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# Explanatory Note

## 1. Historical Background

### 1.1 The fight against marine pollution:

Marine pollution can result from four main sources, namely the land based activities, ships, dumping at sea and activities carried out on the sea bed. Nowadays the fight against marine pollution requires co-operation between States due regard to the impact of the pollution which can easily pass the boundaries traditionally known especially in cases of pollutions occurring forward incidents. Thus, the pollutant may be transferred by force of nature i.e. by wind in case of gas.

International co-operation to deal with pollution incidents or emergencies at sea is primarily a matter of prudent self-interest, but international law does impose certain obligations on States confronted with such risks. Both customary law and Article 198 of the UNCLOS 1982<sup>1</sup> indicate that once they are aware of imminent or actual pollution of the marine environment, States must give immediate notification to others likely to be affected<sup>2</sup>.

In this respect, IMO offers to member States an invaluable framework of co-operation throughout the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990<sup>3</sup> which establishes a veritable framework to facilitate co-operation by the establishment of obligations on States for that purpose then co-operation either at regional or international level are obligatory to the member to fight against marine pollution by oil resulting from incidents. The Protocol on Preparedness, Response to

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<sup>1</sup> The United Nations Convention on the Law of the Sea ratified by Algeria on by the Presidential Decree N 96-53 of January 22<sup>nd</sup>, 1996.

<sup>2</sup> Patricia, Birnie et al.; International law and the environment, Third Edition, Oxford University Press, 2009, p.423.

<sup>3</sup> Hereafter OPRC 1990.

Pollution Incident by Hazardous and Noxious Substances, 2000<sup>4</sup> was adopted in the same vision. On the other hand, co-operation is so required even in the absence of treaty because the recent events shown that the passivity of coastal State to assist ships in difficulty may be fatal either for the life at sea or for the environment therefore the concept of refuge zones begins to impose itself.

It needs to be recalled that Article 195 of UNCLOS specifically prohibits States from acting 'to transfer, directly or indirectly, damage or hazards from one area to another'. In such circumstances the appropriateness of any action a coastal State may take will depend on what is necessary to protect all those who may potentially be affected<sup>5</sup>.

In the light of this process the OPRC-HNS Protocol 2000 was adopted by States within the IMO through a diplomatic conference of International Maritime Organization (IMO) as an expansion of the scope of the OPRC 1990 which covers only the pollution caused by oil, initially established in 1990 following the *Exxon Valdez* disaster in March 1989.

The OPRC-HNS Protocol 2000 has been adopted by IMO for providing a global framework for international co-operation in combating major incidents or threats of marine pollution from ships carrying Hazardous and Noxious substances, such as Chemicals it was adopted following a diplomatic conference held from 9 to 15 March 2000 at the London headquarters of the IMO. The conference was held alongside the 44<sup>th</sup> session of IMO's Marine Environment Protection Committee (MEPC), which met from 6 to 13 March.

The adoption of OPRC HNS protocol 2000 has been made in 15 March 2000 entered into force on 14 June 2007 after the fifteenth ratification was filed with IMO on 14 June 2006. This instrument follows the principles of 1990 OPRC and was formally adopted by States already party to OPRC Convention 1990. The Acronym HNS is also mentioned in another Convention, known confusingly as the HNS 1996 Convention which is The International Convention on Liability and Compensation for Damage in Connection with

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<sup>4</sup> Hereafter OPRC-HNS Protocol 2000.

<sup>5</sup> Ibid, p. 428.

the Carriage of Hazardous and Noxious Substances (HNS) by sea, known as the HNS 1996 Convention, provides for a compensation and liability regime for incidents involving HNS, whilst the HNS Protocol 2000 deals with preparedness and response measures for dealing with HNS spills or release.

## **1.2 Definition of Hazardous Noxious Substances (HNS):**

Hazardous and Noxious substances mean 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.<sup>6</sup>

Broadly defined, hazardous and noxious substances (HNS) are those substances that due to their intrinsic properties may, if released endanger human life, the environment or property. However, for the purpose of this manual, this definition excludes oil, as oil-related pollution matters are dealt with in other IMO technical manuals.<sup>7</sup>

The definitions of HNS adopted by international instrument regulating the prevention of incidents and co-operation to face these incidents involving HNS, do not give details on these substances they merely refer to their impact on human life, property and environment, they exclude also oil, however, this does not mean oil is not harmful but the aim is to highlight the difference between substances abovementioned, in other words, to understand specificities of HNS they should be differentiated from oil, considering technical nature of this issue, the contribution of experts is very important therefore the following statement enable every one to understand the nature of HNS:

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<sup>6</sup> Article 2(2) of the Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency Combating Pollution of the Mediterranean Sea, done in *Valetta (Malta)*, January 25<sup>th</sup>, 2002.

<sup>7</sup> Manual on Chemical Pollution Problem Assessment and Response Arrangement, 1999 edition, IMO. p. 1

\*A major difference is that HNS can kill and be radically more harmful and toxic than oil. A 100 liters spill of toxic chemical can do more harm than a 100 liters heavy fuel oil spill.

\* Another difference is that oil is in a liquid form, although of varying viscosities, whilst HNS can come in solid, liquid or gas forms.

\* Therefore consideration in the different types of operational handling and modes of transport of HNS will impact upon considerations of how to handle a HNS incident.

Note, I have changed the wording from “spill” to “incident”; this is how personnel must consider dealing with HNS in a situation where it can be released in an uncontrolled manner, i.e. an incident, either an actual one or the potential risk of one.

\* HNS incidents do not necessary have to be an uncontrolled release of cargo from a ship onto the water as an oil spill is invariably considered. The HNS incident can be during cargo handling or transportation of a HNS which is a liquid, solid or gas form, and either stays immobile or moves or changes state.

\* The HNS can start out in one form and evolve into another form by changing conditions acting upon the released or contained HNS, which in turn has implications on the surrounding community, workers and response personnel.

\* The risk of an uncontrolled release of a HNS is one or more of the following:

**Explosion, Fire, Reactivity, Toxicity**<sup>8</sup>.

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<sup>8</sup> Simon; Rickaby, “**The OPRC-HNS Protocol and its practical implications**” A paper delivered at the PAJ Oil Spill Symposium Tokyo 24-25<sup>th</sup> February 2005.

*Examples of incidents involving Hazardous and Noxious Substances<sup>9</sup>*

Location and year	Vessel	HNS	Quantity involved	Incident consequences
Halifax, Canada, 1917	Montblanc	Explosives	2,600 tons	Explosion, 3000 killed 9000 injured
Texas City, 1947	Grandcamp	Ammonium Nitrate	2,200 tons	Fire and explosion, 468 killed, 2nd vessel caught fire and exploded carrying sulphur and ammonium nitrate
Italian Coast, 1974	Cavtat	Tetraethyl lead Tetra methyl lead		Collision and sinking
Landskrona Sweden, 1976	Rene 16	Ammonia	180 tons	Hose rupture, 2 dead.
North Sea, 1979	Sindbad	Chlorine	52 one ton flasks	Flasks lost at sea due to rough weather
Adriatic coast, 1984	Brigitta Montanari	Vinyl chloride	1300 tons	Sinking
Mogadishu port, 1985	Ariad	62 IMDG-classed chemical	Over 750 tons in teus	Grounded, fires, local population at risk. Sunk
North Sea, 1987	Herald of Free Enterprise	Undeclared ro-ro freight packages	Over 500 tons	Capsized, hazards to salvage divers
Cape Finisterre, 1987	Cason	Mixed dangerous cargo in packages	1,000 tons	Fire and grounding, 23 crew members perished

<sup>9</sup> Howells Ltd, The MPSC, Milford Haven. Wales, UK Past President - The Institute of Marine Engineering, Science and Technology, pp. 4-5.  
[http://www.pcs.gr.jp/doc/esymposium/2005/2005\\_Rickaby\\_E.pdf](http://www.pcs.gr.jp/doc/esymposium/2005/2005_Rickaby_E.pdf).

Dutch Coast, 1988	Anna Boere	Acrylonitrile, Dodecylbenzene	547 tons 500 tons	Collision and sinking
Italian Coast, 1991	Alessandro Primo	Acrylonitrile, Dichloromethane	550 tons 1000 tons	Sinking
Greek Islands 1994	Tus	Sodium hydroxide (Caustic soda)	4,200 tons	Grounding
Chinese coast 1995	Chung Mu	Styrene	310 tons	Collision
English Channel, 1995	Grape 1	Xylene	4000 tons	Sinking
North Scottish Coast, 1999	Multitank Ascania	Vinyl acetate	1750 tons	Fire, left abandoned, threat to villages
Thames Estuary, 1999	Ever Decent	Sodium cyanide, potassium cyanide	Various teus in vicinity with other flammables	Collision with pax ship, fire, extensive fire fighting, coastal threat
English Channel, 2000	Iveoli Sun	Styrene, methyl ethyl ketone, isopropyl alcohol	4000 tons, 1027 tons, 997 tons	Sank under tow, sunken cargo recovered following year

## 2. Algerian Perspective Regarding the Protection of Marine Environment

In Algeria the environment and sustainable development have been rooted in fundamental law; this is reflected through the adoption of diverse public actions aiming to set out solution for the development problems, as a result, the Algerian authorities are being mindful of the importance of the environment which is regarded as source of wealth. Therefore, they grant it a huge importance in respect of its protection. The requirements linked to socio-economic developments and the new ecological trend, locally and universally, have led to the commitment of the State to implement diverse actions aiming to the establishment of national environmental policy. Consequently, the issue of environment is considered an overriding priority giving due regard to its assets which, if not appreciated would lead to an imbalance in social and economic life.

In Algeria the protection of environment and the fight against climate change are considered politic and economic issues. Consequently, Algerian authorities have adopted primary, secondary and institutional legislations. The importance given to the environment is justified by its interdependence and interaction with the economy. The interdependence is reflected through environmental assets which supply the economy by raw materials transformed at the end of the day to consumption products. However, the interaction is more significant through disposals and release of wastes resulting from the transformation of raw materials, as a result, the intervention of public authorities at this stage to set up a balance is required. Taking into account the interdependence and the interaction factors between the environment and the economy, Algerian public authorities have adopted diverse legal instruments aiming to protect the environment in the context of sustainable development these instruments are divided into three types:

1- Legal instruments adopting actions such as:

- the national programme for environmental affairs;
- the national programme for sustainable development;
- the national programme for the management of non hazard wastes;
- the national programme for territory planning;
- the national programme for integrated management of cities' wastes;
- the national plan of action for the environment and sustainable development;
- the communal charter for the protection of the environment;
- the local environmental programme;
- the directive programme for the planning.

