

# MARINE POLLUTION (INTERVENTION) ACT NO. 64 OF 1987

Assented to: 11 September 1987

Date of commencement: 25 September 1987

## ACT

**To give effect to the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, and to the Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other than Oil 1973; and to provide for matters incidental thereto.**

[Long title substituted by s. 58 of Act No 23 of 1997.]

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### 1. Definitions

In this Act, unless the context otherwise indicates-

**Authority** means the South African Maritime Safety Authority established by section 2 of the South African Maritime Safety Authority Act, 1998.

[Definition of "Authority" inserted by Act No 5 of 1998.]

**Convention** means the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties done at Brussels on 29 November 1969, the English text of which is set forth in Schedule 1;

[Definition of "Convention" substituted s. 51(a) of Act No 23 of 1997.]

**Minister** .....

[Definition of "Minister" deleted by s. 51(b) of Act No 23 of 1997.]

**Protocol** means the Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil done at London on 2 November 1973, the English text of which is set forth in Schedule 2, as modified by any amendment made under Article III of that Protocol that has entered into force for the Republic;

[Definition of "Protocol" inserted by s. 51(c) of Act No 23 of 1997.]

**regulation** means a regulation made under this Act;

**this Act** includes the regulations.

### 2. Application and Interpretation of Convention and Protocol

- (1) Subject to the provisions of this Act, the Convention and Protocol shall have the force of law in the Republic.

- (2) The Minister shall, as soon as practicable after any amendment of the Protocol has entered into force for the Republic, by notice in the Gazette amend Schedule 2 to reflect such amendment.
- (3) Unless the context indicates otherwise, a reference in the Convention and Protocol to a State or a State Party shall, in relation to the Republic, be construed as a reference to the Authority, and any reference to a Party shall be construed accordingly.
- (4) The English text of the Convention and Protocol shall prevail in the event of conflict between the English and Afrikaans texts.

[S. 2 substituted by s. 52 of Act No 23 of 1997 and by Act No 5 of 1998.]

### 3. **Regulations**

- (1) The Minister of Transport may make regulations relating to the carrying out of, and giving effect to, the provisions of the Convention and Protocol, and generally for the better achievement of the objects of this Act.
- (2) Regulations made under subsection (1) may-
  - (a) prescribe, for any contravention thereof or failure to comply therewith, penalties of a fine not exceeding R500 000, or imprisonment for a period not exceeding five years, or such fine as well as such imprisonment;
  - (b) be applicable outside the Republic.

[S. 3 substituted by s. 53 of Act No 23 of 1997.]

### 4. **Jurisdiction**

- (1) Any offense in terms of this Act shall, for purposes in relation to jurisdiction of a court to try the offense, be deemed to have been committed within the area of jurisdiction of the court in which the prosecution is instituted.
- (2) Notwithstanding anything to the contrary contained in any other law, a magistrate's court shall have jurisdiction to impose any penalty provided for in this Act.

[Sub-s. (1) substituted by s. 54 of Act No 23 of 1997.]

### 4A. **Application of Act to Prince Edward Islands**

This Act shall also apply to the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act, 1948 (Act No 43 of 1948) and any reference in this Act to the Republic shall include a reference to those Islands.

[S. 4A inserted by s. 55 of Act No 23 of 1997.]

### 5. **Short title**

This Act shall be called the Marine Pollution (Intervention) Act, 1987.

[S. 5 substituted by s. 56 of Act No 23 of 1997.]

## **Schedule 1**

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

Done at Brussels: 29 November 1969

Accession: 17 March 1976

The States Parties to the present Convention,

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

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

HAVE AGREED as follows:

## ARTICLE I

1. Parties to the present Convention may take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea by oil, following upon a maritime casualty or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences.
2. However, no measures shall be taken under the present Convention against any warship or other ship owned or operated by a State and used, for the time being, only on government non-commercial service.

