A SOUND INVESTIGATION

ON

POLLUTION OFFENCES

Captain Jean – Claude DE BAERE
Former Maritime Commissioner
Aqua – Marine Bureau for Consultancy, Development and Training
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A SOUND INVESTIGATION ON POLLUTION OFFENCES

1 Foreword

I’m glad to have the opportunity to develop some ideas but first to point out some misunderstandings I noticed in the past. I mean by this for instance a different signification whether a word is used by an air observer or a prosecutor and the policeman I was. The notion “investigation” is a good example. In addition, if we think further, an investigation can be an administrative one or a preliminary criminal procedure sometimes even a combination of both. So, which one is, in such case, prevailing?

This is at once the kernel of my exposition “A sound investigation on pollution offences“ or how to make sure that offenders are properly identified, prosecuted and sentenced, but also that deficiencies are remedied.

2 Introduction

First, I would like to limit my intervention. I am not a lawyer and I am not a port state control officer. I am a maritime commissioner and competent for the so-called administrative and judicial police. Particular laws give me also a control and surveillance competency in the capacity of particular civil servant - inspector.

Therefore, it is from this perspective that I will illustrate the notion investigation. Of course, I will also limit this explanation to the Belgian system, but I’m almost sure that the general framework goes for every country. There might be some differences in some aspects of the execution.
3 Initial stage

During an observation task, the observer spots a suspect pollution behind a ship. The ship is identified, VHF contact is established, information’s are exchanged and the pumping operations are stopped. The facts took place in foreign waters but the ship is due for a national port. A further investigation is necessary in the next port of call.

<table>
<thead>
<tr>
<th>Suspect pollution observed</th>
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<tbody>
<tr>
<td>Polluton</td>
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<tr>
<td>observation</td>
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<td>report</td>
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### Administrative  INVESTIGATION  Judicial

<table>
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<th>Various steps</th>
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<td>Various steps</td>
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<tr>
<td>Immediate measures</td>
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<tr>
<td>Court proceedings</td>
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*Short terms, hours/days*  *Long terms, month/years*

The first observation report is nothing more than a statement of facts, namely that a product has been discharged into the water. Usually the observer can add a number of information’s about the quality and the quantity, the position, the extend of the pollution, the ship’s reactions etc, etc, etc ... ... .... Thus, information based on the use of his senses.

This is not necessarily a red hand caught.

It is not easy to define the notion but one can say that there is talk of it when, and only then, at first sight all the elements of the crime are present. Well-defined objective standards are of great help in this matter (see second problem).
4 The multiple choice

If we look at the limited scheme above, we see that we have a triple choice to continue after the first official observation report. Let’s pose one or more questions and consider the pros and the cons.

**FIRST PROBLEM:**
Is it a prohibited action?
Is it a breach of the domestic law?
Is it a breach of the Marpol 73/78 convention?

How is the Marpol 73/78 convention executed in the domestic law? What is punishable? Who is punishable? What are the sanctions? The following scheme illustrates the situation in Belgium.

<table>
<thead>
<tr>
<th>What is punishable?</th>
<th>Who is punishable?</th>
<th>What are the sanctions*?</th>
</tr>
</thead>
</table>
| 1. The discharge of harmful materials taking into account the legal exceptions foreseen by the convention | ▶ The charterer, owner, manager, operator***
▶ The captain
▶ The officers | ▶ From 500.000** up to 1.000.000** BeF
▶ From 10.000** up to 25.000** BeF
▶ From 2.000** up to 10.000** BeF |
| 2. Not properly enter the record books | ▶ The captain
▶ The officers | ▶ From 10.000** up to 25.000** BeF
▶ From 2.000** up to 10.000** BeF |
| 3. Sail without the proper and valid certificates | The owner etc ........
The captain and the officers | See fines under item N°1 |
| 4. Opposition to or prevention of the control | The captain and the officers | See fines under item N°2 |
| 5. Refusal to co-operate | The captain and the officers | See fines under item N°2 |

* : If the discharge is done (item 1) during night time (from sundown until sunset) the fine is doubled; the same is applicable for reiteration within 3 years after conviction.

** : All figures have to be multiplied by 5 to know the actual level of the fine in Euro.

***: The owner (c, m or o) is punishable if one of his ships has discharged whether he was or was not on board at that time. This might be called an objective liability.
The scheme shows clearly that only three infractions are retaken from the convention as being punishable. The two other ones must guarantee a proper control.

