

## ANNEX 11

### PROCEDURES AND CRITERIA FOR DETERMINING AND ADDRESSING EMERGENCY SITUATIONS AS REFERRED TO IN ARTICLES 8 AND 18.1.6 OF THE 1996 LONDON PROTOCOL

#### 1 INTRODUCTION

1.1 Under Article 8.1 of the 1996 Protocol, a permit is not required for the disposal of wastes or other matter at sea “when it is necessary to secure the safety of human life or of vessels, aircraft, platforms or other man-made structures at sea in cases of *force majeure* caused by stress of weather, or in any case which constitutes a danger to human life or a real threat to vessels, aircraft, platforms or other man-made structures at sea, if dumping or incineration at sea appears to be the only way of averting the threat and if there is every probability that the damage consequent upon such dumping or incineration at sea will be less than would otherwise occur. Such dumping or incineration at sea shall be conducted so as to minimize the likelihood of damage to human or marine life and shall be reported forthwith to the Organization”.

1.2 Under Article 8.2 of the 1996 Protocol, a Contracting Party may issue a permit for the disposal of wastes or other matter at sea “in emergencies posing an unacceptable threat to human health, safety or the marine environment and admitting of no other feasible solution. Before doing so the Contracting Party shall consult any other country or countries that are likely to be affected and the Organization which, after consulting other Contracting Parties, and competent international organizations as appropriate, shall, in accordance with Article 18.1.6 promptly recommend to the Contracting Party the most appropriate procedures to adopt. The Contracting Party shall follow these recommendations to the maximum extent feasible consistent with the time within which action must be taken and with the general obligation to avoid damage to the marine environment and shall inform the Organization of the action it takes. The Contracting Parties pledge themselves to assist one another in such situations”.

1.3 In this connection Article 18.1.6 states that Contracting Parties may develop or adopt, in consultation with competent international organizations, procedures referred to in Article 8.2 including:

- .1 basic criteria for determining emergency situations; and
- .2 procedures for consultative advice and the safe disposal of matter at sea in such circumstances.

#### 2 ACTION TO IMPLEMENT ARTICLE 8.1

2.1 Although a permit is not required for the disposal of wastes or other matter at sea under Article 8.1 of the 1996 Protocol, it is required that such disposal be reported to the Secretariat. This communication should include the available information regarding the details of the situation (including date, time, location, material concerned, circumstances of the event), the necessity of the emergency dumping, and the actions undertaken so as to minimize the likelihood of damage to human or marine life. A Party submitting the report of the occurrence of a *force majeure* situation to the Secretariat would generally use information obtained from the ship’s master and other relevant authorities. This information serves to ensure that the case of dumping was in fact in accordance with Article 8.1 of the 1996 Protocol.

2.2 Two situations can be envisaged. The first being a notification of such an occurrence by a ship's master to the relevant authority of the Party before the dumping occurs; the second being an after-the-fact report by the ship's master or other relevant authorities. In the first situation there may be opportunity for the Party to provide guidance, in the second situation this is not the case.

2.3 A report on a *force majeure* emergency dumping in accordance with Article 8.1, of the 1996 Protocol, should address the following:

