers and will enter into force immediately after its publication in the Official Gazette.

The law to be adopted by the Albanian Parliament for the accession to the Prevention and Emergency Protocol of Barcelona Convention which illustrates the above mentioned procedures is attached herewith as Appendix 1. It is simply a law of accession with the translated text of the Prevention and Emergency Protocol in Albanian.

What further follows in Appendix 2 is the Law that will make some amendments to the Law No.10109, date 02.04.2009 “On Maritime Administration of Republic of Albania”. This is for the purpose of introducing a new Authority under the Maritime Administration, The Marine Environment Protection Authority (MEPA), which will be responsible for the implementation of the Prevention and Emergency Protocol.

Following the above mentioned procedures, it is the duty of the Ministry of Public Works and Transport of Albania to take the required steps in drafting the Decree that will establish the activities of MEPA which will guarantee the implementation of the Prevention and Emergency Protocol.

The abovementioned Decree is attached as Appendix 3.

PART II:

DRAFTS OF ALBANIAN LEGAL ACTS

APPENDIX 1

LAW

No. XXXXX DATE XX.XX.2012

**ON THE ACCESSION OF THE REPUBLIC OF ALBANIA TO THE PROTOCOL
“CONCERNING COOPERATION IN PREVENTING POLLUTION FROM SHIPS AND,
IN CASES OF EMERGENCY, COMBATING POLLUTION OF THE
MEDITERRANEAN SEA”, OF THE CONVENTION “FOR THE PROTECTION OF
THE MARINE ENVIRONMENT AND THE COASTAL REGION OF THE
MEDITERRANEAN”**

In accordance with articles 78, 83.(1) and 121 of the Constitution, based on the proposal of the Council of Ministers,

THE PARLIAMENT

OF

THE REPUBLIC OF ALBANIA

DECIDED:

Article 1

The Republic of Albania accedes to the Protocol “Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea, of the Convention “For the Protection of the Marine Environment and the Coastal Region of the Mediterranean”.

Article 2

The text of the Protocol, translated into Albanian, is attached to this law.

Article 3

The present law enters into force 15 days upon its publication in the Official Gazette.

Published under the Decree No. xxxx, date xx.xx.2012 of the President of Republic, Bamir Topi.

PROTOCOL⁴⁰

“CONCERNING COOPERATION IN PREVENTING POLLUTION FROM SHIPS AND, IN CASES OF EMERGENCY, COMBATING POLLUTION OF THE MEDITERRANEAN SEA
(PREVENTION AND EMERGENCY PROTOCOL)

Malta, 25 January 2002

The Contracting Parties to the present Protocol,

Being Parties to the Convention for the Protection of the Mediterranean Sea against Pollution, adopted at Barcelona on 16 February 1976 and amended on 10 June 1995,

Desirous of implementing Articles 6 and 9 of the said Convention,

Recognizing that grave pollution of the sea by oil and hazardous and noxious substances or a threat thereof in the Mediterranean Sea Area involves a danger for the coastal States and the marine environment,

Considering that the cooperation of all the coastal States of the Mediterranean Sea is called for to prevent pollution from ships and to respond to pollution incidents, irrespective of their origin,

Acknowledging the role of the International Maritime Organization and the importance of cooperating within the framework of this Organization, in particular in promoting the adoption and the development of international rules and standards to prevent, reduce and control pollution of the marine environment from ships,

Emphasizing the efforts made by the Mediterranean coastal States for the implementation of these international rules and standards,

⁴⁰ Final Act of the Conference of Plenipotentiaries on the Protocol concerning Cooperation in Preventing Pollution from Ships and in Cases of Emergency, Combating Pollution of the Mediterranean Sea, UNEP(OCA9MEDIG.14, pages 66-79.