## ARTICLE II

For the purposes of the present Convention:

1. **maritime casualty** means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or cargo;
2. **ship** means:
  - (a) any sea-going vessel of any type whatsoever, and
  - (b) any floating craft, with the exception of an installation or device engaged in the exploration and exploitation of the resources of the sea-bed and the ocean floor and the subsoil thereof;
3. **oil** means crude oil, fuel oil, diesel oil and lubricating oil;
4. **related interests** means the interests of a coastal State directly affected or threatened by the maritime casualty, such as:
  - (a) maritime coastal, port or estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;
  - (b) tourist attractions of the area concerned;
  - (c) the health of the coastal population and the well-being of the area concerned, including conservation of living marine resources and of wildlife;
5. **Organization** means the Inter-Governmental Maritime Consultative Organization.

### **ARTICLE III**

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

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

### **ARTICLE IV**

1. Under the supervision of the Organization, there shall be set up and maintained the list of experts contemplated by Article III of the present Convention, and the Organization shall make necessary and appropriate regulations in connection therewith, including the determination of the required qualification.
2. Nominations to the list may be made by Member States of the Organization and by Parties to this Convention. The experts shall be paid on the basis of services rendered by the States utilizing those services.

### **ARTICLE V**

1. Measures taken by the coastal State in accordance with Article I shall be proportionate to the damage actual or threatened to it.
2. Such measures shall not go beyond what is reasonably necessary to achieve the end mentioned in Article I and shall cease as soon as that end has been achieved; they shall not unnecessarily interfere with the rights and interests of the flag State, third States and of any persons, physical or corporate, concerned.
3. In considering whether the measures are proportionate to the damage, account shall be taken of.

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

#### **ARTICLE VI**

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

#### **ARTICLE VII**

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

#### **ARTICLE VIII**

1. Any controversy between the Parties as to whether measures taken under Article I were in contravention of the provisions of the present Convention, to whether compensation is obliged to be paid under Article VI, and to the amount of such compensation shall, if settlement by negotiation between the Parties involved or between the Party which took the measures and the physical or corporate claimants has not been possible, and if the Parties do not otherwise agree, be submitted upon request of any of the Parties concerned to conciliation or, if conciliation does not succeed, to arbitration, as set out in the Annex to the present Convention.
2. The Party which took the measures shall not be entitled to refuse a request for conciliation or arbitration under provisions of the preceding paragraph solely on the grounds that any remedies under municipal law in its own courts have not been exhausted.

#### **ARTICLE IX**

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

#### **ARTICLE X**

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

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

#### **ARTICLE XI**

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

#### **ARTICLE XII**

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

#### **ARTICLE XIII**

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

#### **ARTICLE XIV**

1. A Conference for the purpose of revising or amending the present Convention may be

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<sup>1</sup> The Convention entered into force on 6 May 1975.

convened by the Organization.

2. The Organization shall convene a Conference of the States Parties to the present Convention for revising or amending the present Convention at the request of not less than one-third of the Parties.

#### **ARTICLE XV**

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

#### **ARTICLE XVI**

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

#### **ARTICLE XVII**

The present Convention is established in a single copy in the English and French languages, both texts being equally authentic. Official translations in the Russian and Spanish languages shall be prepared and deposited with the signed original.

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

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

[Signatures not reproduced]

#### **ANNEX**

#### **CHAPTER I CONCILIATION**

#### **ARTICLE I**

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

## **ARTICLE 2**

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

## **ARTICLE 3**

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

## **ARTICLE 4**

1. The list prescribed in Article 3 above shall consist of qualified persons designated by the Parties and shall be kept up to date by the Organization. Each Party may designate for inclusion on the list four persons, who shall not necessarily be its nationals. The nominations shall be for periods of six years each and shall be renewable.
2. In the case of the decease or resignation of a person whose name appears on the list, the Party which nominated such person shall be permitted to nominate a replacement for the remainder of the term of office.

## **ARTICLE 5**

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



18 October 1907.

2. The Parties shall be represented before the Conciliation Commission by agents whose duty shall be to act as intermediaries between the Parties and the Commission. Each of the Parties may seek also the assistance of advisers and experts nominated by it for this purpose and may request the hearing of all persons whose evidence the Party considers useful.
3. The Commission shall have the right to request explanations from agents, advisers and experts of the Parties as well as from any persons whom, with the consent of their Governments, it may deem useful to call.

#### **ARTICLE 6**

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

#### **ARTICLE 7**

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

- (a) provide the Commission with the necessary documents and information;
- (b) enable the Commission to enter their territory, to hear witnesses or experts, and to visit the scene.