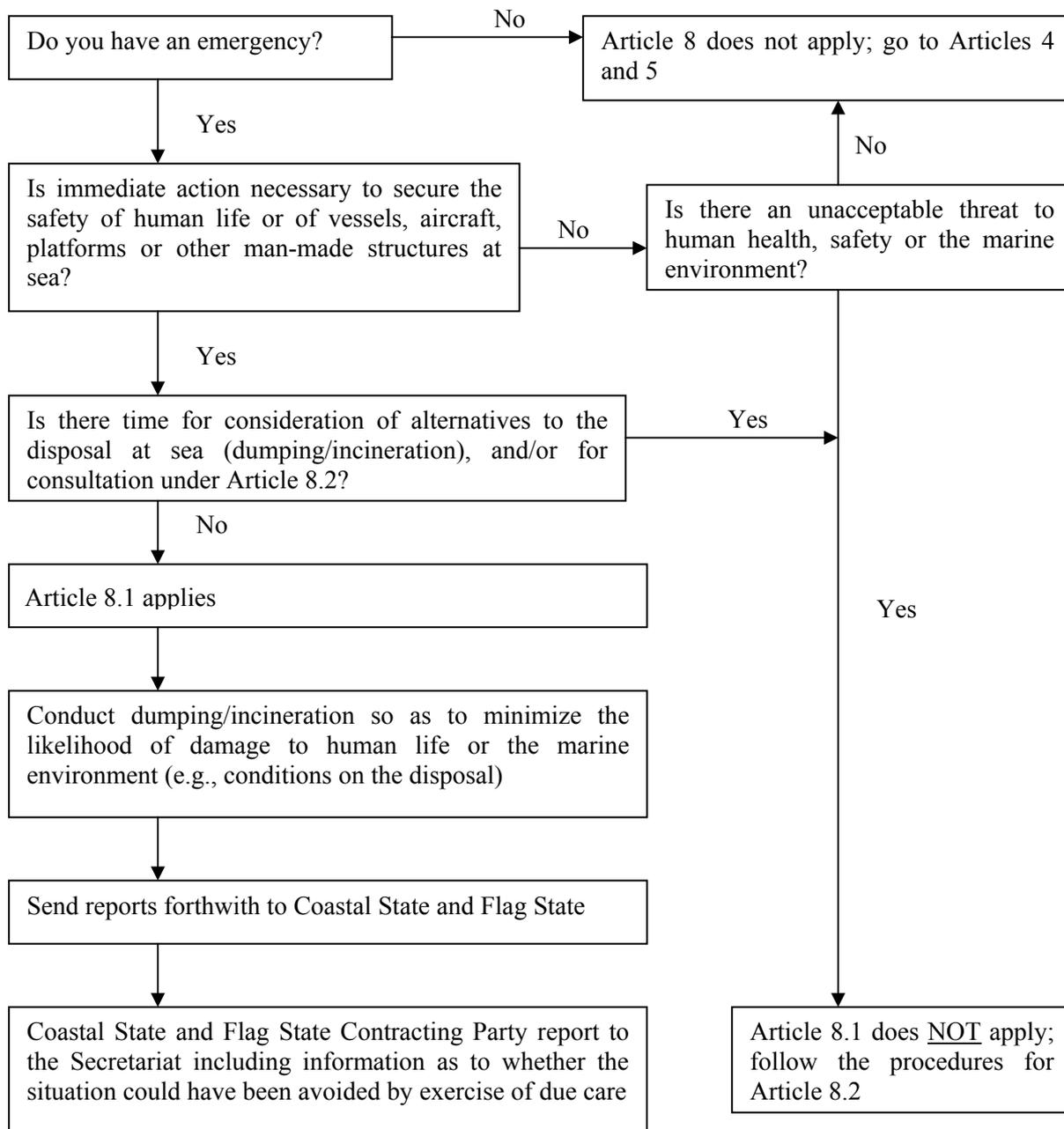
- .1 the necessity to secure the safety of human life or of vessels, aircraft, platforms or other man-made structures at sea;
- .2 the nature of the *force majeure* case caused by stress of weather, or in any other case which constitutes a danger to human life or a real threat to vessels, aircraft, platforms or other man-made structures at sea;
- .3 that dumping or incineration at sea appeared to be the only way of averting the threat and that there was every probability that the damage consequent upon such dumping or incineration at sea was less than would otherwise occur;
- .4 actions undertaken to minimize the likelihood of damage to human and marine life to the maximum extent possible;
- .5 procedures established, if applicable, to monitor the impact of the action;
- .6 the name of the ship, the name of the Master of the ship and the name and address of its owner;
- .7 the port of registry of the ship;
- .8 the last point of departure and the immediate destination of the ship at the time at which the disposal occurred;
- .9 the latitude and longitude of the disposal site and the depth of the sea at that place; and
- .10 a description of the substance disposed of, including:
  - .1 information on the composition and nature of the substance;
  - .2 the quantity that was disposed of;
  - .3 the form of the substance, namely, solid, liquid or gas; and
  - .4 an estimate of the time required for the substance to disappear below the surface of the water.

2.4 The Secretariat should forward such reports to the Meeting of Contracting Parties.

### **3 ACTION TO IMPLEMENT ARTICLE 8.2**

3.1 In cases of Article 8.2 emergency, more time (than under Article 8.1 emergency) is likely to be available, e.g., for prior consultation, for consideration of other alternatives, and for consideration of conditions in relation to disposal at sea. However, in some cases Article 8.2 emergencies are situations requiring action with a marked degree of urgency, and which may preclude thorough consultations and evaluations. In these cases, the Contracting Party would notify the Secretariat as to the actions taken.

**Flow chart for Application of Article 8.1 – Emergency Exceptions**



3.2 In the implementation of the above provisions, the following sequence of actions can be envisaged:

- .1 In order to decide that an emergency under Article 8.2 does in fact exist, the Contracting Party proposing to issue a permit for the disposal of wastes or other matter at sea would:
  - .1 investigate the situation to decide whether or not it poses an unacceptable risk relating to human health, safety or the marine environment; and

- .2 investigate possible alternative methods of disposal in order to decide that no feasible solution other than disposal at sea can be found;
- .2 Having decided that disposal at sea is necessary, the Contracting Party concerned would:
  - .1 consult with other countries that may be affected;
  - .2 consult with the Secretariat for recommendations as to the most appropriate procedures to adopt; and
  - .3 consult with any relevant regional agreements or programmes, as appropriate;
- .3 Upon being informed of the situation, the Secretariat would:
  - .1 consult with other Contracting Parties;
  - .2 consult with other competent international organizations; and
  - .3 decide upon and promptly recommend to the Contracting Party the most appropriate procedures to adopt;
- .4 In issuing the permit for the disposal at sea, the Contracting Party concerned would:
  - .1 follow the Secretariat's recommendations to the maximum extent feasible consistent with the time within which action must be taken and with the general obligation to avoid damage to the marine environment; and
  - .2 inform the Secretariat of the action taken.