Acknowledging also the contribution of the European Community to the implementation of international standards as regards maritime safety and the prevention of pollution from ships,

Recognizing also the importance of cooperation in the Mediterranean Sea Area in promoting the effective implementation of international regulations to prevent, reduce and control pollution of the marine environment from ships,

Recognizing further the importance of prompt and effective action at the national, subregional and regional levels in taking emergency measures to deal with pollution of the marine environment or a threat thereof,

Applying the precautionary principle, the polluter pays principle and the method of environmental impact assessment, and utilizing the best available techniques and the best environmental practices, as provided for in Article 4 of the Convention,

Bearing in mind the relevant provisions of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, which is in force and to which many Mediterranean coastal States and the European Community are Parties,

Taking into account the international conventions dealing in particular with maritime safety, the prevention of pollution from ships, preparedness for and response to pollution incidents, and liability and compensation for pollution damage,

Wishing to further develop mutual assistance and cooperation in preventing and combating pollution,

Have agreed as follows:

Article 1

DEFINITIONS

For the purpose of this Protocol:

- (a) “Convention” means the Convention for the Protection of the Mediterranean Sea against Pollution, adopted at Barcelona on 16 February 1976 and amended on 10 June 1995;

- (b) “Pollution incident” means an occurrence or series of occurrences having the same origin, which results or may result in a discharge of oil and/or 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 other immediate response;
- (c) “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;
- (d) “Related interests” means the interests of a coastal State directly affected or threatened and concerning, among others:
 - (i) maritime activities in coastal areas, in ports or estuaries, including fishing activities;
 - (ii) the historical and tourist appeal of the area in question, including water sports and recreation;
 - (iii) the health of the coastal population;
 - (iv) the cultural, aesthetic, scientific and educational value of the area;
 - (v) the conservation of biological diversity and the sustainable use of marine and coastal biological resources;
- (e) “International regulations” means regulations aimed at preventing, reducing and controlling pollution of the marine environment from ships as adopted, at the global level and in conformity with international law, under the aegis of United Nations specialized agencies, and in particular of the International Maritime Organization;
- (f) “Regional Centre” means the “Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea” (REMPEC), established by Resolution 7 adopted by the Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region on the Protection of the Mediterranean Sea at Barcelona on 9 February 1976, which is administered by the International Maritime Organization and the United Nations Environment Programme, and the objectives and functions of which are defined by the Contracting Parties to the Convention.

Article 2
PROTOCOL AREA

The area to which the Protocol applies shall be the Mediterranean Sea Area as defined in Article 1 of the Convention.

Article 3
GENERAL PROVISIONS

1. The Parties shall cooperate:
 - (a) to implement international regulations to prevent, reduce and control pollution of the marine environment from ships; and
 - (b) to take all necessary measures in cases of pollution incidents.
2. In cooperating, the Parties should take into account as appropriate the participation of local authorities, non-governmental organizations and socio-economic actors.
3. Each Party shall apply this Protocol without prejudice to the sovereignty or the jurisdiction of other Parties or other States. Any measures taken by a Party to apply this Protocol shall be in accordance with international law.

Article 4
CONTINGENCY PLANS AND OTHER MEANS OF PREVENTING AND
COMBATING POLLUTION INCIDENTS

1. The Parties shall endeavour to maintain and promote, either individually or through bilateral or multilateral cooperation, contingency plans and other means of preventing and combating pollution incidents. These means shall include, in particular, equipment, ships, aircraft and personnel prepared for operations in cases of emergency, the enactment, as appropriate, of relevant legislation, the development or strengthening of the capability to respond to a pollution incident and the designation of a national authority or authorities responsible for the implementation of this Protocol.

2. The Parties shall also take measures in conformity with international law to prevent the pollution of the Mediterranean Sea Area from ships in order to ensure the effective implementation in that Area of the relevant international conventions in their capacity as flag State, port State and coastal State, and their applicable legislation. They shall develop their national capacity as regards the implementation of those international conventions and may cooperate for their effective implementation through bilateral or multilateral agreements.

3. The Parties shall inform the Regional Centre every two years of the measures taken for the implementation of this Article. The Regional Centre shall present a report to the Parties on the basis of the information received.

Article 5

MONITORING

The Parties shall develop and apply, either individually or through bilateral or multilateral cooperation, monitoring activities covering the Mediterranean Sea Area in order to prevent, detect and combat pollution, and to ensure compliance with the applicable international regulations.

Article 6

COOPERATION IN RECOVERY OPERATIONS

In case of release or loss overboard of hazardous and noxious substances in packaged form, including those in freight containers, portable tanks, road and rail vehicles and shipborne barges, the Parties shall cooperate as far as practicable in the salvage of these packages and the recovery of such substances so as to prevent or reduce the danger to the marine and coastal environment.