#### **ARTICLE 8**

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

#### **ARTICLE 9**

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

#### **ARTICLE 10**

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

#### **ARTICLE 11**

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

## **ARTICLE 12**

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

## **CHAPTER II ARBITRATION**

### **ARTICLE 13**

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

### **ARTICLE 14**

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

### **ARTICLE 15**

1. If, at the end of a period of 60 days from the nomination of the second Arbitrator, the Chairman of the Tribunal shall not have been nominated, the Secretary-General of the Organization upon request of either Party shall within a further period of 60 days proceed to such nomination, selecting from a list of qualified persons previously drawn up in accordance with the provisions of Article 4 above. This list shall be separate from the list of experts prescribed in Article IV of the Convention and from the list of Conciliators prescribed in Article 4 of the present Annex; the name of the same person may, however, appear both on the list of Conciliators and on the list of Arbitrators. A person who has acted as Conciliator in a dispute may not, however, be chosen to act as Arbitrator in the same matter.
2. If, within a period of 60 days from the date of the receipt of the request, one of the Parties shall not have nominated the member of the Tribunal for whose designation it is responsible, the other Party may directly inform the Secretary-General of the Organization who shall nominate the Chairman of the Tribunal within a period of 60 days, selecting him from the list prescribed in paragraph I of the present Article.
3. The Chairman of the Tribunal shall, upon nomination, request the Party which has not provided an Arbitrator, to do so in the same manner and under the same conditions. If the Party does not make the required nomination, the Chairman of the Tribunal shall request the Secretary-General of the Organization to make the nomination in the form and conditions prescribed in the preceding paragraph.

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

#### **ARTICLE 16**

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

#### **ARTICLE 17**

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

#### **ARTICLE 18**

1. Decisions of the Tribunal both as to its procedure and its place of meeting and as to any controversy laid before it, shall be taken by majority vote of its members; the absence or abstention of one of the members of the Tribunal for whose nomination the Parties were responsible shall not constitute an impediment to the Tribunal reaching a decision. In cases of equal voting, the Chairman shall cast the deciding vote.
2. The Parties shall facilitate the work of the Tribunal and in particular, in accordance with their legislation, and using all means at their disposal:
  - (a) provide the Tribunal with the necessary documents and information;
  - (b) enable the Tribunal to enter their territory, to hear witnesses or experts, and to visit the scene.
3. Absence or default of one Party shall not constitute an impediment to the procedure.

#### **ARTICLE 19**

1. The award of the Tribunal shall be accompanied by a statement of reasons. It shall be final and without appeal. The Parties shall immediately comply with the award.
2. Any controversy which may arise between the Parties as regards interpretation and execution of the award may be submitted by either Party for judgment to the Tribunal which made the award, or, if it is not available, to another Tribunal constituted for this purpose in the same manner as the original Tribunal.

## SCHEDULE 2

### PROTOCOL RELATING TO INTERVENTION ON THE HIGH SEAS IN CASES OF MARINE POLLUTION BY SUBSTANCES OTHER THAN OIL 1973<sup>1</sup>

NOTE: The present text incorporates the original text as amended by the following:

<i>Amendments</i>	<i>Date of entry into force</i>
1991 (Annex) amendments (MEPC.49(31))	24 July 1992
1996 (Annex) amendments (MEPC.72(38))	17 December 1997

*The Parties* to the present Protocol,

*Being parties* to the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, done at Brussels on 29 November 1969,

*Taking into account* the Resolution on International Co-operation Concerning Pollutants other than Oil adopted by the International Legal Conference on Marine Pollution Damage, 1969,

*Further* taking into account that pursuant to the Resolution, the Inter-Governmental Maritime Consultative Organization<sup>2</sup> has intensified its work, in collaboration with all interested international organizations, on all aspects of pollution by substances other than oil,

*Have agreed* as follows:-

#### ARTICLE I

1. Parties to the present Protocol may take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution by substances other than oil following upon a maritime casualty or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences.
2. 'Substances other than oil' as referred to in paragraph 1 shall be-
  - (a) those substances enumerated in a list which shall be established by an appropriate body designated by the Organization and which shall be annexed to the present Protocol, and
  - (b) those other substances which are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.
3. Whenever an intervening Party takes action with regard to a substance referred to in paragraph 2(b) above that Party shall have the burden of establishing that the substances, under the circumstances present at the time of the intervention, could reasonably pose a grave and imminent danger analogous to that posed by any of the substances enumerated in the list referred to in paragraph 2(a) above.