2- legal instruments creating institutions and diverse organisms aiming to protect the environment:

- the National Council for Planning and Sustainable Development of the Territory;
- the National Agency for Climate Change;
- the National Fund for Environment and Cleaning up;
- the National Office for Environment and Sustainable Development
- the Regional Conference for Planning and Development of the Territory;
- the Regional Inspectorates for the Environment;



- the Environmental Directions within Departmental Administration;
- 3- legal instruments aiming to the protection of the environment: several texts either primary or subsidiary legislations are adopted during last decade and all of them reflect provisions of international instruments adopted by People's Democratic Republic of Algeria, the most important are the following:
- Law No 01-19 of December 12<sup>th</sup>, 2001 relating to the management, control and elimination of wastes;
  - Law No 01-20 of December 12<sup>th</sup>, 2001 relating to the planning of the territory in the context of sustainable development;
  - Law No 02-02 of February 5<sup>th</sup>, 2002 relating to the protection and development of coastline;
  - Law No 03-10 of July 19<sup>th</sup>, 2003 relating to the protection of environment in the context of sustainable development;
  - Law No 04-03 of June 23<sup>rd</sup>, 2003 relating to the protection of mountain areas in the context of sustainable development;
  - Law No 04-09 of August 14<sup>th</sup>, 2004 relating to the promotion of the renewed energies in the context of sustainable development;
  - Law No 04-20 of December 5<sup>th</sup>, 2004 relating to the prevention of major hazards and management of disasters in the context of sustainable development;

Additionally, the People's Democratic Republic of Algeria has ratified and acceded to a large number of important international instruments aiming to the protection of environment from any pollution, going back to the last decade, the OPRC 1990 done in London on 11<sup>th</sup>, 1990 has been ratified by Algeria. The said Convention aims to establish a mechanism for co-operation between States to fight against pollution of sea by oil notably accidental pollution.

The number hereunder mentioned<sup>10</sup> reflects the tendency of national policy relating to the preservation of the environment which is an area without borders traditionally known. Given that, environment under the jurisdiction of a State once infected by pollution may

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<sup>10</sup> The People's Democratic Republic of Algeria has ratified the main important international instruments aiming to protect the environment, the number of ratified instruments exceeds 20 including Kyoto Protocol.

often affect the environment of other States especially neighboring States. This is explained by the nature of environmental communication channels which have no limits therefore, the need to protection and reaction is highly recommended. In this respect the Mediterranean Basin as a semi closed sea has a specific classification regarding international or regional environmental standards<sup>11</sup> regulating the prevention and fighting against marine pollution. Moreover, the distance between the North and the South of this Basin is not important. Accordingly, this situation explains the huge and immediate consequences of a pollution event which can happen any where inside that area. They would probably affect all coastal States directly or indirectly.

On the one hand, the factor of traffic density<sup>12</sup> in Mediterranean Sea is a sore point which cannot be ignored. It is very expressive upon the risks of accidents that likely occur due to the huge traffic accordingly, it should be noted that the part of Algerian coast in the Mediterranean Sea is 1200 Km among 46.000 km an important distance which is not immune from marine incidents with serious consequences especially if the pollutants are harmful and noxious. These products pass through Algerian coast or involved in activities related to international trade which requires their transit through national ports. In this respect, notwithstanding the dangerousness and harmfulness of these products the need of their use in domestic industry continues to grow.

On the other hand, it should be noted that Algerian economy is based on the international trade including trade of oil and its derivatives. As a result, the national trend regarding the development of this sector is in perpetual rising in order to meet international demand in matters of natural gas “*GNL*” or petroleum gas “*GPL*” considered less pollutant however, their harm to the environment is very serious. The delivery of these products is made trough sea on board of Gas carriers or by pipe lines transiting the Mediterranean Sea. Furthermore, facilities for processing, storage and transfer are located in the shores of the sea accordingly; an incident involving dangerous substance may occur at any time within an area under national jurisdiction. The means used for fighting against such incidents are never considered effective due to the non-homogeneity of the reaction of the

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<sup>11</sup> Mediterranean Sea is considered a special area by the provisions of MARPOL Convention 73/78.

<sup>12</sup> More than 120.000 ships navigate in Mediterranean Basin.

hazardous and noxious substances. So, such situation hinders the making of decision, as well as, the assessing of the manner and the time of the appropriate reaction. Accordingly, the particularity of the issue requires the adoption of standards at internal level moreover, an international co-operation for better reaction is much recommended. Noting that no State can claim the efficiency standards adopted unilaterally to master impacts resulting from incidents involving certain substances without recourse to the assistance of other States, especially if the incident involves one of its ships while it is under the jurisdiction of another State.

Algeria has an appreciated legal system governing the prevention and fighting against marine pollution either at internal level or internationally through the adopted international instruments. This is evidenced by the important number of international treaties adopted to protect Sea from pollution (International convention for the prevention of pollution of sea by oil 1954, MARPOL Convention 73-78, Barcelona Convention 1976 and its protocol of 1995). In addition, other treaties have been adopted regarding the regime of liability and compensation in case of pollution of sea by oil (CLC 1969). Also International Conventions providing international co-operation framework for the fight against pollution of sea (OPRC 1996, Malta Protocol of 2002). However, the effectiveness of this legal framework will not be reached unless instruments providing international co-operation for fighting against pollution of sea will be solidified by the accession to the Protocol on Preparedness, Response and Co-operation to pollution incidents by Hazardous and Noxious Substances' 2000. Consequently, channels of co-operation will be extended to substances which are not covered by the existed instruments noting that OPRC 1996 covers only the pollution by Oil. Furthermore, the accession to this relevant instrument will allow the harmonization of provisions of domestic law, already in force regulating this issue, with the requirements of that Protocol.

Having regard to the reasons abovementioned, the need of Algeria to accede to the OPRC HNS Protocol 2000 seems vital. Noting that, it provides a framework for the development of national and regional capacity to prepare and respond to HNS pollution incidents. In addition, it is considered as a platform to facilitate international co-operation and mutual assistance in preparing for and responding to major HNS pollution incidents. In this

respect, the adoption of OPRC HNS protocol 2000 will be made according to Algerian law regulating the incorporation of international treaties to domestic law which will be reached by the enactment of separate instrument for accession. Furthermore, the modification of national instrument carrying the organization of fighting against marine pollutions and contingency plans related thereof is highly recommended in order to harmonize the fulfillment of Algerian obligations contracted from international instrument with domestic standards.

### **3. Advantages for Algeria in incorporating the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000 into domestic law**

Many advantages offered by the Protocol OPRC-HNS 2000 especially for States that are in need to technologies regarding equipments and training required to be used in events of incidents involving HNS. Moreover, the Protocol enhance the system that has been already adopted by the Convention OPRC 1996 therefore the issue of implementation of the Protocol by a State party to the Convention such as Algeria does not need much efforts and expenditures for the implementation of the Protocol. In Other words, OPRC-HNS 2000 requires only the reinforcement of measures taken by virtue of the Convention. In this respect, “IMO” through the Protocol suggests to the States an important assistance regarding understanding and implementation of the Protocol. This aims to the improvement of preparedness and response to HNS incidents. In this respect it should be noted that certain provisions of the Protocol OPRC HNS 2000 have been already implemented in Algeria before its adoption trough the implementation of national instruments such as:

\*Algeria has already adopted at internal level an organization for preparedness and response in case of marine pollutions enshrined in the:

- a) Executive Decree No 94-279 of September 17<sup>th</sup>, 1994 carrying the Organization of fighting against Marine Pollution and the establishment of Contingency Plans;
- b) Executive Decree No 08-327 of October 21<sup>st</sup>, 2008 carrying mandatory reporting by captains of ships carrying dangerous goods or toxic or pollutant in case of event at sea.

This last Decree designates the national authority responsible for the reception of messages of notification of any event occurring on board the ship which constitutes a threat of pollution or contamination of marine environment and coastal areas.<sup>13</sup>

\*Regarding regional co-operation, Algeria has ratified the Protocol relating to the Co-operation for the prevention of pollution from ships and, in cases of emergency to fight against pollution in Mediterranean Sea, done in Valetta (Malta), on January 25<sup>th</sup>, 2002;

This Protocol gathers members of Mediterranean Regional Center for Emergency Response to Accidental Marine Pollution (REMPEC) created by the resolution 7 adopted by the Conference of plenipotentiaries of Coastal States of Mediterranean region in Barcelona in February 9<sup>th</sup>, 1976 which is administered by International Maritime Organization and the United Nations Environment Program.

In addition, the accession to the OPRC-HNS Protocol 2000 is justified by the fulfillment of commitments set forth by various pertinent international conventions as a flag State, port and coastal State.

- By the accession to the OPRC-HNS Protocol 2000, Algeria will develop its capabilities on a national implementation of provisions of international conventions aiming to the enhancement of safety of life at sea and the reduction of risks caused by incidents involving hazardous and noxious substances.

The accession to the OPRC-HNS Protocol 2000 will allow the strengthening of national plan for the fight against pollution of the sea, already in force, to stress on the duties of each body authorized to act on behalf of Algerian Government on measures for mutual assistance and co-operation with other parties to the Protocol. This objective shall be reflected through domestic regulations which will be modified for the implementation of the commitments contracted either at regional or international level. Consequently the role of following authorities will be consolidated:

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<sup>13</sup> Article 4 designates Maritime Rescue Co-ordination Center of Algiers to be responsible for receiving messages from ships.

1- Competent national authority responsible for pollution incident and emergency plan required for Algerian ships. Such authority would be the same authority responsible for the implementation of standards aiming to ensure that masters' of these ships follow as required the reporting procedures;

2- Competent national authority which is responsible for the notification to other States whose interests are likely to be affected by incident involving pollution whatsoever its origin;

3- The designation of national port authorities required to establish appropriate pollution emergency plans or similar arrangements for hazardous and noxious substances, prepared in accordance with procedures established by the competent national authority;

4- Competent national authority responsible for reception or response to request for assistance from other States parties to the Protocol. Such authority shall be responsible to request assistance in case of major incidents to States parties either to the Protocol or parties to bilateral or multilateral agreements related to the co-operation in matters relating to fight against marine pollution;

On the other hand, the implementation of procedures, relating to the preparedness and response to pollution incidents at sea leads irrevocably to expenditures on the State budget. So, this situation requires the adoption of standards for financing the measures to be taken by national authority responsible for national contingency plan for the fight against marine pollutions and cleaning up. The available solution is the recourse to the National Fund for Environment and Cleaning Up bearing in mind the main important duty that will be attributed to the Fund is the disinterestedness of States which provide assistance to Algeria due to an event at sea requesting the call for assistance on the basis of the OPRC-HNS protocol 2000 and the Malta Protocol. Thus, both provide the reimbursement of costs of assistance particularly in case where State providing that assistance claim for reimbursement.

Notwithstanding the advantages previously cited, it should be emphasized that the main benefit that can be gained from the accession of Algeria to the OPRC-HNS Protocol 2000 is the up dating of the rules already in force and the remedying the lacuna of national law governing the protection of the environment generally and marine environment particularly, given that the first Algerian primary law has been enacted on February 5<sup>th</sup>, 1983 to regulate the aspects linked to the environment. In 2003 other legislation has been passed repealing the existed law due to its obsolescence and ineffectiveness as a result of the adoption of several international instruments containing principles which should be reflected in domestic legislation. On the other hand, the overriding priority given by public authorities during two last decades to the environment required the review of the legislation. Accordingly, a new law has been enacted on July 19<sup>th</sup>, 2003 in which the following principles are adopted:

- a) preservation of biodiversity principle;
- b) non degradation of natural resources principle;
- c) substitution principle;
- d) integration principle;
- e) precautionary principle;
- f) pollutant pays principle;
- g) information and participation principle.