3.3 For Contracting Parties being also Contracting Parties to a regional agreement on the prevention of marine pollution by dumping, a consultation procedure adopted within that regional agreement may be substituted for the above procedures provided that it is consistent with the requirements set out below. The Secretariat of the regional agreement will immediately submit any information on emergency situations to the IMO Secretariat, which will then follow, as necessary and appropriate, the procedures developed within the framework of the 1996 Protocol to the London Convention 1972 taking into account the procedure being followed under the regional agreement. In case a consultation procedure adopted within a regional agreement is applied, the Contracting Party concerned should report **both** to the Secretariat **and** the relevant regional organization.

#### **4 ACTION TO BE TAKEN BY THE PARTY CONCERNED IN IMPLEMENTING ARTICLE 8.2**

##### **4.1 Assessment of the emergency situation**

4.1.1 With reference to paragraph 3.2.1 above, it is apparent that when an emergency situation involving the disposal of wastes or other matter at sea occurs, the first step to be taken by the Contracting Party is to assess the threat or risk to human health, safety or the marine environment. Such assessment should include the following:

- .1 The circumstances of the emergency:

- .1 type including chemical composition of material involved;
- .2 location and cause of release;
- .3 amount lost into the environment; and
- .4 potential for further release and expected rate;

### **Risks relating to human health**

- .2 The risks relating to human health with regard, *inter alia*, to:
  - .1 toxicity to human life:
    - by inhalation;
    - by ingestion; and
    - by skin absorption;
  - .2 method of contact:
    - direct contact with material;
    - water supply;
    - food source;
  - .3 the impact on health of present and future generations:
    - chronic toxicity;
    - carcinogenic, teratogenic and mutagenic properties of the material; and
    - potential for causing long-term effects;

### **Risks to safety<sup>27</sup>**

- .3 The risks relating to safety with regard, *inter alia*, to:
  - .1 the risk to human life;
  - .2 the risk to the vessel, aircraft, platform or other man-made structure and to other vessels, aircraft, platforms, or other man-made structures in the area;
  - .3 the risk to other legitimate uses of the sea; and
  - .4 in case the situation occurs in port, the risk to surrounding buildings and adjacent living and working areas;

### **Risks to the marine environment**

- .4 The risks relating to the marine environment with regard, *inter alia*, to:
  - .1 acute and chronic toxicity;
  - .2 short- and long-range transport of air pollutants from incineration;
  - .3 risk to commercial or recreational fisheries from toxicity and tainting;
  - .4 the impact of disposal at sea versus uncontrolled release;
  - .5 habitat destruction or alteration;

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<sup>27</sup> All safety aspects indicated in the specific operational plan for sea disposal to deal with a case of emergency should be identified, in advance, to the extent possible and considered in accordance with the applicable IMO safety requirements to the satisfaction of the authorities concerned.

- .6 introduction of alien species, pests, or diseases; and
- .7 other marine environmental quality concerns.

4.1.2 Disposal at sea (i.e., dumping or incineration) should only be considered by the Contracting Party after an assessment of the waste concerned and the proposed location for dumping, utilizing the “Guidelines for the Assessment of Wastes or Other Matter that may be Considered for Dumping” (LC 19/10, annex 2) to the maximum extent possible under the circumstances and, where appropriate, the Specific Guidelines developed under the Protocol (LC/SG 24/11, annexes 3 to 10). In particular, an evaluation is required of the following factors:

- .1 Alternatives to disposal to be considered as a first priority, including:
  - .1 re-use, reclamation and recycling;
  - .2 off-site recycling;
  - .3 destruction of hazardous constituents; and
  - .4 treatment to reduce or remove the hazardous constituents through biological, chemical or physical treatment;
- .2 Alternative methods of disposal to be considered, including:
  - .1 landfill and soil disposal;
  - .2 well injection;
  - .3 incineration on land;
  - .4 storage; and
  - .5 partial treatment prior to ocean disposal;
- .3 Assessment of the environmental impact of each alternative:
  - .1 adverse environmental effects of alternative actions;
  - .2 impact on living and non-living marine resources, navigation, recreation and other uses of the ocean; and
  - .3 evaluation to determine which alternative has least overall environmental impact;
- .4 The disposal site designation and monitoring:
  - .1 physical, chemical and biological information relating to the proposed disposal site;
  - .2 proposed method of release of material at the site;
  - .3 proposed times and dates of disposal; and
  - .4 monitoring to assess the impact of the material on the marine environment.