#### ARTICLE II

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

### **ARTICLE III**

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

### **ARTICLE IV**

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

### **ARTICLE V**

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

### **ARTICLE VI**

1. The present Protocol shall enter into force on the ninetieth day following the date on which fifteen States have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General of the Organization, provided however that the present Protocol shall not enter into force before the Convention referred to in Article II has entered into force<sup>3</sup>.
2. For each State which subsequently ratifies, accepts, approves or accedes to it, the present

Protocol shall enter into force on the ninetieth day after the deposit by such State of the appropriate instrument.

#### **ARTICLE VII**

1. The present Protocol may be denounced by any Party at any time after the date on which the Protocol enters into force for that Party.
2. Denunciation shall be effected by the deposit of an instrument to that effect with the Secretary-General of the Organization.
3. Denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General of the Organization.
4. Denunciation of the Convention referred to in Article II by a Party shall be deemed to be a denunciation of the present Protocol by that Party. Such denunciation shall take effect on the same day as the denunciation of the Convention takes effect in accordance with paragraph 3 of Article XII of the Convention.

#### **ARTICLE VIII**

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

#### **ARTICLE IX**

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

#### **ARTICLE X**

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

#### **ARTICLE XI**

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

*In witness whereof* the undersigned<sup>4</sup>, being duly authorized for that purpose, have signed the present Protocol.

*Done at London* this second day of November one thousand nine hundred and seventy-three.

## LIST OF SUBSTANCES

### Appendix 1-Oil carried in bulk as listed in Appendix I to Annex I of MARPOL 73/78 other than those covered by the 1969 Intervention Convention

#### *Asphalt solutions*

Blending stocks  
Roofers flux  
Straight run residue

#### *Oils*

Clarified  
Road oil  
Transformer oil  
Aromatic oil (excluding vegetable oil)  
Mineral oil  
Motor oil  
Penetrating oil  
Spindle oil  
Turbine oil  
Polymer-fuel

#### *Gasolines*

Casinghead (natural)  
Automotive  
Aviation  
Straight run  
Fuel oil No. 1 (Kerosene)  
Fuel oil No. 1-D  
Fuel oil No. 2  
Fuel oil No. 2-D

#### *Distillates*

Straight run  
Flashed feed stocks

#### *Gas oil*

Cracked

#### *Naphtha*

Solvent  
Petroleum  
Heartcut distillate oil

#### *Gasolines blending stocks*

Alkylates-fuel  
Reformats  
Polymer-fuel

#### *Jetfuels*

JP-1 (Kerosene)  
JP-3  
JP-5 (Kerosene, heavy)  
Turbo fuel  
Kerosene  
Mineral spirit

### Appendix 2-Noxious liquid substances carried in bulk

Acetone cyanohydrin  
Acrylonitrile  
Alachlor technical (90 % or more)  
Alcohol (C6-C17)(secondary) poly (3-6) ethoxylates  
Alcohol (C12-C15) poly (1-6) ethoxylates  
Alcohol (C6-C17)(secondary) poly (7-12) ethoxylates  
Alcohol (C12-C15) poly (7-19) ethoxylates  
Alkaryl polyethers (C9-C20)  
Alkyl (C3-C4) benzenes  
Alkyl (C5-C8) benzenes  
Alkyl (C7-C9) nitrates  
Alkyl acrylate-vinyl pyridine copolymer in toluene  
Alkylbenzene, alkylindane, alkylindene mixture (each C12-C17)  
Allyl alcohol  
Allyl chloride  
Ammonium sulphide solution (45% or less)  
Aniline

