

# INTERNATIONAL CONVENTION RELATING TO INTERVENTION ON THE HIGH SEAS IN CASES OF OIL POLLUTION CASUALTIES ACT 64 OF 1987

[ASSENTED TO 11 SEPTEMBER, 1987][DATE OF COMMENCEMENT: 25 SEPTEMBER, 1987]

*(Afrikaans text signed by the State President)*

## ACT

**To provide for the application in the Republic of the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties; and to provide for matters incidental thereto.**

### **1 Definitions**

In this Act, unless the context otherwise indicates—

**"Convention"** means the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties adopted by the Inter-Governmental Maritime Consultative Organization ("IMCO") in Brussels on 29 November 1969, and set out in the Schedule;

**"Minister"** means the Minister of Transport Affairs;

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

**"this Act"** includes the regulations.

### **2 Application of Convention**

(1) The Convention shall, subject to the provisions of this Act, apply in the Republic.

(2) The State President may do all things necessary to ratify or cause to be ratified on behalf of the Republic any amendments of or additions to the Convention which may be made from time to time, and may by proclamation in the *Gazette* amend the Schedule to give effect to any amendment or addition so ratified.

(3) The Minister shall lay a copy of every proclamation issued under subsection (2) upon the Table in the respective Houses of Parliament within 14 days after the date of the publication of the proclamation in the *Gazette* if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

### **3 Regulations**

(1) The Minister may make regulations—

- (a) to give effect to any provision of the Convention as applicable in the Republic;
- (b) prescribing fees, and providing for the recovery of any expenditure incurred, in connection with the application of the Convention in the Republic.

(2) Any regulation made under subsection (1) may prescribe penalties for any contravention thereof or failure to comply therewith, but no such penalty shall exceed a fine of R100 000 or imprisonment for a period of ten years.

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(3) Any regulation made under subsection (1) shall be laid upon the Table in the respective Houses of Parliament within 14 days after the date of the publication thereof in the *Gazette* if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

(4) Any regulation referred to in subsection (3) or any provision thereof may, by resolution passed by the respective Houses of Parliament during the session in which such regulation has been laid upon the Table, be disapproved of, and if the said regulation or provision is so disapproved of by all three Houses of Parliament, the provisions of section 12(2) of the Interpretation Act, 1957 (Act 33 of 1957), shall apply as if such resolution were a law repealing the regulation or provision in question.

#### **4 Jurisdiction**

(1) If any person is charged with having committed an offence in terms of this Act on the high seas, the offence shall be deemed to have been committed within the area of jurisdiction of the court in which that person is found.

(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.

#### **5 Short title**

This Act shall be called the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties Act, 1987.

### **SCHEDULE**

#### **International convention relating to intervention on the high seas in cases of oil pollution casualties**

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,

CONVNCED 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:

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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  
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Secretary-General of the Organization.

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

**article xiii**

1. The United Nations where it is the administering authority for a territory, or any State Party to the present Convention responsible for the international relations of a territory, shall as soon as possible consult with the appropriate authorities of such territories or take such other measures as may be appropriate, in order to extend the present Convention to that territory and may at any time by notification in writing to the Secretary-General of the Organization declare that the present Convention shall extend to such territory.

2. The present Convention shall, from the date of receipt of the notification or from such other date as may be specified in the notification, extend to the territory named therein.

3. The United Nations, or any Party which has made a declaration under paragraph 1 of this Article may at any time after the date on which the Convention has been so extended to any territory declare by notification in writing to the Secretary-General of the Organization that the present Convention shall cease to extend to any such territory named in the notification.

4. The present Convention shall cease to extend to any territory mentioned in such notification one year, or such longer period as may be specified therein, after the date of receipt of the notification by the Secretary-General of the Organization.

**article xiv**

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

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

**article xv**

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

2. The Secretary-General of the Organization shall:

(a) inform all States which have signed or acceded to the Convention of:

- (i) each new signature or deposit of instrument together with the date thereof;
- (ii) the deposit of any instrument of denunciation of this Convention together with the date of the deposit;
- (iii) the extension of the present Convention to any territory under paragraph 1 of Article XIII and of the termination of any such extension under the provisions of paragraph 4 of that Article stating in each case the date on which the present Convention has been or will cease to be so extended;

- (b) transmit certified true copies of the present Convention to all Signatory States and to all States which accede to the present Convention.

**article xvi**

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

**article xvii**

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

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 1**

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

**ARTICLE 2**

1. A Conciliation Commission shall be established upon the request of one Party addressed to another in application of Article VIII of the Convention.

2. The request for conciliation submitted by a Party shall consist of a statement of the case together with any supporting documents.

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

**ARTICLE 3**

1. The Conciliation Commission shall be composed of three members: one nominated by the coastal State which took the measures, one nominated by the State the nationals or property of which have been affected by those measures and a third, who shall preside over the Commission and shall be nominated by agreement between the two original members.

2. The Conciliators shall be selected from a list previously drawn up in accordance with the procedure set out in Article 4 below.

3. If within a period of 60 days from the date of receipt of the request for conciliation, the Party to which such request is made has not given notice to the other Party to the controversy of the nomination of the Conciliator for whose selection it is responsible, or if within a period of 30 days from the date of nomination of the second of the members of the Commission to be designated by

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

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

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

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

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

#### **ARTICLE 16**

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

#### **ARTICLE 17**

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

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