Article 7

DISSEMINATION AND EXCHANGE OF INFORMATION

1. Each Party undertakes to disseminate to the other Parties information concerning:

- (a) the competent national organization or authorities responsible for combating pollution of the sea by oil and hazardous and noxious substances;
- (b) the competent national authorities responsible for receiving reports of pollution of the sea by oil and hazardous and noxious substances and for dealing with matters concerning measures of assistance between Parties;
- (c) the national authorities entitled to act on behalf of the State in regard to measures of mutual assistance and cooperation between Parties;
- (d) the national organization or authorities responsible for the implementation of paragraph 2 of Article 4, in particular those responsible for the implementation of the international conventions concerned and other relevant applicable regulations, those responsible for port reception facilities and those responsible for the monitoring of discharges which are illegal under MARPOL 73/78;
- (e) its regulations and other matters which have a direct bearing on preparedness for and response to pollution of the sea by oil and hazardous and noxious substances;
- (f) new ways in which pollution of the sea by oil and hazardous and noxious substances may be avoided, new measures for combating pollution, new developments in the technology of conducting monitoring and the development of research programmes.

2. The Parties which have agreed to exchange information directly shall communicate such information to the Regional Centre. The latter shall communicate this information to the other Parties and, on a basis of reciprocity, to coastal States of the Mediterranean Sea Area which are not Parties to this Protocol.

3. Parties concluding bilateral or multilateral agreements within the framework of this Protocol shall inform the Regional Centre of such agreements, which shall communicate them to the other Parties.

Article 8

COMMUNICATION OF INFORMATION AND REPORTS CONCERNING
POLLUTION INCIDENTS

The Parties undertake to coordinate the utilization of the means of communication at their disposal in order to ensure, with the necessary speed and reliability, the reception, transmission and dissemination of all reports and urgent information concerning pollution incidents. The Regional Centre shall have the necessary means of communication to enable it to participate in this coordinated effort and, in particular, to fulfill the functions assigned to it by paragraph 2 of Article 12.

Article 9

REPORTING PROCEDURE

1. Each Party shall issue instructions to masters or other persons having charge of ships flying its flag and to the pilots of aircraft registered in its territory to report by the most rapid and adequate channels in the circumstances, following reporting procedures to the extent required by, and in accordance with, the applicable provisions of the relevant international agreements, to the nearest coastal State and to this Party:

- (a) all incidents which result or may result in a discharge of oil or hazardous and noxious substances;
- (b) the presence, characteristics and extent of spillages of oil or hazardous and noxious substances, including hazardous and noxious substances in packaged form, observed at sea which pose or are likely to pose a threat to the marine environment or to the coast or related interests of one or more of the Parties.

2. Without prejudice to the provisions of Article 20 of the Protocol, each Party shall take appropriate measures with a view to ensuring that the master of every ship sailing in its territorial waters complies with the obligations under (a) and (b) of paragraph 1 and may request assistance from the Regional Centre in this respect. It shall inform the International Maritime Organization of the measures taken.

3. Each Party shall also issue instructions to persons having charge of sea ports or handling facilities under its jurisdiction to report to it, in accordance with applicable laws, all incidents which result or may result in a discharge of oil or hazardous and noxious substances.

4. In accordance with the relevant provisions of the Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil, each Party shall issue instructions to persons having charge of offshore units under its jurisdiction to report to it by the most rapid and adequate channels in the circumstances, following reporting procedures it has prescribed, all incidents which result or may result in a discharge of oil or hazardous and noxious substances.

5. In paragraphs 1, 3 and 4 of this Article, the term “incident” means an incident meeting the conditions described therein, whether or not it is a pollution incident.

6. The information collected in accordance with paragraphs 1, 3 and 4 shall be communicated to the Regional Centre in the case of a pollution incident.

7. The information collected in accordance with paragraphs 1, 3 and 4 shall be immediately communicated to the other Parties likely to be affected by a pollution incident:

(a) by the Party which has received the information, preferably directly or through the Regional Centre; or

(b) by the Regional Centre.

In case of direct communication between Parties, these shall inform the Regional Centre of the measures taken, and the Centre shall communicate them to the other Parties.

8. The Parties shall use a mutually agreed standard form proposed by the Regional Centre for the reporting of pollution incidents as required under paragraphs 6 and 7 of this Article.

9. In consequence of the application of the provisions of paragraph 7, the Parties are not bound by the obligation laid down in Article 9, paragraph 2, of the Convention.