Benzene and mixtures having 10% benzene or more\*  
Benzyl chloride  
Benzyl alcohol  
Butene oligomer  
Butyl butyrate (all isomers)  
Butyl benzyl phthalate  
Butyl acrylate (all isomers)  
Butylamine (all isomers)  
Butyraldehyde (all isomers)  
Calcium alkyl (C9) phenol sulphide/Polyolefin phosphorusulphide mixture  
Calcium hypochlorite solution (more than 15%)  
Calcium long chain alkyl phenate sulphide (C8-C40)  
Camphor oil  
Carbolic oil  
Carbon disulphide  
Carbon tetrachloride  
Chlorinated paraffins (C10-C13)  
Chloroacetic acid (80% or less)  
Chlorobenzene  
o-Chloronitrobenzene  
Chloroform  
Chlorohydrins (crude)  
2- or 3-Chloropropionic acid  
m-Chlorotoluene  
o-Chlorotoluene  
p-Chlorotoluene  
Chlorotoluenes (mixed isomers)  
Coal tar  
Coal tar naphtha solvent  
Coal tar pitch (molten)  
Cobalt naphthenate in solvent naphtha  
Creosote (coal tar)  
Creosote (wood)  
Cresols (all isomers)  
Cresylic acid, dephenolized  
Cresylic acid, sodium salt solution  
Crotonaldehyde  
1,5,9-Cyclododecatriene  
Cyclohexyl acetate  
Cyclohexylamine  
1,3-Cyclopentadiene dimer (molten)  
Cyclopentene  
Decanoic acid  
Decene  
Decyl acetate  
Decyl alcohol (all isomers)  
Decyl acrylate  
Decycloxytetrahydro-thiopene dioxide  
Di-n-hexyl adipate  
Di-n-propylamine  
Dibutyl phthalate  
Dibutyl hydrogen phosphonate  
Dibutylamine  
Dichlorobenzenes (all isomers)



Dichloroethyl ether  
1,6-Dichlorohexane  
2,4-Dichlorophenol  
2,4-Dichlorophenoxyacetic acid, diethanolamine salt solution  
2,4-Dichlorophenoxyacetic acid, dimethylamine salt solution (70% or less)  
2,4-Dichlorophenoxyacetic acid, triisopropanolamine salt solution  
1,2-Dichloropropane  
1,3-Dichloropropane  
Dichloropropene/Dichloro-propane mixtures  
Diethyl sulphate  
Diethylamine  
Diethylaminoethanol  
Diethylbenzene  
Diglycidyl ether of bisphenol F  
Diglycidyl ether of bisphenol A  
Diisobutyl phthalate  
Diisobutylamine  
Diisobutylene  
Diisopropylamine  
Diisopropylbenzene (all isomers)  
Dimethyl octanoic acid  
Dimethyl adipate  
Dimethyl hydrogen phosphite  
Dimethylamine solution (greater than 55% but not greater than 65%)  
Dimethylamine solution (greater than 45% but not greater than 55%)  
Dimethylamine solution (45% or less)  
N,N-Dimethylcyclohexylamine  
Dinitrotoluene (molten)  
1,4-Dioxane  
Diphenyl  
Diphenyl ether  
Diphenyl ether/Diphenyl phenyl ether mixtures  
Diphenyl/Diphenyl ether mixtures  
Diphenylamine, reaction product with 2,2,4-Trimethylpentene  
Diphenylamines, alkylated  
Diphenylmethane diisocyanate  
Diphenylol propane  
Diphenylol propane-epichlorohydrin resins  
Dodecene (all isomers)  
Dodecyl alcohol  
Dodecyl diphenyl ether disulphonate solution  
Dodecyl phenol  
Dodecyclamine/Tetradecylamine mixture  
Dodecyldimethylamine/Tetradecyldimethylamine mixture  
Drilling brines, containing Zinc salts  
Epichlorohydrin  
Ethyl acrylate  
Ethylamine solutions (72% or less)  
Ethylamine  
Ethylbenzene  
N-Ethylbutylamine  
Ethylene dichloride  
Ethylene dibromide  
Ethylene chlorohydrin