The provisions regarding protection of marine environment are provided under section 2 “*Protection of the Sea*” of chapter 3 “*prescriptions of water and aquatic environments*” both are cited under title III “*Prescriptions of Environmental Protection*”.

However, despite the recent enactment of that law it is important to underline that some discrepancies are recorded notably in respect of principles of international law governing the issue of co-operation to fight against marine pollution. Basically, the role of primary legislation is the laying down of the principles by which subsidiary legislation will be based on. In the following points the deficiencies recorded are pointed out:

- Whereas the UNCLOS 1982 has been ratified by the People’s Democratic Republic of Algeria, the law of 2003 does not refer to it neither in its preamble nor in its articles and it does not reflect some provisions laid down by the Convention especially those set forth in section 2 and 3 of Part XII related

respectively to global and regional co-operation and technical assistance which constitute the main provisions of OPRC-HNS Protocol 2000. Conversely, the subsidiary legislation enacted before that law reflects some provisions such as the intervention in high seas to fight against pollution or threat of pollution therefore; the lack of harmonization is again recorded;

- Whereas the International Convention for the Prevention of Pollution from Ships 1973 and the Protocol of 1978 relating to it (MARPOL Convention 73/78) is acceded by the People's Democratic Republic of Algeria since 1988, the law of 2003 does not refer to it neither in its preamble nor in its articles bearing in mind that Article 9 of the said Convention provides that the OILPOL Convention of 1954 is superseded by MARPOL Convention 73/78 between State Parties, meaning that there is a need to refer officially to the MARPOL Convention 73/78 as a basic law regulating marine pollution from ships in addition to OILPOL Convention 1954 which is still applicable between State Parties to it without being parties to the MARPOL 73/78 Convention and between State Parties to MARPOL 73/78 Convention and State Parties to the OILPOL Convention 1954 with or without being Parties to MARPOL 73/78 Convention;
- Direct consequence of the previous failure, the 2003 law has no provision regarding the duty of State to not transfer type of pollution or risk of pollution from one maritime area to another during its implementation of measures to prevent or reduce that pollution;
- Whereas, the 2003 law provides the procedure to be followed in case of threat of waters under national jurisdiction by pollution coming from a ship through the request given to the shipmaster to take adequate measures to avoid pollution, no provision is provided to clarify the duty of State to co-operate by assisting the ship involved in the incident moreover, the predominant trend internationally after the disaster of The Prestige<sup>14</sup> is the adoption of measures aiming to assist ships through refuge zones;

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<sup>14</sup> Bahamian Oil tanker broken into two parts in Atlantic near Spanish coast, the result was huge pollution for marine environment by oil on November 19<sup>th</sup>, 2002.



- The 2003 law does not refer namely to the national authority responsible for national contingency plan;
- Except the right of recourse against the ship for the costs incurred from the measures taken to avoid or to fight against pollution, the 2003 law does not provide a provision by which sources of financing the measures taken through the implementation of national emergency plan could be determined;
- No provision is provided by 2003 law regarding the possibility of the recourse to request international assistance in case of a major pollution incident.

#### **4. Overview of the Protocol**

The Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000 is organized in three related parts.

*The preamble* which recalls the “polluter pays principle” and the “precautionary principle” simultaneously, provides reasons and objectives of the adoption of the of the Protocol;

*The main body* contains 11 Articles which establishes duties and rights of State Parties regarding the co-operation at different levels for the preparedness and response to pollution incidents by HNS;

*The final part* that has procedural provisions including amendments, methods of adoption of the Protocol by Members of “IMO”, the entry in force, denunciation, depositary and languages;

*The Annex* that provides provisions regulating the reimbursement of costs of assistance rendered between State Parties in accordance to the Protocol’s provisions.

Considering that the provisions of the main body and the annex to the protocol are the main important parts by their establishment of standards that set out duties and rights for State Parties and taking into account the final part is a routine procedural part, consequently, the author will only explain the main body of the protocol.

## *Article 1*

### *General provisions*

Composed by three paragraphs:

Paragraph (1) states the general duty of each party to the *OPRC-HNS Protocol 2000* to endeavor for the implementation of the provisions of the protocol throughout either individual taking of measures or with other States Parties by bilateral or multilateral agreements to prepare for and respond to a pollution incident by hazardous and noxious substances.

Paragraph (2) refers to the annex to the Protocol which is considered an integral part of it consequently, States when they refer to the Protocol they refer simultaneously to the annex.

Paragraph (3) is related to the scope of application of the Protocol, it provides the categories of excepted ships to which the Protocol shall not apply inter alia, warships, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on Government non-commercial service. On the other hand a duty upon States Parties is provided to adopt appropriate measures to ensure that excepted ships operate within standards set out by the Protocol but these measures shall not without led to the impairing their operation or operational capabilities.

## *Article 2*

### *Definitions*

Article 2 provides 6 key definitions of phrases used through the Articles of the Protocol, the definitions provided as follows:

(1) *Pollution incident by hazardous and noxious substances* shortened in provisions of the Article to be “pollution incident” and it refers to any occurrence or series of occurrences having the same origin which means any event or series of events resulting from unique cause, thus, the definition give example of fire and explosion because fire is an event which can provoke an explosion, therefore both have the same origin, in addition, “pollution incident” include the result of the occurrence or series of occurrences which is described to be in three forms, the discharge, release or emission of hazardous and noxious substances.

Ultimately, the definition refers to the damage that result from the incident which is the threat to the marine environment, or to the coast line or related interest such as health, fishing , tourism etc...however, it is not considered “pollution incident” unless it requires an emergency action or immediate response.

(2) *Hazardous and noxious substances* For the purposes of the HNS Protocol, a Hazardous and Noxious Substance is defined **as 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. The oil is excepted because the incidents resulting from oil spills are regulated by the 1990 OPRC Convention then, OPRC-HNS Protocol 2000 ensures that ships carrying hazardous and noxious liquid substances are covered by preparedness and response regimes similar to those already in existence for oil incidents. For the purposes of the OPRC-HNS Protocol, HNS definition includes:

- Noxious liquid substances described in *Annex II* of *MARPOL 73/78* and the International Bulk Chemical Code (*IBC Code*).
- Dangerous goods described in the *IMO Dangerous Goods Code (IMDG Code)*.
- Solid cargoes covered by the Code of the safe practice for solid bulk cargoes (*BC Code*).

(3) *Sea ports and hazardous and noxious substances handling facilities* refer to the ports or facilities situated in territories of States Parties where HNS constitute subject of commercial operations by their loading and unloading from ships. In other words, sea ports and other facilities where HNS are not used are excepted from the provisions of the Protocol.

(4) *Organization*: the term of Organization used in Protocol's provisions is referred to the International Maritime Organization "IMO" by which the OPRC-HNS protocol 2000 is adopted.

(5) *Secretary General*: refers to the secretary general of the "IMO" who is the depositary according to the Article 17 of the OPRC-HNS protocol 2000.

(6) *OPRC Convention*: means the International Convention on Oil Pollution Preparedness, Response, and Co-operation, 1990 which set out principles followed by the regarding pollution incidents by oil followed by the OPRC-HNS Protocol 2000 for pollution incidents by HNS

### ***Article 3***

#### ***Emergency plans and reporting***

##### ***Requirements for Flag States:***

Article 3 is organized in 3 paragraphs which deal with requirements to be followed by flag States to ensure that their ships and sea ports and noxious substances handling facilities of States Parties to the OPRC-HNS Protocol 2000 respect these requirements.

(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.

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

(3) This paragraph set out the international duty on States Parties to notify through designated national authorities, other States whose interests are likely to be affected by incidents involving *HNS*.

#### *Article 4*

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

This Article is considered the core of the OPRC-HNS Protocol 2000 by enumerating standards that each Party shall observe during the establishment of the national system for responding to pollution incidents thus, those standards are enshrined in 3 paragraphs as follows:

(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;

(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 minimum level of pre-positioned equipment for responding to pollution incidents commensurate with the risk involved, and programmes for its use; a programme of exercises for pollution incident response organizations and training of relevant personnel; detailed plans and communication capabilities for responding to a pollution incident - such capabilities should be continuously available; a mechanism or arrangement to co-ordinate the response to a pollution incident with, if appropriate, the capability to mobilize the necessary resources.

(3) This part of article 4 set up a duty of State Parties to provide the International Maritime Organization either directly or through relevant regional organization such as REMPEC for Mediterranean State Parties to this regional organization, current information which is useful through the organization for the establishment of guidelines and resolutions by which the said information may be easily accessible for all States for the effect of response and preparedness and co-operation to pollution incidents

The information required concern:

- (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 may be made available to other States, upon request; and
- (c) national contingency plan of each State Party.

## *Article 5*

### *International co-operation in pollution response*

The provisions of Article 6 deal with the situations where State party need to be assisted in combating pollution incident by other Parties, therefore parties to the protocol have the duty to provide the requested assistance according to their capabilities and the availability of relevant resources. The assistance may take form of providing of advisory service, technical support and equipment.

Article 5 refers to the annex of the OPRC-HNS Protocol 2000 to determine sources of financing of costs rising from the assistance given internationally, moreover paragraph 2 of present Article provide the assistance that may be requested by the Party affected or likely to be affected to the “IMO” for the purposes of identifying sources of provisional financing of the costs referred to in Paragraph (1), in addition, paragraph 3 provides the duty of State Parties related to the conclusion of international agreements by which they shall adopt measures aiming to facilitate the movement of persons, equipment and materials as far as necessary to be used in facing pollution incidents.

## *Article 6*

### *Research and development*

The provisions of Article 6 provides the consent of State Parties to co-operate bilaterally, regionally or through the “IMO” in order to promote and exchange of results of research and development programmes to enhance the State-of-the-art of preparedness and response to pollution incidents. The co-operation in research and development includes technologies and techniques for surveillance leading to know in appropriate time the occurrence of pollution incidents and to identify easily the authors, techniques relating to the methods of dealing with HNS such as containment, recovery, dispersion, clean up, and restoration.

While Paragraph (2) provides duty of State Parties to establish relations between their research institutions for research and development to the extent of paragraph (1) the remaining parts of the Article 6 provide the duty of State Parties to co-operate in order to promote technological advances in techniques and equipment for responding to pollution incidents and to develop the standards for compatible HNS pollution combating techniques and equipment.

