ANNEX 4

RESOLUTION OF THE THIRD CONSULTATIVE MEETING
ON SETTLEMENT OF DISPUTES

Resolution adopted on 12 October 1978

THE THIRD CONSULTATIVE MEETING,

RECALLING Article XI of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter whereby the Contracting Parties undertake to consider procedures for the settlement of disputes concerning the interpretation and application of the Convention,

RECALLING FURTHER that the Second Consultative Meeting agreed to consider proposals at the Third Consultative Meeting to incorporate provisions for the settlement of disputes within the framework of the Convention with a view to the development and possible adoption of such provisions by that Meeting,

NOTING Article X of the Convention whereby the Contracting Parties undertake, in accordance with the principles of international law regarding State responsibility for damage to the environment of other States or to any other area of the environment, caused by dumping of wastes and other matter of all kinds, to develop procedures for the assessment of liability and the settlement of disputes regarding dumping,

BEARING IN MIND the provisions of Article XIII whereby the Contracting Parties affirm that nothing in the Convention shall prejudice the codification and development of the law of the sea by the Third United Nations Conference on the Law of the Sea nor the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction,

HAVING CONSIDERED the proposed provisions on the settlement of disputes contained in the Report of the Ad Hoc Group of Legal Experts on Dumping,

ADOPTS the following amendments to the Convention in accordance with Articles XIV(4)(a) and XVI(1) thereof:

(a) amendments to Article XI;

(b) amendments to Articles XIV(4)(a) and XV(1)(a); and

(c) addition of an Appendix,

the texts of which are set out in the Attachment to this Resolution,

REQUESTS the Secretary-General of the Inter-Governmental Maritime Consultative Organization to inform the Contracting Parties of the above-mentioned amendments in accordance with Article XV(1)(b) of the Convention,

ALSO REQUESTS the Secretary-General of the Inter-Governmental Maritime Consultative Organization to perform among his other Secretariat duties, functions provided for in the Appendix to the Convention regarding settlement of disputes,

INVITES the Contracting Parties to accept the amendments as soon as possible.

Attachment

AMENDMENTS TO THE CONVENTION ON THE PREVENTION OF MARINE POLLUTION BY DUMPING OF WASTES AND OTHER MATTER CONCERNING SETTLEMENT OF DISPUTES

Article XI shall be replaced by the following:

Any dispute between two or more Contracting Parties concerning the interpretation or application of this Convention shall, if settlement by negotiation or by other means has not been possible, be submitted by agreement between the parties to the dispute to the International Court of Justice or upon the request of one of them to arbitration. Arbitration procedures, unless the parties to the dispute decide otherwise, shall be in accordance with the rules set out in the Appendix to this Convention.

Article XIV(4)(a) shall be replaced by the following:

"(a) review and adopt amendments to this Convention, its Annexes and Appendix in accordance with Article XV;".

The first sentence of Article XV(1)(a) shall be replaced by the following:

"At meetings of the Contracting Parties called in accordance with Article XIV amendments to this Convention and its Appendix may be adopted by a two-thirds majority of those present.".

The Appendix mentioned in the amended Article XI above is set out hereunder:

APPENDIX

ARTICLE 1

1. An Arbitral Tribunal (hereinafter referred to as the "Tribunal") shall be established upon the request of a Contracting Party addressed to another Contracting Party in application of Article XI of the Convention. The request for arbitration shall consist of a statement of the case together with any supporting documents.

2. The requesting Party shall inform the Secretary-General of the Organization of:

(i) its request for arbitration;

(ii) the provisions of the Convention the interpretation or application of which is, in its opinion, the subject of disagreement.

3. The Secretary-General shall transmit this information to all Contracting States.

ARTICLE 2

1. The Tribunal shall consist of a single arbitrator if so agreed between the parties to the dispute within 30 days from the date of receipt of the request for arbitration.

2. In the case of the death, disability or default of the arbitrator, the parties to a dispute may agree upon a replacement within 30 days of such death, disability or default.

ARTICLE 3

1. Where the parties to a dispute do not agree upon a Tribunal in accordance with Article 2 of this Appendix, the Tribunal shall consist of three members:

(i) one arbitrator nominated by each party to the dispute; and

(ii) a third arbitrator who shall be nominated by agreement between the two first named and who shall act as its Chairman.