Article 10

OPERATIONAL MEASURES

1. Any Party faced with a pollution incident shall:

(a) make the necessary assessments of the nature, extent and possible consequences of the pollution incident or, as the case may be, the type and approximate quantity of

oil or hazardous and noxious substances and the direction and speed of drift of the spillage;

- (b) take every practicable measure to prevent, reduce and, to the fullest possible extent, eliminate the effects of the pollution incident;
- (c) immediately inform all Parties likely to be affected by the pollution incident of these assessments and of any action which it has taken or intends to take, and simultaneously provide the same information to the Regional Centre, which shall communicate it to all other Parties;
- (d) continue to observe the situation for as long as possible and report thereon in accordance with Article 9.

2. Where action is taken to combat pollution originating from a ship, all possible measures shall be taken to safeguard:

- (a) human lives;
- (b) the ship itself; in doing so, damage to the environment in general shall be prevented or minimized.

Any Party which takes such action shall inform the International Maritime Organization either directly or through the Regional Centre.

Article 11

EMERGENCY MEASURES ON BOARD SHIPS, ON OFFSHORE INSTALLATIONS AND IN PORTS

1. Each Party shall take the necessary steps to ensure that ships flying its flag have on board a pollution emergency plan as required by, and in accordance with, the relevant international regulations.
2. Each Party shall require masters of ships flying its flag, in case of a pollution incident, to follow the procedures described in the shipboard emergency plan and in particular to provide the proper authorities, at their request, with such detailed information about the ship and its cargo as is relevant to actions taken in pursuance of Article 9, and to cooperate with these authorities.

3. Without prejudice to the provisions of Article 20 of the Protocol, each Party shall take appropriate measures with a view to ensuring that the master of every ship sailing in its territorial waters complies with the obligation under paragraph 2 and may request assistance from the Regional Centre in this respect. It shall inform the International Maritime Organization of the measures taken.

4. Each Party shall require that authorities or operators in charge of sea ports and handling facilities under its jurisdiction as it deems appropriate have pollution emergency plans or similar arrangements that are coordinated with the national system established in accordance with Article 4 and approved in accordance with procedures established by the competent national authority.

5. Each Party shall require operators in charge of offshore installations under its jurisdiction to have a contingency plan to combat any pollution incident, which is coordinated with the national system established in accordance with Article 4 and in accordance with the procedures established by the competent national authority.

Article 12

ASSISTANCE

1. Any Party requiring assistance to deal with a pollution incident may call for assistance from other Parties, either directly or through the Regional Centre, starting with the Parties which appear likely to be affected by the pollution. This assistance may comprise, in particular, expert advice and the supply to or placing at the disposal of the Party concerned of the required specialized personnel, products, equipment and nautical facilities. Parties so requested shall use their best endeavours to render this assistance.

2. Where the Parties engaged in an operation to combat pollution cannot agree on the organization of the operation, the Regional Centre may, with the approval of all the Parties involved, coordinate the activity of the facilities put into operation by these Parties.

3. In accordance with applicable international agreements, each Party shall take the necessary legal and 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 the personnel, cargoes, materials and equipment referred to in subparagraph (a).

Article 13

REIMBURSEMENT OF COSTS OF ASSISTANCE

1. 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 action in dealing with pollution in accordance with paragraph 2.
2. (a) 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. If the request is cancelled, the requesting Party shall bear the costs already incurred or committed by the assisting Party;
 - (b) if the action was taken by a Party on its own initiative, that Party shall bear the cost of its action;
 - (c) the principles laid down in subparagraphs (a) and (b) above shall apply unless the Parties concerned otherwise agree in any individual case.
3. Unless otherwise agreed, the costs of the 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.
4. The Party requesting assistance and the assisting Party shall, where appropriate, cooperate 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 3.

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 developing countries.

5. The provisions of this Article shall not be interpreted as in any way prejudicing the rights of Parties to recover from third parties the costs of actions taken to deal with pollution incidents under other applicable provisions and rules of national and international law applicable to one or to the other Party involved in the assistance.

Article 14

PORT RECEPTION FACILITIES

1. The Parties shall individually, bilaterally or multilaterally take all necessary steps to ensure that reception facilities meeting the needs of ships are available in their ports and terminals. They shall ensure that these facilities are used efficiently without causing undue delay to ships.