### *Article 7*

#### *Technical co-operation*

By provisions of article 7 it is established the duty of State Parties to co-operate in technical matters especially by providing support to States which request technical assistance and the transfer of technology in respect of preparedness for response to pollution incidents, accordingly, the developing countries should benefit from this duty of sort of co-operation due to the fact that developed countries hold the advanced technologies, moreover the *Annex* to the OPRC-HNS Protocol 2000 contains provision which is in favor of developing countries by providing that “assisting Parties shall give due consideration to the needs of the developing countries”

### *Article 8*

#### *Promotion of bilateral and multilateral co-operation in preparedness and response*

OPRC-HNS Protocol 2000 is a an efficient international framework aiming to the promotion of co-operation in preparedness for and response to pollution incidents thus, its Article 8 encourages State Parties to conclude bilateral or multilateral agreements for that effect (if any) the copy of each agreement shall be communicated to the “IMO” for the purposes of their communication to the State Parties at their request.



## *Article 9*

### *Relation to other Conventions and other agreements*

For the purposes of avoidance of interference between the OPRC-HNS Protocol 2000 and other international Conventions, Article 9 provide expressly that no provision in the protocol shall be interpreted as altering the rights or obligations of any Party under another Convention or international agreements.

## *Article 10*

### *Institutional arrangements*

Article 10 provides functions and activities of International Maritime Organization in relation to the implementation of OPRC-HNS Protocol 2000 which are given to it by the parties in order to ensure the performance of:

- information services with respect to the information transmitted to it by States Parties and providing , as it is stated by Article 5, assistance in identifying sources of provisional financing of costs for Parties that request assistance from other Parties;
- promotion of education and training in respect of preparedness for and response to pollution incidents;
- technical services by providing advice to States regarding the establishment of national or regional response capabilities and the analyzing of the information provided by Parties and relevant information provided by other sources;
- technical assistance by facilitating the provision of technical assistance in establishing national or regional response capabilities and in response to the request of States faced with major pollution incidents.

## *Article 11*

### *Evaluation of the Protocol*

The evaluation of the protocol by State Parties within the “IMO” aims to ensure its effectiveness regarding its objectives set out in its preamble therefore, amendments may be carried out following each assessment to enhance principles underlying co-operation and assistance.

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## *Annex*

### *Reimbursement of costs of assistance*

The *OPRC-HNS Protocol 2000* provides in its main body especially in its Article 5 the right of Parties affected or likely to be affected to ask assistance from other State Parties when the severity of the incident so justifies that request. On the other hand, it is provided a duty upon State Parties to co-operate and provide the requested assistance subject to the capabilities and availability of relevant resources, as a result, the assistance given incurs costs which must be reimbursed by the assisted State thus, the annex to the Protocol set out principles governing the methods of such reimbursement as follows:

- (a) the reimbursement of costs of assistance shall be made by the assisted Party according to the provisions of the *OPRC-HNS Protocol 2000* if the concerned parties do not agree otherwise through bilateral or multilateral agreements concluded prior to the pollution incident. The requesting Party may cancel its request at any time, however, it shall bear the costs already incurred or committed by the assisting Party and if the assistance was taken voluntarily by a Party then it shall bear the costs of its actions

(b) State Parties may agree to deal with incurred costs in a way different from that previously provided.

- if there is not agreement providing otherwise, the costs of assistance rendered upon a request shall be equitably calculated according to the law and current practice of the assisting party with respect of the reimbursement of such costs.

- State Parties concerned by reimbursement of costs of assistance shall co-operate to

1- Include any action in response to a compensation claim;

2- give due consideration to existing legal regime

3- Waive reimbursement of the expenses exceeding the sums compensated

4- Reduce the costs which have been calculated in accordance with the law and current practice of the assisting Party

5- Request a postponement of the reimbursement of costs of assistance

6- Give due consideration to the needs of the developing countries by assisting Parties

Ultimately, State Parties have the right to recover from States non parties to the OPRC-HNS Protocol 2000 the costs of actions taken to fight against pollution or the threat of pollution according to other applicable provisions and rules of national and international law.

## **5. Incorporation of the Protocol into Primary and Subsidiary legislations**

The task of administration related to maritime affairs in Algeria is the responsibility of Ministry of Transport which represents the central maritime administration empowered to set out and execute the State maritime policy, it is represented at this level by the

“Department of Merchant Marine and Ports” (hereinafter: DMMP) which is given the whole prerogatives regarding the enforcement of maritime laws and regulations. To carry out its duties the DMMP has under its supervision the Local Maritime Administration (hereinafter: LMA) entrusted to carry out duties related to the administration of ships and seafarers, the flag State and port State controls. In addition, it is given to “LMA” the duty of maritime police with respect to enforcement of laws and suppression of unlawful acts at sea. Because of this latter duty the “LMA” is placed under the exclusive control of the National Service of Coast Guard (SNGC). The DMMP remains the national maritime authority representing the State at international forums dealing with maritime affairs; therefore, it is responsible to provide international maritime organization by the required information through national organization responsible for national contingency plan for preparedness and response to pollution incidents. The same authority is requested to ensure:

- The conformity of ships entitled to fly Algerian flag and their masters to the planning requirements and reporting procedures ;
- The conformity of Algerian ships with the prescriptions related to the necessary equipments required to be used in case of pollution incident;
- The conformity of crew members of Algerian ships regarding the completion of necessary training and periodic exercises for the fight against pollution which may be occurred following an incident involving HNS ;
- The conformity of national port facilities handling hazardous and noxious substances with planning requirements.

This duty will be the task of “LMA” which will be carried out throughout the flag State control according to the texts regulating missions of “LMA”<sup>15</sup>

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<sup>15</sup> Executive Decree n 96-350 of October 19<sup>th</sup>, 1996.

Regarding the OPRC-HNS Protocol 2000, because it concerns duties having operational character, therefore it involves several authorities in respect of enforcement of its provisions; however, the main authority remains the Ministry of Transport (DMMP) in matters related to the obligations of flag and Port State provided by the Protocol. On the other hand, considering that Algeria has already enacted a subsidiary legislation which deals with the organization of the fighting against marine pollutions and the establishment of contingency plans<sup>16</sup> by which the authorities responsible in this respect are designated, therefore, the need is related to affect modification to both primary and subsidiary legislations in order to reflect the new provisions contained in the OPRC-HNS Protocol 2000 then the work will be reflected throughout of the modification where it is necessary the provisions of existed primary and subsidiary legislation as follows:

At the national level the ministry of protection of environment, whose main duty is the protection and preservation of the environment from all forms pollution, the minister of environment is by virtue of the aforesaid subsidiary legislation is the national authority responsible for the carrying out of the duties entrusted to the “*National Committee Tel Bahr*”, this committee is under the presidency of that minister and he it empowered to carry out the following duties:

- Assures coordination, at national level, between actions of different ministerial departments and organizations with respect to the preparation and the organization of the fighting against marine pollutions;
- Proposes each technical and regulatory measure regarding the preparation and the Organization of the fighting against marine pollutions;
- Initiates any necessary measure for the improvement and consolidation of the capacities of intervention of the organizations in charge of the fighting against marine pollutions;
- Proposes the repartition of means of fighting and fixes the priorities of interventions;
- Decides upon the opportunity to call for international assistance;
- Studies the foreign offers of assistance;

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<sup>16</sup> Executive Decree N 94-279 of September 17<sup>th</sup>, 1994

- Establishes plans of interventions which include inventory of civil and military means to face a threat of pollution or to fight against pollution;
- Carries out studies upon maritime traffic and the vulnerability of coasts;
- Ensures the training of personnel that is necessary for the fighting against marine pollutions;
- Proposes the repartition of means and decides upon priorities of intervention taking into account zones considered as vulnerable, sensitive or exposed to threat;
- Ensures the forwarding of human and material means to the disaster areas;
- Acquires if there is a need the emergency equipments;
- Ensures the finance of expenditures and their recovery;
- Follows development of fighting operations since the starting of the plan until its official closure;
- Evaluates occurred damages by pollutions;
- Initiates and enforces the simulated exercises of “*plan Tel bahr*”;
- Presents annual report to the head of government regarding the readiness of different “*plans Tel bahr*”;
- Establishes a national chart for vulnerable zones or zones of higher risks.

The Ministry of Environment has a Department known as Department of Fighting against Marine Pollution. Its main duty is the preservation and protection of marine environment. The said ministry carries out the national policy aiming for the protection of the environment; it has a main legal instrument for that effect which is the law No 03-10 of July 19<sup>th</sup>, 2003 relating to *the protection of the environment in the context of sustainable development*. It is considered as Environmental Constitution due regard to its provisions regulating all aspects related to the environment thus, it adopts the most important principles, universally known, in relation to the management and the preservation of the environment such as the precautionary principle, the substitution principle and the polluter pays principle. In relation to the protection of sea from pollution the said law dedicates its *Section 2, chapter 3 of Title III* for that purpose. The Articles 56 and 57 are consecrated respectively to the issues of the incidents involving oil and hazardous and noxious substances that may occur in the limits of waters under national jurisdiction and the obligation of captains of ships regarding reporting in such cases.

Despite the generality of the said law, and its adoption of provisions aiming to respond for the fight against pollution of sea in case of incidents, it should be noted that it does not refer at all to the international co-operation for that effect, moreover, it does not reflect the principle aiming to empower the national authorities to exercise the right to intervene in the high sea in case of actual or threatened damage conversely, the Executive Decree No 94-279 has adopted that principle therefore, a dysfunction is apparent given that it is the duty of the primary legislation to adopt the principle subsequently, the subsidiary legislation will determine methods of its implementation. Moreover, it should be noted that the law No 03-10 is characterized by a lacuna related to the sources of financing and means of the measures to be taken by the competent authority in virtue of Article 56 (2) In this respect, the “*National Fund for the Environment and the Cleaning up*” created under the 2001 Finance law <sup>17</sup> will be designated for the financing of expenditures that will be incurred from incidents causing pollutions whatsoever the affected part of the national territory, having regard that many legal instrument in force were the initiative of the Minister of Environment contain provisions of environmental taxation<sup>18</sup> therefore this will be the main resource of funding. “Generally speaking, this tax targets a defined population that pollutes the environment (Pollutant Pays) and damages this asset in the pursuing of its business activities through the use of damaging production factors, the causes, the scope of application, the asset and the recovery are determined following the quantity and the degree of the damage and the hazard emitted or occurred this tax in its origin by the history is the idea of the Economist Pigou (Pigovian Tax)”<sup>19</sup>. As a result, the modification of the primary legislation seems to be irreversible in order to fill up a lacuna and to redress the dysfunctions this can be reached through the proposition of the government to the parliament to modify and to supplement the law No 03-10. The process will be initiated by the Minister responsible for the protection of the environment noting that in this case even the subsidiary legislation will require the modification in order to harmonize laws regulating same matters therefore,

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<sup>17</sup> The law No 2000-06 of December 23<sup>rd</sup>, 2000 carrying the finance law for 2001

<sup>18</sup> Article 117 of the Finance law for 1992 has created a taxation upon pollutant an dangerous activities which has been updated by the Finance laws of 2000 and 2001, and ultimately the Finance law for 2002 has recognized the character of public expenditure for environmental taxation.