2. If the Chairman of a Tribunal is not nominated within 30 days of nomination of the second arbitrator, the parties to a dispute shall, upon the request of one party, submit to the Secretary-General of the Organization within a further period of 30 days an agreed list of qualified persons. The Secretary-General shall select the Chairman from such list

as soon as possible. He shall not select a Chairman who is or has been a national of one party to the dispute except with the consent of the other party to the dispute.

3. If one party to a dispute fails to nominate an arbitrator as provided in sub-paragraph (1)(i) of this Article within 60 days from the date of receipt of the request for arbitration, the other party may request the submission to the Secretary-General of the Organization within a period of 30 days of an agreed list of qualified persons. The Secretary-General shall select the Chairman of the Tribunal from such list as soon as possible. The Chairman shall then request the party which has not nominated an arbitrator to do so. If this party does not nominate an arbitrator within 15 days of such request, the Secretary-General shall, upon request of the Chairman, nominate the arbitrator from the agreed list of qualified persons.

4. In the case of the death, disability or default of an arbitrator, the party to the dispute who nominated him shall nominate a replacement within 30 days of such death, disability or default. If the party does not nominate a replacement, the arbitration shall proceed with the remaining arbitrators. In the case of the death, disability or default of the Chairman, a replacement shall be nominated in accordance with the provision of paragraphs 1(ii) and 2 of this Article within 90 days of such death, disability or default.

5. A list of arbitrators shall be maintained by the Secretary-General of the Organization and composed of qualified persons nominated by the Contracting Parties. Each Contracting Party may designate for inclusion in the list four persons who shall not necessarily be its nationals. If the parties to the dispute have failed within the specified time limits to submit to the Secretary-General an agreed list of qualified persons as provided for in paragraphs 2, 3 and 4 of this Article, the Secretary-General shall select from the list maintained by him the arbitrator or arbitrators not yet nominated.

ARTICLE 4

The Tribunal may hear and determine counter-claims arising directly out of the subject matter of the dispute.

ARTICLE 5

Each party to the dispute shall be responsible for the costs entailed by the preparation of its own case. The remuneration of the members of the Tribunal and of all general expenses incurred by the Arbitration shall be borne equally by the parties to the dispute. The Tribunal shall keep a record of all its expenses and shall furnish a final statement thereof to the parties.

ARTICLE 6

Any Contracting Party which has an interest of a legal nature which may be affected by the decision in the case may, after giving written notice to the parties to the dispute which have originally initiated the procedure, intervene in the arbitration procedure with the consent of the Tribunal and at its own expense. Any such intervenor shall have the right to present evidence, briefs and oral argument on the matters giving rise to its intervention, in accordance with procedures established pursuant to Article 7 of this Appendix, but shall have no rights with respect to the composition of the Tribunal.

ARTICLE 7

A Tribunal established under the provisions of this Appendix shall decide its own rules of procedure.

ARTICLE 8

1. Unless a Tribunal consists of a single arbitrator, decisions of the Tribunal as to its procedure, its place of meeting, and any question related to the dispute laid before it, shall be taken by majority vote of its members. However, the absence or abstention of any member of the Tribunal who was nominated by a party to the dispute shall not constitute an impediment to the Tribunal reaching a decision. In case of equal voting, the vote of the Chairman shall be decisive.

2. The parties to the dispute shall facilitate the work of the Tribunal and in particular shall, in accordance with their legislation and using all means at their disposal:

(i) provide the Tribunal with all necessary documents and information;

(ii) enable the Tribunal to enter their territory, to hear witnesses or experts, and to visit the scene.

3. The failure of a party to the dispute to comply with the provisions of paragraph (2) of this Article shall not preclude the Tribunal from reaching a decision and rendering an award.

ARTICLE 9

1. The Tribunal shall render its award within five months from the time it is established unless it finds it necessary to extend that time limit for a period not to exceed five months. The award of the Tribunal shall be accompanied by a statement of reasons for the decision. It shall be final and without appeal and shall be communicated to the Secretary-General of the Organization who shall inform the Contracting Parties. The parties to the dispute shall immediately comply with the award.

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