The Parties are invited to explore ways and means to charge reasonable costs for the use of these facilities.

2. The Parties shall also ensure the provision of adequate reception facilities for pleasure craft.

3. The Parties shall take all the necessary steps to ensure that reception facilities operate efficiently to limit any impact of their discharges to the marine environment.

4. The Parties shall take the necessary steps to provide ships using their ports with updated information relevant to the obligations arising from MARPOL 73/78 and from their legislation applicable in this field.

Article 15

ENVIRONMENTAL RISKS OF MARITIME TRAFFIC

In conformity with generally accepted international rules and standards and the global mandate of the International Maritime Organization, the Parties shall individually, bilaterally or multilaterally take the necessary steps to assess the environmental risks of the recognized routes

used in maritime traffic and shall take the appropriate measures aimed at reducing the risks of accidents or the environmental consequences thereof.

Article 16

RECEPTION OF SHIPS IN DISTRESS IN PORTS AND PLACES OF REFUGE

The Parties shall define national, subregional or regional strategies concerning reception in places of refuge, including ports, of ships in distress presenting a threat to the marine environment. They shall cooperate to this end and inform the Regional Centre of the measures they have adopted.

Article 17

SUBREGIONAL AGREEMENTS

The Parties may negotiate, develop and maintain appropriate bilateral or multilateral subregional agreements in order to facilitate the implementation of this Protocol, or part of it. Upon request of the interested Parties, the Regional Centre shall assist them, within the framework of its functions, in the process of developing and implementing these subregional agreements.

Article 18

MEETINGS

1. Ordinary meetings of the Parties to this Protocol shall be held in conjunction with ordinary meetings of the Contracting Parties to the Convention, held pursuant to Article 18 of the Convention. The Parties to this Protocol may also hold extraordinary meetings as provided in Article 18 of the Convention.

2. It shall be the function of the meetings of the Parties to this Protocol, in particular:

- (a) to examine and discuss reports from the Regional Centre on the implementation of this Protocol, and particularly of its Articles 4, 7 and 16;
- (b) to formulate and adopt strategies, action plans and programmes for the implementation of this Protocol;

(c) to keep under review and consider the efficacy of these strategies, action plans and programmes, and the need to adopt any new strategies, action plans and programmes and to develop measures to that effect;

(d) to discharge such other functions as may be appropriate for the implementation of this Protocol.

Article 19

RELATIONSHIP WITH THE CONVENTION

1. The provisions of the Convention relating to any protocol shall apply with respect to the present Protocol.

2. The rules of procedure and the financial rules adopted pursuant to Article 24 of the Convention shall apply with respect to this Protocol, unless the Parties agree otherwise.

FINAL PROVISIONS

Article 20

EFFECT OF THE PROTOCOL ON DOMESTIC LEGISLATION

In implementing the provisions of this Protocol, the right of Parties to adopt relevant stricter domestic measures or other measures in conformity with international law, in the matters covered by this Protocol, shall not be affected.

Article 21

RELATIONS WITH THIRD PARTIES

The Parties shall, where appropriate, invite States that are not Parties to the Protocol and international organizations to cooperate in the implementation of the Protocol.

Article 22

SIGNATURE

This Protocol shall be open for signature at Valletta, Malta, on 25 January 2002 and in Madrid from 26 January 2002 to 25 January 2003 by any Contracting Party to the Convention.

Article 23

RATIFICATION, ACCEPTANCE OR APPROVAL

This Protocol shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Government of Spain, which will assume the functions of Depositary

Article 24

ACCESSION

As from 26 January 2003, this Protocol shall be open for accession by any Party to the Convention.

Article 25

ENTRY INTO FORCE

1. This Protocol shall enter into force on the thirtieth day following the deposit of the sixth instrument of ratification, acceptance, approval or accession.
2. From the date of its entry into force, this Protocol shall replace the Protocol concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and other Harmful Substances in Cases of Emergency of 1976 in the relations between the Parties to both instruments.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Protocol.

DONE at Valletta, Malta, on 25 January 2002, in a single copy in the Arabic, English, French and Spanish languages, the four texts being equally authentic.