Ethylene oxide/Propylene oxide mixture with an Ethylene oxide content of not more than 30% in weight  
Ethylene glycol methyl ether acetate  
Ethylenediamine  
2-Ethylhexyl acrylate  
2-Ethylhexylamine  
Ethylidene norbornene  
o-Ethylphenol  
2-Ethyl-3-propylacrolein  
Ethyltoluene  
Fluorosilicic acid (20-30%) in water solution  
Formaldehyde solutions (45% or less)  
Fumaric adduct of rosin, water dispersion  
Furfural  
Glycidyl ester of C10 trialkylacetic acid  
Heptyl acetate  
Hexamethylenediamine solution  
Hexyl acetate  
2-Hydroxyethyl acrylate  
2-Hydroxy-4-(methylthio) butanoic acid  
Isophorone diisocyanate  
Isophoronediamine  
Lactonitrile solution (80% or less)  
Lauric acid  
Liquid chemical wastes  
Long chain polyetheramine in alkyl (C2-C4) benzenes  
Long chain polyetheramine in aromatic solvent  
Long chain alkaryl polyether (C11-C20)  
Magnesium long chain alkyl salicylate (C11+)  
Mercaptobenzothiazol, sodium salt solution  
Metam sodium solution  
Methacrylic resin in Ethylene solution  
Methyl acrylate  
Methyl butyl ketone  
2-Methyl-6-ethyl aniline  
Methyl heptyl ketone  
Methyl methacrylate  
Methylcyclopentadiene dimer  
Methyl naphthalene (molten)  
3-Methylpyridine  
Methyl salicylate  
alpha-Methylstyrene  
Motor fuel anti-knock compounds (containing lead alkyls)  
Naphthalene (molten)  
Naphthenic acids  
Neodecanoic acid  
Nitrating acid (mixture of sulphuric acid and nitric acids)  
Nitrobenzene  
o-Nitrophenol (molten)  
o- or p-Nitrotoluenes  
Nonene (all isomers)  
Nonyl phenol  
Nonyl phenol poly (4-12) ethoxylates  
Noxious liquid, N.F,(1)n.o.s. (trade name ..., contains ...) S.T. 1, Cat. A\* \*\*

Noxious liquid, F,(2)n.o.s. (trade name ..., contains ...) S.T. 1, Cat. A\*

Noxious liquid, N.F,(3)n.o.s. (trade name ..., contains ...) S.T. 2, Cat. A\*

Noxious liquid, F,(4)n.o.s. (trade name ..., contains ...) S.T. 2, Cat. A\*

Noxious liquid, N.F,(5)n.o.s. (trade name ..., contains ...) S.T. 2, Cat. B\*

Noxious liquid, N.F,(6)n.o.s. (trade name ..., contains ...) S.T. 2, Cat. B\*, mp

Noxious liquid, F,(7)n.o.s. (trade name ..., contains ...) S.T. 2, Cat. B\*

Noxious liquid, F,(8)n.o.s. (trade name ..., contains ...) S.T. 2, Cat. B\*, mp

Noxious liquid, N.F,(9)n.o.s. (trade name ..., contains ...) S.T. 3, Cat. A\*

Noxious liquid, F,(10)n.o.s. (trade name ..., contains ...) S.T. 3, Cat. A\*

Noxious liquid, N.F,(11)n.o.s. (trade name ..., contains ...) S.T. 3, Cat. B\*

Noxious liquid, N.F,(12)n.o.s. (trade name ..., contains ...) S.T. 3, Cat. B\*, mp

Noxious liquid, F,(13)n.o.s. (trade name ..., contains ...) S.T. 3, Cat. B\*

Noxious liquid, F,(14)n.o.s. (trade name ..., contains ...) S.T. 3, Cat. B\*, mp

Octene (all isomers)

Octyl aldehydes

Olefin mixtures (C5-C15)

alpha-Olefins (C6-C18) mixtures

Oleum

Oleylamine

Palm kernel acid oil

Pentachloroethane

Perchloroethylene

Phosphorus, yellow or white

Phthalic anhydride (molten)

alpha-Pinene

beta-Pinene

Poly(2+)cyclic aromatics

Polyethylene polyamines

Polyolefin amide alkeneamine (C28+)

Polyolefin amide alkeneamin borate (C28-C250)

Polyolefin amide alkeneamine polyol

Polyolefinamine in aromatic solvent

Polyolefinamine in alkyl (C2-C4) benzenes

Polyolefin ester (C28-C250)

beta-Propiolactone

Propionitrile

n-Propylamine

Propylbenzene (all isomers)

Propylene trimer

Propylene oxide

Propylene tetramer

Rosin soap (disproportionated) solution

Rosin

Sodium sulphide solution (15% or less)