Every other deficiency must be taken care of within the port state control (PSC) agreements and within the framework of the domestic law, such as detention or the lay on of works to the construction, the equipment or the installation of additional equipment before sailing. This is what could be called the administrative measures notwithstanding the judicial procedures.

What about the exceptions foreseen in the Marpol 73/78 convention?

SECOND PROBLEM: Is the ship’s action a crime or a fault?

In other words is it actionable in court or not? Under the Belgian code of criminal procedures, everyone, especially the civil servant, has the legal obligation to report every crime he witnesses to the prosecutor. From that moment, the prosecutor is in charge of the dossier and he/she can order any duty he/she thinks opportune in search of the truth, even outside the country. Possible channels are: Interpol, rogatory commissions, and rogatory tasks, even PSC.

The further investigation will clear this problem out. However, from the start it should be considered as a possible crime.

- A crime or a fault?

One might be surprised that I make this nuance. Therefore, you ought to know that a crime is not always a crime. For an action to be defined as a crime, three elements must be present together. These elements are 1) the factual element, 2) the moral element and 3) the legal element. I will not further detail these notions but an example might clear it a bit.

Is it a crime if the “crazy” second engineer goes down in the engine room and opens the wrong valves?

Is he responsible for his act? If not, who is liable? Responsibility or liability? Another discussion although in some sense the Belgian law includes the principle as said before.

THIRD PROBLEM: Which way to use? An administrative or a judicial investigation? Or both?

The choice is important because different rules apply to the procedures. Compared to the procedures police and prosecutors have to follow, the
administrative rules seem very ample and without much control on the application. On the other hand one can say that the competency of these administrative authorities is usually much more limited.

For instance what will happen if the oil or the cargo record book is suspect for forgery?

What is very important, however, is the fact that an administrative investigation might end up in a case brought to court. Therefore, we think that, although the inquiry started as a pure administrative one, it is important to bear in mind that it always can change into a judicial one. That means that a number of principles should be kept in mind. One of the most important ones is the respect of the rights of the suspect.

The Belgian executive Marpol 73/78 law contains an apparent contradiction on this matter. The law makes it obligatory for the master to co-operate whenever there is a control or surveillance on board of his ship. However, at the same time no one can ever oblige a suspect to assist in gathering evidence against him. It follows that the means foreseen to support the control activity are not applicable in case of a judicial investigation. It follows that when boarding the ship the police officer has to inform the ship’s master about the goal of this visit and in particular about his rights.

FIRST CONCLUSION: As soon as a suspect pollution is sighted, it is of the highest importance that the competent judicial authority is informed quickly by means of an initial official report.

This official report should contain:

- The details of the observation;
- The details of all ships in the neighbourhood;
- The next ports of call of these ships.

This enables the prosecutor to write out additional duties. The prosecutor is now in charge of the investigation. In dialogue with the prosecutor the observer (the organisation) may already inform the next ports of call requesting a port state control in accordance with Montego Bay '82, the Paris Memorandum of Understanding on Port State Control or the Marpol 73/78 convention.

If the ship is due for a domestic harbour, the observer can also inform the local (maritime) police office. To my opinion, this specialised branch can start the inquiry without any further duty. By not taking the necessary steps, one might even say they fail in their duties.

Additional duties can be of any kind as the gathering of evidence is almost totally free and only limited by legal forms (f.i. evidence obtained in an illegal
way such as theft). The interview of a suspect or a witness at his home place (foreign country) is possible. Other examples are the seizure of documents, analysis of samples, identification of owners, additional interviews, indicate experts etc, ............

It should be clear by now that a prosecutor has a broad fan of competencies when in charge of a criminal case.
The administrative and the judicial procedures

- The administrative procedures

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<tr>
<th>Administrative</th>
<th>INVESTIGATION</th>
<th>Judicial</th>
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<tbody>
<tr>
<td>Suspect pollution observed</td>
<td>Pollution observation report</td>
<td></td>
</tr>
<tr>
<td>1. Civil servants, agencies, PSC</td>
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<td>2. Deficiency report</td>
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<tr>
<td>3. Detention</td>
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<tr>
<td>4. Safety and security works</td>
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<tr>
<td>5. Flag state, classification societies</td>
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<tr>
<td>6. Response Flag state</td>
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\[
\begin{align*}
&\text{INVESTIGATION (1&2)} \\
&\text{IMMEDIATE MEASURES (3&4)} \\
&\text{NOTIFICATION (5)}
\end{align*}
\]
This type of investigation is limited because it is mainly based on a control of the ship’s documents and a technical inspection.