## 4.2 Consultation

4.2.1 With reference to paragraph 3.2.2 above, once it has been determined that an unacceptable risk to human health, safety or the marine environment exists and that ocean disposal is the only feasible solution the Contracting Party shall consult with other countries which may be affected, and with the Secretariat. The information provided initially by the Contracting Party will be dependent upon the urgency of the emergency situation.

4.2.2 All the significant information used in making the determinations in 4.2.1 above, in light of the criteria listed in 4.1 above, should be provided to other countries which may be affected, and to interested regional agreements or programmes as appropriate, and include:

- .1 type including chemical composition of material;
- .2 amount of material to be disposed, location of disposal site and dates of disposal;
- .3 risk to human health, or safety of human life or vessels;
- .4 potential adverse impacts on the marine environment;
- .5 alternatives considered;
- .6 potential impact of action/no action on other countries;
- .7 proposed actions to minimize potential adverse impacts; and
- .8 proposed monitoring programme to determine impact.

4.2.3 At a minimum, the information provided to other countries (paragraph 4.2.2 above) should be submitted to the Secretariat and also include:

- .1 countries the Party has consulted with;
- .2 recommendations of the other countries; and
- .3 extent to which the recommendations have been adopted.

In addition, the Contracting Party should submit to the Secretariat all significant information mentioned in paragraph 4.1 above.

## **5 ACTION TO BE TAKEN BY THE SECRETARIAT IN IMPLEMENTING ARTICLE 8.2**

### **5.1 Consultation within the IMO Secretariat**

5.1.1 In implementation of paragraph 3.2.3 above, the Secretariat should undertake a review of the submissions by the Contracting Party to ensure that it has carried out the following:

- .1 demonstrated an unreasonable risk to human health, safety or the marine environment;
- .2 evaluated other alternatives and found no other feasible solution;
- .3 avoided damage to the marine environment to the maximum extent possible;
- .4 established procedures to monitor the impact of the proposed action; and
- .5 consulted with other countries that may be affected and incorporated their recommendations into the proposed action where appropriate and feasible.

5.1.2 If the Secretariat finds that further review and analysis is needed, the following action should be taken:

- .1 refer specific questions to competent international organizations;
- .2 consult with other Contracting Parties or countries which may be affected; and/or
- .3 consult with independent experts nominated by Contracting Parties.

### **5.2 Recommendations by the Secretariat**

5.2.1 The Secretariat should, after consultation with other competent international organizations, experts and Contracting Parties, as appropriate, promptly recommend appropriate procedures that should be adopted by the Contracting Party prior to disposal. Due account should also be taken of any recommendations made by countries which may be affected by the proposed action. The Contracting Party shall follow these recommendations to the maximum extent feasible consistent with the time within which action must be taken.

## **6 REPORTING BY THE PARTY ON ACTION TAKEN IN IMPLEMENTING ARTICLE 8.2**

The Party shall inform the Secretariat forthwith of the action taken and may provide any additional facts relating to the disposal of the material it considers appropriate. The Secretariat should inform all Parties of the emergency situation and actions taken as soon as practicable.

## **7 PROCEDURE FOR CONSULTATION**

7.1 With a view to facilitating consultation among Contracting Parties and with competent international organizations, it would seem appropriate for each Contracting Party to designate a "focal point" for all communications of this nature. The Secretariat would collect the requisite information from Governments (name, designation, address, telephone and fax numbers, e-mail, etc.) and prepare a comprehensive list for circulation to all concerned. The Secretariat would also communicate with other organizations including UNEP, WHO, FAO, UNESCO/IOC, UN and IAEA in order to arrange for the nomination of a suitable "focal point" in each case to expedite consultations relative to the 1996 Protocol.

7.2 Upon being informed by the Contracting Party concerned of the circumstances of the emergency situation, including the views of other States consulted by the Contracting Party, the Secretariat should proceed to arrange for consultations with a view to formulating appropriate recommendations. As a general rule, consultations will occur by telephone, e-mail, fax, conference calls, and/or video conference. In rare circumstances, the Secretariat may convene a Special Meeting of Contracting Parties or a smaller panel of Contracting Parties, provided the urgency of the situation allows enough time.

7.3 It also seems possible that consultation with other competent international organizations might proceed simultaneously with, and in a similar manner as, consultation with other Contracting Parties. The Contracting Parties might also consider the possibility of including countries likely to be affected in such consultations.

7.4 To facilitate the consideration of future cases involving emergency disposal at sea, the Secretariat will assemble and keep on file for ready reference information on actual cases dealt with, including details of methods of disposal adopted, etc.

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