Sodium dichromate solution (70% or less)

Sodium hydrogen sulphide (6% or less)/Sodium carbonate (3% or less) solution

Sodium hydrosulphide solution (45% or less)

Sodium hydrosulphide/Ammonium sulphide solution

Sodium petroleum sulfonate

Sodium nitrite solution

Sodium thiocyanate solution (56% or less)

Styrene monomer

Sulpho hydrocarbon long chain (C18+) alkylamine mixture

Sulphuric acid

Sulphuric acid, spent  
Tall oil (crude and distilled)  
Tall oil soap (disproportionated) solution  
Tall oil fatty acid, barium salt  
Tetrachloroethane  
Tetramethylbenzene (all isomers)  
Toluene  
Toluene diisocyanate  
Toluenediamine  
o-Toluidine  
Tributyl phosphate  
1,2,4-Trichlorobenzene  
Trichloroethylene  
Tricresyl phosphate (containing 1% or more ortho-isomer)  
Tricresyl phosphate (containing less than 1% ortho-isomer)  
Triethylamine  
Triethylbenzene  
Triethylenetetramine  
Triethylphosphite  
Triiopropylated phenyl phosphates  
Trimethylamine solution (30% or less)  
Trimethylbenzene (all isomers)  
Trimethylhexamethylene diisocyanate (2,2,4- and 2,4,4-isomers)  
Trixylyl phosphate  
Turpentine  
Undecanoic acid  
1-Undecene  
Undecyl alcohol  
Vinyl neodecanoate  
Vinylidene chloride  
Vinyltoluene  
White spirit, low (15-20%) aromatic  
Xylenes  
Xylenol  
Zinc alkaryl dithiophosphate (C7-C16)  
Zinc alkyl dithiophosphate (C3-C14)

\*\* NF = not flammable; F = flammable; n.o.s. = not otherwise specified; S.T. = ship type; mp = marine pollutant

### **Appendix 3-Harmful substances carried in packaged form**

Aldrin  
Azinphos-ethyl  
Azinphos-methyl  
gamma-BHC  
Binapacryl  
Bodifacoum  
Cadmium compound  
Camphechlor  
Carbophenothion  
Chlordane  
Chlorinated paraffin(C10-C13)  
Chlorophenolates, liquid  
Chlorophenolates, solid

Chlorpyrifos  
Chlorthiops  
Copper cyanide  
Copper metal powder  
Coumaphos  
Cresyl diphenylphosphate  
Cupric cyanide  
Cupric sulphate  
1,5,9-Cyclododecatriene  
Cyhexatin  
Cymenes (ortho-; meta-; para-)  
Cymol  
Cypermethrin  
DDT  
Dialifos  
Diazinon  
Dichlofenthion  
Dichlorvos  
Dieldrin  
Dimethoate  
Diphenylaminechloroarsine  
Diphenylchloroarsine, liquid  
Diphenylchloroarsine, solid  
Dodecylphenol  
Endosulfan  
Endrin  
EPN  
Esfenvalerate  
Ethion  
Fenbutatin oxide  
Fenitrothion  
Fenprothrin  
Fenthion  
Fentin acetate  
Fentin hydroxide  
Fonofos  
Heptachlor  
Hexachlorobutadiene  
1,3-Hexachlorobutadiene  
Isopropyltoluene  
Isopropyltoluol  
Isoxathion  
Lindane  
Mercuric acetate  
Mercuric ammonium chloride  
Mercuric arsenate  
Mercuric benzoate  
Mercuric bisulphate  
Mercuric bromide  
Mercuric chloride  
Mercuric cyanide  
Mercuric gluconate  
Mercuric nitrate  
Mercuric oleate