APPENDIX 2

LAW
No. XXXXX, DATE XX.XX.2012
ON AMENDMENTS TO THE LAW No.10109, DATE 02.04.2009 “ON MARITIME
ADMINISTRATION OF REPUBLIC OF ALBANIA”

In accordance with articles 78 and 83(1) of the Constitution, based on the proposal of the Council of Ministers,

THE PARLIAMENT

OF

THE REPUBLIC OF ALBANIA

DECIDED:

Article 1

Article 6 of the Law is hereby amended by the insertion of paragraph (h), following paragraph (g):

“(h) Marine Environment Protection Authority”.

Article 2

The following Article 12/a is added, after Article 12:

“Article 12/a

Marine Environment Protection Authority

The Marine Environment Protection Authority is an important structure organized under the General Maritime Directorate and performs its functions with the aim of cooperating, coordinating and implementing the obligations undertaken by Albania in international agreements with regard to the prevention, reduction, control and response taken in relation to pollution incidents”.

Article 3

The Council of Ministers is hereby empowered to enact the necessary subsidiary legislation specifying the functions of this Authority.

Article 4

The present law enters into force 15 days upon its publication in the Official Gazette.

Published under the Decree No. XXXX, Date XX.XX.2012 of the President of Republic, Bamir Topi

APPENDIX 3

DECREE

No. XXXXX, DATE XX.XX.2012

**“ON SOME OF THE ACTIVITIES OF THE MARINE ENVIRONMENT
PROTECTION AUTHORITY UNDER THE GENERAL MARITIME
DIRECTORATE OF THE MARITIME ADMINISTRATION OF REPUBLIC OF
ALBANIA”**

In accordance with Article 100 of the Constitution, the Protocol “Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea, of the Convention “For the Protection of the Marine Environment and the Coastal Region of the Mediterranean”, Article 2 of the Law No.10109, dated 02.04.2009 “On Maritime Administration of Republic of Albania”, as amended and based on the proposal of the Minister of Public Works and Transport,

THE COUNCIL OF MINISTERS

DECIDED:

1. Definitions

For the purpose of this Decree:

- (a) Authority means The Marine Environment Protection Authority (MEPA), constituted under Law No.XXXXX, dated XX.XX.2012.
- (b) The Protocol Area shall mean the Mediterranean Sea Area as defined in article 1 of the Barcelona Convention.
- (c) Barcelona Convention means: the Convention for the Protection of the Mediterranean Sea against Pollution, adopted at Barcelona on 16 February 1976 and amended on 10 June 1995 as the Convention “For the Protection of the Marine Environment and the Coastal Region of the Mediterranean”, acceded to by Albania under Law No.8690, dated 16.11.2000.
- (d) 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;

- (e) International regulations means: regulations aimed at preventing, reducing and controlling pollution of the marine environment from ships as adopted, at the global level and in conformity with international law, under the aegis of United Nations specialized agencies, and in particular of the International Maritime Organization;
- (f) Pollution incident means: an occurrence or series of occurrences having the same origin, which results or may result in a discharge of oil and/or 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 other immediate response;
- (g) Protocol means: the Protocol “Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea, of the Convention “For the Protection of the Marine Environment and the Coastal Region of the Mediterranean”
- (h) Related interests means: the interests of a coastal State directly affected or threatened and concerning, among others:
- (i) maritime activities in coastal areas, in ports or estuaries, including fishing activities;
 - (ii) the historical and tourist appeal of the area in question, including water sports and recreation;
 - (iii) the health of the coastal population;
 - (iv) the cultural, aesthetic, scientific and educational value of the area;
 - (v) the conservation of biological diversity and the sustainable use of marine and coastal biological resources;
- (i) Regional Centre means: the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea. (REMPEC), established by Resolution 7 adopted by the Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region on the Protection of the Mediterranean Sea at Barcelona on 9 February 1976, which is administered by the International Maritime Organization and the United Nations Environment Program, and the objectives and functions of which are defined by the Contracting Parties to the Convention.

2. Scope of Application

The Authority shall:

- (a) ensure the implementation of international regulations to prevent, reduce and control pollution of the marine environment from ships;
- (b) take all necessary measures of cooperation required in cases of pollution incidents.
- (c) take into account when appropriate the participation of local authorities, non-governmental organizations and socio-economic actors.

3. National Contingency Plan of Albania.

The Authority, in cooperation with other relevant Albanian entities and institutions shall be responsible for taking the necessary measures for the adoption, implementation and the duly execution of the National Contingency Plan of Albania.