Usually the pollution report is the start-signal for a PSC on board in the next port. One must be aware that a PSC is an inspection of documents and technical matters (report). If the ship is detained after inspection, she will be released as soon as the deficiencies are remedied. This could occur while the ship is still loading or discharging or after terminating the ship’s commercial operations. Only in this last case the ship experiences negative effects (apart from the possible costs to remedy the deficiencies).

So usually not the pollution but further stated deficiencies, will or will not result in the detention of the ship.

Indeed a PSC is more than a Marpol 73/78 inspection and is usually based on the control of compliance with several conventions summed in the M.o.U. (such as the load-lines convention and the SOLAS convention). This means to my opinion that it is not always clear whether the ship was detained for the pollution or for other reasons.

Anyway, the ship is free to sail, if no (important or enough major) deficiencies are found. This may sound Utopian but still is possible.

A PSC-inspector will always base his decisions (for instance detain a vessel) on his own statements, because he is responsible for this decision.

The intervention of another authority is compulsory if, although no deficiencies have been stated or if the deficiencies have been remedied, the ship nevertheless must be detained in the port state.

This other authority can be the prosecutor or (in some countries) a special judge required by the prosecutor for a particular investigation. He then requires or imposes a judicial seizure of the ship considered as an element of the crime. There are some examples in drug trafficking. In addition, this brings us to the next item.

SECOND CONCLUSION: An administrative inquiry = limited investigation
The judicial procedures

Before the competent judicial authority can decide what to do about the ship and the crew she needs information. Gathering this information is what we call the preliminary judicial (or criminal) investigation. This investigation is confidential and not open to the concerned parties. The scheme below illustrates this procedure.

Suspect pollution observed

Pollution observation report

Administrative INVESTIGATION Judicial

INVESTIGATION (1,2,3&4)

1. Prosecutor

2. Preliminary judicial investigation

Technical expertise reports, PSC, air observer, analysis etc...

3. Police force

4. Dossier

IMMEDIATE MEASURES (5)

5. Detention // Bail

5bis. Amicable settlement

6. Court

One can talk of full investigation, compared to the limitations of a PSC, because the policeman will have to find out, to proof more than purely facts. Facts are only part of a criminal investigation. Equipment not in working order might lead to a PSC detention and a repair before sailing, but is, on its own, not necessarily the proof that the ship is responsible for an observed pollution. More evidence is needed in the burden of proof that usually lies in hands of the prosecutor. In most countries the gathering of evidence is not ruled. So the prosecutor as well as the suspect may freely choose what kind, what type, what quantity and what quality of evidence they present to court. The judge is of course free to decide what degree of beliefs he will attach to the different means of evidence presented by the parties to court.

The burden of proof might be reversed if the ship’s responsible means he falls under one of the exceptions mentioned in the convention or the domestic law. In some countries he will then have to proof this exception is applicable to his ship in this particular case.

THIRD CONCLUSION: Judicial investigation = full investigation
Montego Bay (‘82)

Apart from the traditional PSC and judicial procedures for mutual or reciprocal assistance the Montego Bay convention adds new procedures. These procedures arrange not only the assistance but also the pursuit in court.

New is the fact that upon request from a coastal state a case can be brought to court in a port state although the facts were perpetrated outside her territory. This is remarkable in penal law as prosecution for extra-territorial facts is usually limited by law for activities having a direct impact on public order in the prosecuting country.

However, in the text of MB ’82 the notion “prosecution” is used what comes to a judicial procedure or investigation.

FOURTH CONCLUSION: This new approach of extra-territorial “crimes” will need new legislation and a broad consultation.
6 Detention and bail

Various possibilities can be used to detain a ship within a criminal or administrative action.