<sup>19</sup> Dr H. BENZIDANE, Ecological Taxation in Algeria; an alternative for environmental protection <<http://med-eu.org/documents/MED3/BENZIDANE.pdf>> (accessed on December 24th, 2010).

the same Minister together with the Ministers responsible for the national contingency plan have to follow the ordinary procedure required for the promulgation of a subsidiary procedure. In other words, the representatives of ministerial departments cited by the Executive Decree No 94-279 shall debate during their meeting at General Secretariat of the government the draft which is initiated by the Minister of the Protection of the Environment which will be submitted to the Prime Minister for signature after the approval of the President of the Republic.

At regional level the fighting against marine pollutions is conferred to the “**Regional Committee Tel bahr**” which is under the presidency of the Commander of Maritime District (le Commandant de la façade Maritime) of Naval Forces Command. This Committee has as duties:

- Coordinates at regional level the actions of public services and organizations in the matters of fighting against marine pollutions;
- Defines measures which could be engaged for prevention of spill, as soon as, the risk of an event has been reported;
- Defines the accurate and concrete measures for the preparation of the fighting against marines pollutions;
- Proposes the repartition of means and decides upon priorities of intervention taking into account zones considered as vulnerable, sensitive or exposed to threat;
- Proposes the repartition of means and determines priorities;
- Takes appropriate measures for the mobilization of means of fighting;
- Ensures the carrying out of the scheduled exercises;
- Reports each semester to the “**National Committee Tel bahr**” the readiness of preparation of fighting means of Regional Plan;
- Follows development of fighting operations since the starting of the plan until its official closure;
- Proposes to the “**National Committee Tel bahr**” the urgent acquisition of appropriate equipments which are necessary to the fight against marine pollutions;
- Initiates and follows the simulated exercises of “**Regional Committee Tel bahr**”.



Ultimately, at local level the preparedness and response to pollution incidents at sea is entrusted to the “*Local Committee Tel bahr*” which is responsible to face any marine pollution which occurs inside the area under authority of administrative department.

## **I. Designation of competent national authorities**

The provisions Executive Decree No 94-279 of September 17<sup>th</sup>, 1994 have already designated the authorities responsible in respect of the preparedness and response to pollution incidents as follows:

I.1- The competent national authorities with responsibility for preparedness and response to pollution incidents, they are represented by:

- a) Minister of protection of the environment who ensures the presidency of “*National Committee Tel bahr*”;
- b) The Commandant of façade maritime of Naval Forces Command who ensures the presidency of the “*Regional Committee Tel bahr*”;
- c) The Head of Administrative Department who ensures the presidency of “*Local Committee Tel bahr*”.

I.2 - The national contact point responsible for the reception of reports about incidents involving HNS, is designated by Executive Decree N° 08-327 of October 21<sup>st</sup>, 2008 carrying the obligation of reporting by masters of ships carrying toxic, dangerous cargo or pollutant in case of incident at sea, to be the Maritime Rescue Coordination Center “MRCC Algiers” which is under the authority of National Service of Coast Guard.

I.3 - The competent national authority which is entitled to act on behalf of the State to request assistance, it is the duty of the Minister of Foreign Affairs who is member of “*National Committee Tel bahr*” according to the provisions of the Article 6 and 8 of the Executive Decree N° 94-279 of September 17<sup>th</sup>, 1994, however, the assistance to be rendered to other States at their request is not provided, in addition, the Minister of Foreign Affairs would be the competent national authority responsible for the notification to other States whose interests are likely to be affected by incident involving pollution

whatsoever its origin. This duty was not provided by the provisions of the subsidiary legislation.

I.4- The executive Decree designates in its Article 8 “*The National Committee Tel bahr*” as the competent national authority which ensures coordination between different actors involved in the implementation of national contingency plan for preparedness and response to marine incidents.

## **II. Scope of application**

By reference to Article 4 of the of the Executive Decree No 94-279 of September 17<sup>th</sup>, 1994 the national contingency plan for preparedness and response to pollution incident is enforceable upon the whole maritime waters under national jurisdiction, in addition, the plan may be triggered upon international waters when the pollution is susceptible to threat national maritime territory.

Obviously, this provision refers only to the waters under national jurisdiction without including expressly national port facilities handling HNS and ships entitled to fly national flag.

## **III. Sources of expenditures financing**

Article 8 (14) of the Executive Decree No 94-279 of September 17<sup>th</sup>, 1994 provides the duty conferred to the “*National Committee Tel bahr*” regarding the financing of expenditures necessary to the fulfillment of the main task of the committee, however, neither the said Article nor the Executive Decree provide the sources of that funding.

Having regard to the abovementioned statements, firstly, it is proposed to adhere at the OPRC-HNS Protocol, by enactment of presidential Decree for that effect, the provisions of the said Protocol will have their immediate effect since their publication in the Official Gazette is being done due regard of the Constitutional principle enshrined in Article 132 which consecrates the supremacy of the ratified international treaties upon national laws, therefore the implementation of the provisions either OPRC Convention and OPRC HNS Protocol basically, does not necessitate the promulgation of instruments other than the

instrument of their ratification. However, because the OPRC HNS Protocol provides a number of obligations which the Algerian Republic shall fulfill and those obligations have not self executing character and require their incorporation in the text regulating preparedness and response to pollution incident therefore, they shall later be promulgated in the light of the primary and secondary legislations in the form of instruments aiming to the modification and supplement of the law No 03-10 of July 19<sup>th</sup>, 2003 and the Executive Decree No 94-279 of September 17<sup>th</sup>, 1994. The draft of the first instrument will be prepared jointly by the different authorities who drafted the said initial Executive Decree inter alia, Minister of Home Affairs, Minister of Environment Protection, Minister of National Defense and Minister of Transport, the work will end in the adoption of the Executive decree which will be submitted to the Prime Minister for signature after being well discussed within the General Secretariat of the Government the said Executive Decree before its signature shall be approved by the President of Republic.

*This explanatory note is aiming at towards the proper understanding of the purpose and object of the Law, and it does not form part of the law.*

**Presidential Decree (Year- Number) of (Day – Month – Year Hegira) corresponding (Day – Month – Year Gregorian) relating to accession of People’s Democratic Republic of Algeria to the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000.**



The President of the Republic,

Upon the report of the State Minister and the Minister of Foreign Affairs,

According to the Constitution notably Article 77 Paragraph 9,

Considering the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000,

**Decrees**

**Article 1:** The People’s Democratic Republic of Algeria ratifies the Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, 2000. The Protocol will be published in the Official Gazette of People’s Democratic Republic of Algeria.

**Article 2:** This Decree Shall be published in the Official Gazette of People’s Democratic Republic of Algeria.

Done in Algiers, on (Day – Month – Year Hegira) corresponding to (Day – Month – Year Gregorian).

**The Full Name of the President of the Republic**

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

THE PARTIES TO THE PRESENT PROTOCOL,

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

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

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

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

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

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

HAVE AGREED as follows:

## ARTICLE 1

### *General provisions*

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

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

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

## ARTICLE 2

### *Definitions*

For the purposes of this Protocol:

(1) ***Pollution incident by hazardous and noxious substances*** (hereinafter referred to as "pollution incident") means any occurrence or series of occurrences having the same origin, including fire or explosion, which results or may result in a discharge, release or emission of hazardous and noxious substances and which poses or may pose a threat to the marine environment, or to the coastline or related interests of one or more States, and which requires emergency action or immediate response.

(2) ***Hazardous and noxious substances*** means any substance other than oil which, if introduced into the marine environment is likely to create hazards to human health, to

harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

(3) *Sea ports and hazardous and noxious substances handling facilities* 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 co-ordinated with the national system established in accordance with article 4 and approved in accordance with procedures established by the competent national authority.

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

#### ARTICLE 4

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

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

- (a) the designation of:
  - (i) the competent national authority or authorities with responsibility for preparedness for and response to pollution incidents;
  - (ii) the national operational contact point or points; and
  - (iii) an authority which is entitled to act on behalf of the State to request assistance or to decide to render the assistance requested;
- (b) a national contingency plan for preparedness and response which includes the organizational relationship of the various bodies involved, whether public or private, taking into account guidelines developed by the Organization.

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

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



- (b) a programme of exercises for pollution incident response organizations and training of relevant personnel;
  - (c) detailed plans and communication capabilities for responding to a pollution incident. Such capabilities should be continuously available; and
  - (d) a mechanism or arrangement to co-ordinate the response to a pollution incident with, if appropriate, the capabilities to mobilize the necessary resources.
- (3) Each Party shall ensure that current information is provided to the Organization, directly or through the relevant regional organization or arrangements, concerning:
- (a) the location, telecommunication data and, if applicable, areas of responsibility of authorities and entities referred to in paragraph (1) (a);
  - (b) information on pollution response equipment and expertise in disciplines related to pollution incident response and marine salvage which may be made available to other States, upon request; and
  - (c) its national contingency plan.

## **ARTICLE 5**

### ***International 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 endeavour to conclude bilateral or multilateral agreements for preparedness for and response to pollution incidents. Copies of such agreements shall be

communicated to the Organization which should make them available on request to the Parties.

## **ARTICLE 9**

### ***Relation to other conventions and other agreements***

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

## **ARTICLE 10**

### ***Institutional arrangements***

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

- (a) information services:
  - (i) to receive, collate and disseminate on request the information provided by Parties and relevant information provided by other sources; and
  - (ii) to provide assistance in identifying sources of provisional financing of costs;
- (b) education and training:
  - (i) to promote training in the field of preparedness for and response to pollution incidents; and
  - (ii) to promote the holding of international symposia;
- (c) technical services:

- (i) to facilitate co-operation in research and development;
  - (ii) to provide advice to States establishing national or regional response capabilities; and
  - (iii) to analyse the information provided by Parties and relevant information provided by other sources and provide advice or information to States;
- (d) technical assistance:
- (i) to facilitate the provision of technical assistance to States establishing national or regional response capabilities; and
  - (ii) to facilitate the provision of technical assistance and advice, upon the request of States faced with major pollution incidents.

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

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

## **ARTICLE 11**

### ***Evaluation of the Protocol***

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

## **ARTICLE 12**

### ***Amendments***

- (1) This Protocol may be amended by one of the procedures specified in the following paragraphs.
- (2) Amendment after consideration by the Organization:
  - (a) Any amendment proposed by a Party to the Protocol shall be submitted to the Organization and circulated by the Secretary-General to all Members of the Organization and all Parties at least six months prior to its consideration.
  - (b) Any amendment proposed and circulated as above shall be submitted to the Marine Environment Protection Committee of the Organization for consideration.
  - (c) Parties to the Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Marine Environment Protection Committee.
  - (d) Amendments shall be adopted by a two thirds majority of only the Parties to the Protocol present and voting.
  - (e) If adopted in accordance with subparagraph (d), amendments shall be communicated by the Secretary-General to all Parties to the Protocol for acceptance.
  - (f) (i) An amendment to an article or the Annex of the Protocol shall be deemed to have been accepted on the date on which two thirds of the Parties have notified the Secretary-General that they have accepted it.