Mercuric oxide  
Mercuric oxycyanide, desensitized  
Mercuric potassium cyanide  
Mercuric sulphate  
Mercuric thiocyanate  
Mercuriol  
Mercurous acetate  
Mercurous bisulphate  
Mercurous bromide  
Mercurous chloride  
Mercurous nitrate  
Mercurous salicylate  
Mercurous sulphate  
Mercury acetate  
Mercury ammonium chloride  
Mercury-based pesticide, liquid, flammable, toxic, flashpoint less than 23°C c.c.\*\*  
Mercury-based pesticide, liquid, toxic  
Mercury-based pesticide, liquid, toxic, flammable, flashpoint between 23°C and 61°C c.c.  
Mercury-based pesticide, solid toxic  
Mercury benzoate  
Mercury bichloride  
Mercury bisulphate  
Mercury bromides  
Mercury compound, liquid, n.o.s  
Mercury compound, solid, n.o.s.  
Mercury(ii) (mercuric) compounds or Mercury(i) (mercurous) compounds  
Mercury cyanide  
Mercury gluconate  
Mercury nucleate  
Mercury oleate  
Mercury oxide  
Mercury oxycyanide, desensitized  
Mercury potassium cyanide  
Mercury potassium iodide  
Mercury salicylate  
Mercury sulphate  
Mercury thiocyanate  
Methylpropylbenzenes  
Mevinphos  
Nickel carbonyl  
Nickel cyanide  
Nickel tetracarbonyl  
Organotin compound, liquid, n.o.s.  
Organotin compound, solid, n.o.s.  
Organotin compounds  
(pesticides)  
Organotin pesticide, liquid, flammable, toxic, flashpoint less than 23°C c.c.  
Organotin pesticide, liquid, toxic  
Organotin pesticide, liquid, toxic, flammable, flashpoint between 23°C and 61°C c.c.  
Organotin pesticide, solid, toxic  
Osmium tetroxide  
Parathion  
Parathion-methyl  
PCB's

Pentachlorophenol  
Phenarsazine chloride  
Phenthoate  
Phenylmercuric acetate  
Phenylmercuric compound, n.o.s.  
Phenylmercuric hydroxide  
Phenylmercuric nitrate  
Phorate  
Phosalone  
Phosphamidon  
Phosphorus, white, dry  
Phosphorus, white, molten  
Phosphorus, white, under water  
Phosphorus, yellow, dry  
Phosphorus, yellow, molten  
Phosphorus, yellow, under water  
Polychlorinated biphenyls  
Polyhalogenated biphenyls, liquid  
Polyhalogenated biphenyls, solid  
Polyhalogenated ter-phenyls, liquid  
Polyhalogenated ter-phenyls, solid  
Potassium cuprocyanide  
Potassium cyanocuprate  
Potassium cyanomercurate  
Potassium mercuric iodide  
Pyrazophos  
Quizalofop  
Quizalofop-p-ethyl  
Sodium copper cyanide, solid  
Sodium copper cyanide, solution  
Sodium cuprocyanide, solid  
Sodium cuprocyanide, solution  
Sodium pentachlorophenate  
Sulprophos  
White phosphorus, dry  
White phosphorus, wet  
Yellow phosphorus, dry  
Yellow phosphorus, wet  
Terbufos  
Tetrachlorvinphos

\*\* c.c. = closed cup

#### **Appendix 4-Radioactive materials**

Radioactive materials which are transported in type B packages, or as fissile materials, or under special arrangement, as covered by the provisions of Schedules 10 to 13 of Class 7 of the International Maritime Dangerous Goods Code.

#### **Appendix 5-Liquefied gases carried in bulk**

Acetaldehyde  
Anhydrous ammonia  
Chlorine

Dimethylamine  
Ethyl chloride  
Ethylene oxide  
Hydrogen chloride, anhydrous  
Hydrogen fluoride, anhydrous  
Methyl bromide  
Methyl chloride  
Sulphur dioxide  
Vinyl chloride monomer

<sup>1</sup> The Protocol entered into force on 30 March 1983.

<sup>2</sup> The name of the Organisation was changed to the "International Maritime Organisation (IMO)" by virtue of amendments to the Organisation's Convention which entered into force on 22 May 1982.

<sup>3</sup> The Protocol entered into force on 30 March 1983.

<sup>4</sup> Signatures omitted.

<sup>5</sup> The Annex to this Protocol was adopted by the Marine Environment Protection Committee by resolution MEPC.I(II) of 21 November 1974. The list of substances was revised by resolution MEPC.49(31) of 4 July 1991.

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## **AMENDMENTS**

Shipping General Amendment Act, No 23 of 1997

South African Maritime Safety Authority Act, No 5 of 1998