4. Functions of MEPA

The Authority:

- (a) shall develop and apply, bilateral or multilateral cooperation monitoring activities covering the Area that aim to prevent, detect and combat pollution, and to ensure compliance with the applicable international regulations.
- (b) is responsible for receiving reports of pollution of the sea by oil and hazardous and noxious substances and for dealing with matters concerning measures of assistance between Albania and the Contracting Parties of the Barcelona Convention;
- (c) shall exchange information with the Regional Center with regard to every regulation emanated that has direct bearing on preparedness for and response to pollution of the sea by oil and hazardous and noxious substances.
- (d) shall provide information directly to the Regional Centre, and the latter shall communicate this information to the other Parties and, on a basis of reciprocity, to coastal States of the Mediterranean Sea Area which are not Parties to this Protocol.
- (e) shall issue, in collaboration with the Flag State Control, instructions to masters or other persons having charge of ships flying Albanian flag and to the pilots of aircraft registered in Albania to report by the most rapid and adequate channels in the circumstances, following reporting procedures to the extent required by, and in accordance with, the applicable provisions of the relevant international agreements:
 - (i) all incidents which result or may result in a discharge of oil or hazardous and noxious substances;

- (ii) the presence, characteristics and extent of spillages of oil or hazardous and noxious substances, including hazardous and noxious substances in packaged form, observed at sea which pose or are likely to pose a threat to the marine environment or to the coast or related interests of one or more of the Parties.
- (f) shall issue instructions to administration of Port Authorities or Companies having charge of sea ports or handling facilities under their jurisdiction to report to the Authority, in accordance with applicable laws, all incidents which result or may result in a discharge of oil or hazardous and noxious substances;
- (g) shall communicate to the Regional Centre, and to the other Parties that may be affected by a pollution incident, the information collected in accordance with paragraphs (e) and (f), and in case of direct communication between Parties, shall inform the Regional Centre of the measures taken.

5. Operational Measures

The Authority, in case of a pollution incident, shall take all the necessary steps in order to guarantee that the entities and organizations involved in marine pollution incidents:

- (a) make the necessary assessments of the nature, extent and possible consequences of the pollution incident or, as the case may be, the type and approximate quantity of oil or hazardous and noxious substances and the direction and speed of drift of the spillage;
- (b) take every practicable measure to prevent, reduce and, to the fullest possible extent, eliminate the effects of the pollution incident;
- (c) continue to observe the situation for as long as possible and report thereon to the Authority.

It is the duty of the Authority to immediately inform the Contracting Parties likely to be affected by the pollution incident of these assessments and of any action which it has been taken or is intended to be taken, and simultaneously provide the same information to the Regional Centre, which shall communicate it to all other Parties

6. Assistance

The Authority, when assistance is needed to deal with a pollution incident, shall follow all the procedures of call for assistance from other Parties, either directly or through the Regional Centre, starting with the Parties which appear likely to be affected by the pollution. This assistance may include, in particular, expert advice and, the supply to or

placing at the disposal of the required specialized personnel, products, equipment and nautical facilities.

In accordance with applicable international agreements, the Authority shall take the necessary legal and administrative measures to facilitate:

- (a) the arrival and utilization in and departure from the Albanian territory of ships, aircrafts 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 the Albanian territory of the personnel, cargoes, materials and equipment referred to in subparagraph (i).

7. Reception of ships in distress in ports and places of refuge

The Authority, on behalf of the Ministry of Public Works and Transport, shall collaborate with the Ministry of Interior and the Ministry of the Environment in defining national strategies concerning reception in places of refuge, including ports, of ships in distress presenting a threat to the marine environment. It shall cooperate to this end and inform the Regional Centre of the measures adopted by Albania in:

- (a) the formulation and adoption of strategies, action plans and programs for the implementation of the Prevention and Emergency Protocol;
- (b) the review and consideration of the efficacy of these strategies, action plans and programs, and the need to adopt any new strategies, action plans and programs and to develop measures to that effect.

8. Ministry responsible

The Ministry of Public Works and Transport is responsible for the implementation of this Decree.

9. Entry into force

The present Decree enters into force immediately upon its publication in the Official Gazette.

PRIME MINISTER

SALI BERISHA