- (ii) An amendment to an appendix shall be deemed to have been accepted at the end of a period to be determined by the Marine Environment Protection Committee at the time of its adoption, in accordance with subparagraph (d), which period shall not be less than ten months, unless within that period an objection is communicated to the Secretary-General by not less than one third of the Parties.
  
  - (g)
    - (i) An amendment to an article or the Annex of the Protocol accepted in conformity with subparagraph (f)(i) shall enter into force six months after the date on which it is deemed to have been accepted with respect to the Parties which have notified the Secretary-General that they have accepted it.
  
    - (ii) An amendment to an appendix accepted in conformity with subparagraph (f)(ii) shall enter into force six months after the date on which it is deemed to have been accepted with respect to all Parties with the exception of those which, before that date, have objected to it. A Party may at any time withdraw a previously communicated objection by submitting a notification to that effect to the Secretary-General.
- (3) Amendment by a Conference:
- (a) Upon the request of a Party, concurred with by at least one third of the Parties, the Secretary-General shall convene a Conference of Parties to the Protocol to consider amendments to the Protocol.
  
  - (b) An amendment adopted by such a Conference by a two thirds majority of those Parties present and voting shall be communicated by the Secretary-General to all Parties for their acceptance.

- (c) Unless the Conference decides otherwise, the amendment shall be deemed to have been accepted and shall enter into force in accordance with the procedures specified in paragraph (2) (f) and (g).
- (4) The adoption and entry into force of an amendment constituting an addition of an Annex or an appendix shall be subject to the procedure applicable to an amendment to the Annex.
- (5) Any Party which:
- (a) has not accepted an amendment to an article or the Annex under paragraph (2)(f)(i); or
  - (b) has not accepted an amendment constituting an addition of an Annex or an appendix under paragraph (4); or
  - (c) has communicated an objection to an amendment to an appendix under paragraph (2)(f)(ii)
- shall be treated as a non-Party only for the purpose of the application of such amendment. Such treatment shall terminate upon the submission of a notification of acceptance under paragraph (2)(f)(i) or withdrawal of the objection under paragraph (2)(g)(ii).
- (6) The Secretary-General shall inform all Parties of any amendment which enters into force under this article, together with the date on which the amendment enters into force.
- (7) Any notification of acceptance of, objection to or withdrawal of objection to, an amendment under this article shall be communicated in writing to the Secretary-General who shall inform Parties of such notification and the date of its receipt.
- (8) An appendix to the Protocol shall contain only provisions of a technical nature.



## ARTICLE 13

### *Signature, ratification, acceptance, approval and accession*

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

- (a) signature without reservation as to ratification, acceptance or approval; or
- (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
- (c) accession.

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

## ARTICLE 14

### *States with more than one system of law*

(1) If a State party to the OPRC Convention comprises two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Protocol, it may at the time of signature, ratification, acceptance, approval or accession declare that this Protocol shall extend to all its territorial units or only to one or more of them to which the application of the OPRC Convention has been extended, and may modify this declaration by submitting another declaration at any time.

(2) Any such declarations shall be notified to the depository 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.

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### Annex

#### *Reimbursement of Costs of assistance*

- (1) (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) 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 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.

- (2) Unless otherwise agreed, the costs of action taken by a Party at the request another Party shall be fairly calculated according to the law 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 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.

**Law (year – number) of (Day – Month – Year Hegira) corresponding to (Day – Month – Year Gregorian), modifying and supplementing the Law No 03- 10 of July 19<sup>th</sup>, 2003 relating to the Protection of the Environment in the Context of Sustainable Development.**



### **The President of the Republic**

- In view of the Constitution notably Articles 119, 122, 125 and 126
- In accordance with the ordinance No 66-155 of June 8<sup>th</sup>, 1966 modified and supplemented carrying Penal procedure code;
- In accordance with the ordinance No 66-156 of June 8<sup>th</sup>, 1966 modified and Supplemented carrying Penal Code;
- In accordance with the ordinance No 73-38 of July 25<sup>th</sup>, 1973 carrying the ratification by People's Democratic and Republic of Algeria the Convention concerning the Protection of the Cultural and Natural World Heritage. Done in Paris on November 23<sup>rd</sup>, 1972;
- In accordance with the ordinance No 74-55 of May 13<sup>th</sup>, 1974 carrying the ratification by People's Democratic and Republic of Algeria the International Convention related to the Creation of International Fund for the Compensation of Damages due to the Pollution by Oil. Done in Brussels on December 18<sup>th</sup>, 1971;
- In accordance with the ordinance No 75-58 of September 26<sup>th</sup>, 1975 modified and Supplemented Carrying the Civil Code;
- In accordance with the Ordinance No 76-04 of February 20<sup>th</sup>, 1976 relating to the Applicable Rules in Matters of Safety against risks of fire and the panic and to the Creation of the Commissions of Emergency preparedness ;
- In accordance with the ordinance No 76-80 of October 23<sup>rd</sup>, 1976 modified and supplemented carrying the Maritime Code;
- In accordance with the Law n 79-07 of July 21<sup>st</sup>, 1979 modified and supplemented Carrying the Customs Code;
- In accordance with the Law No 82-10 of August 21<sup>st</sup>, 1982 relating to the Hunting;
- In accordance with the Law No 83-17 of July 16<sup>th</sup>, 1983 modified and supplemented Carrying the Waters Code;
- In accordance with the Law No 84-12 of June 23<sup>rd</sup>, 1984 modified and supplemented Carrying the General Regime of Forests;
- In accordance with the Law No 84-17 of July 7<sup>th</sup>, 1984 modified and relating to Finance Laws;
- In accordance with the Law No 85-05 of February 16<sup>th</sup>, 1985 modified and Supplemented relating to the Protection and Health Promotion;

- In accordance with the Law No 87-17 of August 1<sup>st</sup>, 1987 relating to the Plants Protection;
- In accordance with the Law No 88-08 of January 26<sup>th</sup>, 1988 relating to the Veterinary Medicine and Animal Health Protection;
- In accordance with the Law No 89-23 of December 19<sup>th</sup>, 1989 modified and supplemented relating to the Standardization;
- In accordance with the Law No 90-08 of April 7<sup>th</sup>, 1990 relating to the Commune;
- In accordance to the Law No 90-09 of April 7<sup>th</sup>, 1990 relating to the Wilaya;
- In accordance with the Law No 90-25 of November 18<sup>th</sup>, 1990 modified and Supplemented carrying the Land Orientation;
- In accordance with the Law No 90-29 of December 1<sup>st</sup>, 1990 modified and Supplemented relating to the Planning and Development;
- In accordance with the Law No 90-30 of December 1<sup>st</sup>, 1990 modified and Supplemented carrying the Public Land Law;
- In accordance with the Law No 90-31 of December 4<sup>th</sup>, 1990 relating to the Associations;
- In accordance with the Law No 97-02 of December 31<sup>st</sup>, 1997 carrying the Law of the Finance for 1998;
- In accordance with the Law No 98-04 of June 15<sup>th</sup>, 1998 relating to the Protection of Cultural Heritage;
- In accordance with the Law No 99-09 of July 28<sup>th</sup>, 1999 relating to the Mastering of the Energy;
- In accordance with the Law No 2000-06 of December 23<sup>rd</sup>, 2000 carrying the law of the Law of Finance for 2001;
- In accordance with the Law No 01-10 of July 3<sup>rd</sup>, 2001 carrying the Mining Law;
- In accordance with the Law No 01-11 of July 3<sup>rd</sup>, 2001 relating to the fisheries and the Aquaculture;
- In accordance with the Law No 01-14 of August 19<sup>th</sup>, 2001 relating the Organization, Security and Police Road Traffic;
- In accordance with the Law No 01-19 of December 12<sup>th</sup>, 2001 relating to the Management, and Waste Disposal;
- In accordance with the Law No 01-20 of December 12<sup>th</sup>, 2001 relating to the Management Sustainable Development of the Territory;
- In accordance with the Law No 02-01 of February 5<sup>th</sup>, 2002 relating to the Electricity and Gas Distribution by Pipeline;
- In accordance with the Law No 02-02 of February 5<sup>th</sup>, 2002 relating to the

Protection and Coastal Development;

- In accordance with the Law No 03-03 of February 17<sup>th</sup>, 2003 relating to the Expansion Areas and Tourist Attraction;
- In accordance with the Law No 08-09 of February 25<sup>th</sup>, 2008 carrying the Civil and Administrative Procedure Code;
- In accordance with the Decree No 63-344 of September 11<sup>th</sup>, 1963 carrying the Adhesion of the People's Democratic and Republic of Algeria to the International Convention for the Prevention of Pollution of the Sea by Oil. Done in London on April 12<sup>th</sup>, 1954;
- In accordance with the Decree No 80-14 of January 26<sup>th</sup>, 1980 carrying the adhesion of the People's Democratic and Republic of Algeria to the Convention for the Protection of Mediterranean Sea from Pollution. Done in Barcelona on February 16<sup>th</sup>, 1976;
- In accordance with the Decree No 81-02 of January 17<sup>th</sup>, 1981 carrying the ratification by People's Democratic and Republic of Algeria the protocol relating to the Prevention of the Pollution of the Mediterranean Sea from the Dumping Operations effected from ships and Aircrafts. Done In Barcelona on February 16<sup>th</sup>, 1976;
- In accordance with the Decree No 81-03 of January 17<sup>th</sup>, 1981 carrying the ratification by the People's Democratic and Republic of Algeria the protocol relating to the Co-operation in the fighting against Pollution of Mediterranean Sea by Oil and other Harmful Substances in case critical Situation. Done in Barcelona on February 16<sup>th</sup>, 1976;
- In accordance with the Decree No 82-437 of December 11<sup>th</sup>, 1982 carrying the ratification by the People's Democratic and Republic of Algeria the protocol relating to the Co-operation between North African Countries in matter of the fighting against the desertification. Signed in Cairo on February 5<sup>th</sup>, 1977;
- In accordance with the Decree No 82-439 of December 11<sup>th</sup>, 1982 carrying the Adhesion of the People's Democratic and Republic of Algeria to the Convention relating to Wetlands of International Importance Especially as Waterfowl Habitat. Signed in Ramzar (Iran) on February 2<sup>nd</sup>, 1971;
- In accordance with the Decree No 82-440 of December 11<sup>th</sup>, 1982 carrying the ratification by the People's Democratic and Republic of Algeria the African Convention for the Conservation of the Nature and Natural Resources, Signed in Algiers on September 15<sup>th</sup>, 1968;
- In accordance with the Decree n 82-441 of December 11<sup>th</sup>, 1982 carrying the Adhesion of the People's Democratic and Republic of Algeria to the Protocol relating to the Protection of Mediterranean Sea against Land Based Pollution. Done in Athens on May 17<sup>th</sup>, 1980;
- In accordance with the Decree No 82-498 of December 25<sup>th</sup>, 1982 carrying the Adhesion of the People's Democratic and Republic of Algeria to the Convention on



the International Trade in Endangered Species of Fauna and Flora. Done in Washington on March 3<sup>rd</sup>, 1973;

- In accordance with the Presidential Decree No 88-108 of May 31<sup>st</sup>, 1988 carrying the adhesion of the People's Democratic and Republic of Algeria to the International Convention for the Prevention of Pollution from Ships 1973 and the Protocol of 1978 relating to it, done in London on February 27<sup>th</sup>, 1978.
- In accordance with the Presidential Decree No 92-354 of September 23<sup>rd</sup>, 1992 carrying the Adhesion of the People's Democratic and Republic of Algeria to the Vienna Convention for the Protection of the Ozone Layer. Done in Vienna on March 22<sup>nd</sup>, 1985;
- In accordance with the Presidential Decree No 92-355 of September 23<sup>rd</sup>, 1992 carrying the Adhesion of the People's Democratic and Republic of Algeria to the Montreal Protocol relating to the Substances that Deplete the Ozone Layer. Signed in Montreal on September 16<sup>th</sup>, 1987 and to its amendments (London June 27-29 1990);
- In accordance with the Presidential Decree No 93-99 of April 10<sup>th</sup>, 1993 carrying the ratification by the People's Democratic and Republic of Algeria the Convention on Climate Changes. Adopted by the General assembly of the United Nations on May 9<sup>th</sup>, 1992;
- In accordance with the Presidential Decree No 95-163 of June 6<sup>th</sup>, 1995 carrying the ratification by the People's Democratic and Republic of Algeria of the Convention on the Biological Diversity. Signed in Rio de Janeiro on June 5<sup>th</sup>, 1992;
- In accordance with the Presidential Decree No 96-05 of January 10<sup>th</sup>, 1996 carrying the ratification by the People's Democratic Republic of Algeria of the United Nations Convention on the law of the sea. Done in Jamaica on 1982;
- In accordance with the Presidential Decree No 98-123 of April 18<sup>th</sup>, 1998 carrying the ratification by the People's Democratic and Republic of Algeria of the protocol of 1992 modifying the International Convention of 1969 On Civil Liability for damages due to the Pollution by Oil;
- In accordance with the Presidential Decree n 98-158 of May 16<sup>th</sup>, 1998 carrying the adhesion of the People's Democratic and Republic of Algeria with reservation to The Bale Convention on the Control of Transboundary movement of Hazardous Wastes and their elimination;
- In Accordance with the Presidential Decree No 2004 - 326 of October 10<sup>th</sup>, 2004 carrying the ratification by People's Democratic Republic of Algeria the Convention on Oil Pollution Preparedness, Response and Co-operation 'OPRC Convention. Done In London on November 30<sup>th</sup>, 1990;
- In accordance with the Presidential Decree No 2005-71 of February 13<sup>th</sup>, 2005 Carrying the ratification by the People's Democratic and Republic of Algeria the Co-operation in the Prevention of Pollution from Ships and in case of Emergency the Fighting against the Mediterranean Sea Pollution. Done in Valletta on January 25<sup>th</sup>, 2002;
- In accordance with the Presidential Decree No (Year – number) of (Day- Month- Year) Carrying the adhesion of The People's Democratic and Republic of Algeria to the, Protocol on the Preparedness Response and Co-operation to Pollution Incident by Hazardous and Noxious Substances, 2000. Done in London on March 15<sup>th</sup>, 2000.

After the adoption by the parliament:

Promulgates the following law:

**Article 1:** The present Law aims to amend and supplement the provisions of Law No 03-10 of July 19<sup>th</sup>, 2003 relating to the protection of the environment in the context of Sustainable Development.

**Article 2:** The Law adds new provisions to the section 2 of chapter 3 of title III of Law No 03-10 of July 19<sup>th</sup> 2003 relating to the protection of the environment in the context of sustainable development.

**Article 3:** The provisions of Article 56 of Law No 03-10 of July 19<sup>th</sup>, 2003 relating to the Environment in the context of sustainable development are modified as follows:

“ In case of events or accidents involving any ship, aircraft, device or platform carrying or having on board noxious or dangerous substances or hydrocarbons which are able to create serious and imminent danger that could affect wholly or partly the waters under national jurisdiction or coastline or related interests, notice is to be given to the owner of such ship, aircraft, device of platform to take necessary measures to put an end to those dangers.

In case where the notice remains without effect or does not produce the expected effects within the allowed time or in case of emergency, resort should be made, without any delay, to trigger the appropriate plan, depending on the seriousness of the situation, in order to prevent, mitigate or eliminate risks posed by the incident in question.

The aforesaid plan may be triggered even in case of telluric or atmospheric pollution threatening waters under national jurisdiction.”

**Article 4:** It is inserted in the provisions of Law No 03-10 of July 19<sup>th</sup>, 2003 relating to the protection of the environment in the context of sustainable development a new **Article 56 bis** as follows:

**“Article 56 bis:** Proportionate measures to the actual or threatened damage in relation to those cited in Article 56 are applicable even in case of incident occurring in international waters to protect national coastline or related interests from pollution or threat of pollution following upon a maritime casualty or acts relating to such casualty, which may reasonably be expected to result in major harmful consequences.”

**Article 5:** It is inserted in the provisions of Law No 03-10 of July 19<sup>th</sup>, 2003 relating to the protection of the environment in the context of sustainable development a new **Article 56 bis 1** as follows:

**“Article 56 bis 1:** National authority responsible for the implementation of national contingency plan for fight against marine pollutions when implementing the provisions of Articles 56 and 56 bis shall act so as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another.”

**Article 6:** It is inserted in the provisions of Law No 03-10 of July 19<sup>th</sup>, 2003 relating to the protection of the environment in the context of sustainable development a new **Article 56 bis 2** as follows:

**“Articles 56 bis 2:** The provisions governing the national emergency plan to fight against marine pollution shall include measures to assist the ship or the aircraft which is in difficulty by her direction, as far as practicable, to a safe zone of refuge under national jurisdiction or to national port where threatening cargoes will be transferred for the effect of avoidance of pollution.”

**Article 7:** It is inserted in the provisions of Law No 03-10 of July 19<sup>th</sup>, 2003 relating to the protection of the environment in the context of sustainable development a new **Article 56 bis 3** as follows:

**“Article 56 bis 3:** In case of emergency, without prejudice to the right to execute the necessary measures vis a vis the owner of the ship or the aircraft

causing the incident, the costs of operations aiming to prevent, mitigate or eliminate pollution and to assist the ship or the aircraft in question are in charge of the State.”

**Article 8:** It is inserted in the provisions of Law No 03-10 of July 19<sup>th</sup>, 2003 relating to the protection of the environment in the context of sustainable development a new **Article 56 bis 4** as follows:

“**Article 56 bis 4:** Pursuant to observe the provisions of Article 56 bis 3 above cited, resort will be made to the National Fund for Environment and Cleaning up created by Law No 2000-06 of December 23<sup>rd</sup>, 2000 above cited.”

**Article 9:** It is inserted in the provisions of Law No 03-10 of July 19<sup>th</sup>, 2003 relating to the protection of the environment in the context of sustainable development a new **Article 56 bis 5** as follows:

“**Article 56 bis 5:** The methods of implementation of the provisions of Article 56 bis 4 above cited will be determined by regulation.”

**Article 10:** It is inserted in the provisions of Law No 03-10 of July 19<sup>th</sup>, 2003 relating to the protection of the environment in the context of sustainable development a new **Article 56 bis 6** as follows:

“**Article 56 bis 6:** In accordance with international instruments establishing international or regional co-operation relating to the response, preparedness and co-operation to pollution incidents to which Algeria is Party and if it turns out that the national means implemented by the national authority responsible for the national emergency plan are insufficient use is made to request international assistance.”

**Article 11:** The present Law will be published in the Official Gazette of the People’s Democratic Republic of Algeria.

Done in Algiers on (Day- Month- Year)

**The full name of the President of the Republic**

**Executive Decree N (year – Number) of (Day – Month – Year Hegira) corresponding to (Day – Month – Year Gregorian), modifying and supplementing the Executive Decree No 94- 279 of September 17<sup>th</sup>, 1994 carrying the Organization of the Fight against Marine Pollutions and the Establishment of Contingency Plans**



**The Prime Minister**

- Upon the conjoint report of Minister of Home Affairs, Minister of the Environment Protection, Minister of National Defense and Minister of Transport,
- In view of the Constitution, particularly Articles 85 (3) and 125 (2);
- In accordance with ordinance No 73-12 of April 3<sup>rd</sup>, 1973 modified and supplemented carrying the creation of National Service of Coast Guard;
- In accordance with ordinance No 76-80 of October 23<sup>rd</sup>, 1976 modified and Supplemented carrying Maritime Code;
- In accordance with Legislative Decree n 94-13 of May 28<sup>th</sup>, 1994 carrying rules related to Fisheries;
- In accordance with the Law No 03-10 of July 19<sup>th</sup>, 2003 relating to the Protection of the Environment in the Context of Sustainable Development;
- In view of the Decree No 63-603 of October 12<sup>th</sup>, 1963 carrying the outer limit of the Width of the National Territorial Waters;
- In accordance with Decree No 82-340 of November 13<sup>th</sup>, 1982 carrying the adhesion of of the people’s Democratic and Republic of Algeria to the International Convention on Maritime Search and Rescue. Done in Hamburg on April 27<sup>th</sup>, 1979;
- In accordance with the Decree No 84-14 of January 26<sup>th</sup>, 1984 carrying the adhesion of The People’s Democratic and Republic of Algeria to the Convention relating to the Protection of Mediterranean Sea against pollution. Done in Barcelona on February 16<sup>th</sup>, 1976;
- In accordance with the Presidential Decree No 88-108 of May 31<sup>st</sup>, 1988 carrying the adhesion of the People’s Democratic and Republic of Algeria to the International Convention for the Prevention of Pollution from Ships 1973 and the Protocol of 1978 relating to it, done in London on February 27<sup>th</sup>, 1978.
- In Accordance with the Presidential Decree No 2004-326 of October 10<sup>th</sup>, 2004 carrying the ratification by the Democratic and Popular Republic of Algeria the Convention on Oil Pollution Preparedness, Response and Co-operation ‘OPRC Convention’. Done in London on November 30<sup>th</sup>, 1990;
- In accordance with the Presidential Decree No 2005-71 of February 13<sup>th</sup>, 2005 carrying the ratification by the People’s Democratic and Republic of Algeria the Protocol relating to the Co-operation in the Prevention of Pollution from Ships and, in case of Emergency to fight Against the Mediterranean Sea Pollution. Done In Valetta on January, 25<sup>th</sup>, 2002;

- In accordance with the Presidential Decree No (Year – number) of (Day – Month – Year) Carrying the Adhesion of the People’s Democratic and Republic of Algeria to the Protocol on Preparedness, Response and Co-operation to Pollution Incident by Hazardous and Noxious Substances, 2000. Done in London on March 15<sup>th</sup>, 2000;
- In view of the Presidential Decree No 95-290 of September 30<sup>th</sup>, 1995 carrying the Creation of a National Centre and Regional Centers for the Maritime Search and Rescue;
- In view of the Decree No 84-181 of August 4<sup>th</sup>, 1984 determining the Baselines of Measurement the Widths of Maritime Zones under National Jurisdiction;
- In view of the Decree No 85-231 of August 25<sup>th</sup>, 1985 carrying the Conditions and Methods of execution of Interventions and Rescue in case of Disaster;
- In view of the Decree No 88-51 of March 15<sup>th</sup>, 1988 carrying the Organization of Maritime Search and Rescue;
- In view of the Decree No 88-228 of November 5<sup>th</sup>, 1988 defining the Conditions, Procedures and Arrangements for Disposal of Wastes from Ships and Aircrafts Susceptible to pollute the Sea;
- In view of The Executive Decree No 90-79 of February 27<sup>th</sup>, 1990 carrying the rules Regulating the Carriage of Dangerous Goods;
- In view of Executive Decree n 94-279 of September 1994 carrying the Organization of the Fight against Marine Pollutions and the Establishment of Contingency Plans;
- In view of Executive Decree No03-451 of December 1<sup>st</sup>, 2003 defining the Safety Rules Applicable to activities relating to the Substances and Dangerous Chemical Products and the Containers of Gas under Pressure;
- In view of the Executive Decree No 07-144 of May 19<sup>th</sup>, 2007 establishing the Nomenclature of Classified Installation for the Protection of the Environment;
- In view of the Executive Decree No 08-327 of October 21<sup>st</sup>, 2008 carrying the Compulsory Reporting by Captains of Ships Carrying Dangerous, Toxic Goods in case of incident at Sea.
- In view of Presidential Decree No 09-128 of April 27<sup>th</sup>, 2009 carrying the renewing of the Functions of the Prime Minister;
- In view of Presidential Decree No 09-129 of April 27<sup>th</sup>, 2009 carrying the renewing of the Functions of Government Members;

After the approbation of the President of the Republic

**Decrees:**

**Article 1:** The present Decree aims to modify and supplement the provisions of Executive Decree No 94-279 of September 17<sup>th</sup>, 1994 carrying the Organization and the fight against Marine Pollutions and the Establishment of Contingency Plans.

**Article 2:** The provisions of Article 1 of the Executive Decree No 94-279 of September 17<sup>th</sup>, 1994 No 94-279 of September 17<sup>th</sup>, 1994 carrying the Organization and the fight against Marine Pollutions and the Establishment of Contingency Plans are modified as follows:

“**Article 1:** In accordance with the provisions of the Law No 03-10 of July 19<sup>th</sup>, 2003 relating to the protection of the environment in the Context of sustainable development, the present Decree aims to organize the fight against marine pollutions resulting from maritime, terrestrial or atmospheric event causing a massive spill at sea of hydrocarbons or any other products or substances which are able to constitute an imminent and serious danger or to generate damages to the marine environment, the seabed, the coastline, as well as to the related interests.”

**Article 3:** It is inserted in the provisions of Executive Decree No 94-279 of September 17<sup>th</sup>, 1994 *Article 1 bis* as follows:

*Article 1 bis:* For the purposes of this Decree:

“ - **“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 any pollutant substance which poses or may pose a threat to the marine environment under national jurisdiction or to the national coastline or related interests, and which requires emergency action or immediate response.

- **“Pollutant substance”** means any substance 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 the legitimate uses of the sea.

- **“Sea ports”** means national ports receiving merchant ships.

- **“Ship”** means any floating craft as it is defined by article 13 of the Ordinance 76-80 of October 23<sup>rd</sup>, 1976 above cited.

- **“Organization”** means the International Maritime Organization.

- **“International instruments”** means international treaties establishing norms for co-operation in matters of fighting against marine pollutions to which Algeria is Party.

- “*shipboard incident emergency plan*” means plan required to ships subject to the provisions of present Decree as it is prescribed by the organization.”

**Article 4:** The provisions of Article 2 of the Executive Decree No 94-279 of September 17<sup>th</sup>, 1994 carrying the Organization and the fight against Marine Pollutions and the Establishment of Contingency Plans are modified by insertion a new paragraph as follows:

“**Article 2:** For the purposes of setting out the organization of the fight against marine pollutions, it is created

- Emergency plans for the fight against pollutions of national seaports receiving merchant ships referred to as “plans Tel Bahr of seaports”.

**Article 5:** It is inserted in the provisions of Executive Decree No 94-279 of September 17<sup>th</sup>, 1994 *Article 4 bis* as follows:

“**Article 4 bis:** National sea ports receiving merchant ships and ships flying national flag are an integral part of national emergency plan for the fight against marine pollutions.”

**Article 6:** It is inserted in the provisions of Executive Decree No 94-279 of September 17<sup>th</sup>, 1994 *Article bis 1* as follows:

“**Article 4 bis 1:** National maritime authority ensures the compliance of national ships mentioned in *Article 4 bis* and their crew members in respect of possession of shipboard pollution incident emergency plan, the aptitude of crew members to face pollution incident including appropriate reporting procedure as it is required by international instruments in force.”

**Article 7:** It is inserted in the provisions of Executive Decree No 94-279 of September 17<sup>th</sup>, 1994 *Article 4 bis 2* as follow:

“**Article 4 bis 2:** Ships of national navy and those owned or operated by State on government non-commercial service are exempted from the dispositions of *Article 4 bis 1* above cited; however, equivalent measures will apply for the last category of ships.”



**Article 8:** It is inserted in the provisions of Executive decree No 94-279 of September 17<sup>th</sup>, 1994 *Article 4 bis 3* as follows:

“*Article 4 bis 3:* seaports, shore units including floating production, storage and offloading facilities and floating storage should hold, under administrative supervision, incident emergency plans adopting procedures of fighting against incidents involving oil or hazardous and noxious substances.

- Plans mentioned in paragraph 1 of this Article are subject to the approval of National Committee Tel bahr and should reflect measures to provide broad effective co-ordination between authorities having seat in the Committee created by Article 20 of this Decree.”

**Article 9:** The provisions of paragraphs 6 and 7 of the Executive Decree No 94-279 of September 17<sup>th</sup>, 1994 are cumulated in a single paragraph, modified and supplemented as follows:

“Paragraphs **6:** - Implements the Algerian obligations resulting from International instruments notably in respect of:

- decides upon the necessity to call for foreign assistance;
- studies and decides upon foreign assistance offers
- responds to assistance calls emanating from States Parties to international instruments to which Algeria is Party;
- carries out research and development programmes relating to the enhancement of the State-of-the-art in matters of the fighting against marine pollutions”

(No change for the remaining paragraphs)

**Article 10:** It is inserted in the provisions of Executive Decree No 94-279 of September 17<sup>th</sup>, 1994 *Article 8 bis as* follows:

“*Article 8 bis:* the research and development programmes cited in paragraphs 6 and 7 of shall include:

- The technologies and techniques for surveillance, containment, recovery, dispersion, clean up and all other means aiming to minimize or mitigate the effects of pollution incidents and for restoration.

- The suggestion to the State to adopt necessary legal instruments for the financing of operations carried out in virtue of national emergency plan for the fight against marine pollutions.”

**Article 11:** It is inserted in the provisions of Executive Decree No 94-279 of September 17<sup>th</sup>, 1994 *Article 8 bis 1* as follows:

“*Article 8 bis 1:* National Committee Tel bahr is the national focal point with respect to the fighting against marine pollutions consequently, it ensures through its secretariat created by Article 20 of this Decree the updating and transmission to the Organization and regional institutions concerned by the response and preparedness to marine pollution incident the following information:

- Necessary information relating to the designated national authority responsible for fighting against marine pollution;
- The availability and position of telecommunication channels;
- Areas under the responsibility of national authority responsible for the fighting against marine pollutions;
- Information on equipment and developed expertise relating to the fight against marine pollution and salvage.
- National contingency plan elaborated in accordance with Article 5 of this decree.
- Communication to the Organization copies of bilateral and multilateral agreement concluded by Algeria in matters related to the co-operation in preparedness for and response to pollution incidents.”

**Article 12:** It is inserted in the provisions of Executive Decree No 94-279 of September 17<sup>th</sup>, 1994 *Article 8 bis 2* as follows:

“*Article 8 bis 2:* the operations carried out by the implementation of the provisions of the present Decree are financed in accordance with the provisions of Article 56 quinquies of the Law No 03-10 of July 17<sup>th</sup>, 2003 above cited.”

**Article 13:** It is inserted in the provisions of Executive Decree No 94-279 of September 17<sup>th</sup>, 1994 *Article 8 bis 3* as follows:

“*Article 8 bis 3:* In case of insufficient of mobilized means at national level to fight against a pollution incident and after the use of recourse to the foreign assistance, the National Committee Tel bahr may ask the organization to assist in identifying sources of provisional financing of the costs of the requested assistance.”

**Article 14:** the provisions of paragraph 18 of Article 4 of the Executive Decree No 94-279 of September 17<sup>th</sup>, 1994 are modified as follows:

“*Paragraph 18:* Presents an annual report to the *Prime Minister* regarding the preparation of different *Plans Tel Bahr.*”

**Article 15:** It is inserted in the provisions of Executive Decree No 94-279 of September 17<sup>th</sup>, 1994 a new paragraph referred to as *paragraph 20* as follows:

“*Paragraph 20:* - Locates on the basis of appropriate studies refuge zones inside maritime areas under national jurisdiction for receiving and taking in charge of ships in difficulty.”

**Article 16 :** It is inserted in the provisions of Executive Decree No 94-279 of September 17<sup>th</sup>, 1994 a new *Article 21 bis* as follows:

“*Article 21 bis:* It is created in each national seaport receiving merchant ships a “*Sea port Committee Tel Bahr*”.

The Composition and terms of functioning of the “*Sea port Committee Tel Bahr*” are defined by Order of the Head of Administrative Department territorially competent.”

**Article 17:** It is inserted in the provisions of Executive Decree No 94-279 of September 17<sup>th</sup>, 1994 a new *Article 21 bis 1* as follows:

“*Article 21 bis 1:* “*Sea port Committee Tel Bahr*” is responsible for developing *seaport plan Tel Bahr* on the basis of general principles as provided in Article 5 above.

- The authority in charge of sea port is designated the responsible with the assistance of the relevant authorities designated in accordance with paragraph 2 of Article 21 bis above cited for the implementation of measures contained in *Sea Port Plan Tel Bahr* in the administrative limits of the sea port as they are defined by the provisions of the Ordinance 76-80 of October 23<sup>rd</sup>, 1976 above cited.”

**Article 16:** It is inserted in the provisions of Executive Decree No 94-279 of September 17<sup>th</sup>, 1994 a new *Article 21 bis 2* as follows:

*“Article 21 bis 2: Sea port Plans Tel Bahr* shall contain adequate measures aiming to facilitate the access of ships in difficulty lying inside or beyond water under national jurisdiction to the sea port for the transfer of their pollutant cargoes ashore.”

**Article 18:** The present Executive Decree will be published in Official Gazette of People’s Democratic Republic of Algeria

Done in Algiers on (Day- Month- Year)

**The full name of the Prime Minister.**