- Detention because of a PSC for major deficiencies.
- Judicial seizure of the ship as an element of the crime which then can lead to confiscation or as an element necessary for further investigation;
- Detention by the maritime commissioner but only in case there are very strong suspicions against the ship as being the polluter; the ship can be released as soon as a bail (maximum fine) has been paid in a special fund. This possibility is foreseen to protect the economic interests.
- Detention after request to the Belgian maritime inspection by a foreign country for a ship for infraction in waters under jurisdiction of that state.
7 The results of a visit to a ship in port

Whether the ship is visited from a criminal or administrative point of view makes some difference in the results. In Antwerp, I started an environmental maritime police team named Marpol-team.

However, when the Marpol-team boards a ship in Antwerp, nevertheless the motive, they will always ask for a number of documents. Each document, extract or photocopy has to be signed “for true copy“ before handed over to the team. Some documents then become “a proof till the contrary is proved“ (Marpol 73/78 convention, Belgian law) such as the extract of the Oil Record book.

Acting as a police force all persons involved will be interviewed and duly identified. The goal is then to find out the different responsibilities and liabilities of the various actors and to reconstruct the whole history of this case. The members of the Marpol-team will also add an objective report about their investigation and their statements of all kinds about what they see and hear during their stay on board. The ideal system for investigation is to use the rule of the seven W’s as in every criminal case (see annex for details).

Whenever possible the team will be accompanied by one or more maritime inspectors (deck and/or engine) to verify the declarations of the interviewed persons. In this case the inspector’s report will be exclusively based on the Marpol 73/78 inspection.

The Belgian law provides to the Marpol-team the legal grounds to refuse a clearance to sail if the ship has not fulfilled the requests based on maritime law and regulations.

7.1 Gathering and presenting evidence and compiling a dossier

In daylight and favourable weather conditions, the authorities often receive reports from various sources, such as commercial aircraft, helicopters, yachtsmen or other vessels, concerning possible discharges by ships. Most of the reports lack information, despite the effort from the receiving operator who would normally ask to obtain additional information. Special aircraft equipped with remote sensing instruments operated by professionals provide expert evidence on suspected polluters.

7.2 Gathering evidence

The information in the first report of a possible discharge, including details of the suspected polluter, should be confirmed by officials. Observers on board the remote sensing aircraft should preferably have the authority to draft an Official Report (procès-verbal) or Statement on their findings.

The contents of the official report and/or (witness) Statement has to be in compliance with national legislation. Evidence in writing may be corroborated by supporting imagery by sensors, photographs or video camera. Data annotation integrated in the images provides clear information on date, time and location.
Further evidence to be considered could be constituted by samples taken from the sea surface and from the tanks of the suspected polluter. The Bonn Agreement countries have strict procedures for collecting, handling and analysing samples.

Additional evidence can be obtained based on the results of the investigation on board the suspected vessel. The authority responsible for gathering/assessing evidence should decide if a legal investigation is appropriate, and if so, when to involve the police. Police or other competent personnel may need to interview suspects, take statements and liaise with the prosecutors. As regards international cooperation between a coastal state (with a ship found polluting in its maritime area) and a port state (state with the next port of call of suspect ship), several quick and efficient procedures for cooperation can be followed. A general administrative and technical inspection on board of the suspect ship can be requested via the network of the Memorandum of Understanding on Port State Control. However, the coastal state can also rapidly put a request for legal aid to the Port State police authorities (via Interpol) resulting in a more extended, judicial investigation, including e.g. a directed and detailed ship inspection and a cross-hearing.

An example of procedures used at a national level is given in section 7.4.

### 7.3 Presenting evidence

The authority responsible for gathering and distributing evidence in order to initiate prosecution should be well aware of the requirements of the national prosecution procedures. In cases where the evidence is to be forwarded to another country the requirements of this country should be considered, including the necessity to identify the suspect in person.

A reporting authority should endeavour to submit all documents and annexes in the same language and it is preferable to present the statement in the language of the receiving administration. A description of the sensors used and an interpretation of the imagery is recommended. Additionally, an analysis report of any samples taken should be clearly explained. Information on sensors is available in the Manual: Oil Pollution at Sea, securing evidence on discharges from ships.

The possible content of a dossier is given hereafter.
1) First reporting format as a result of the observation as structured in accordance with the Bonn Agreement reporting format “Pollution Observation report on Polluters and Combatable Spills”

2) Procès-Verbal or (witness) Statement including print-outs of Remote Sensing imagery and photographs

3) Report by the Port State Control

4) Information to be obtained during ship inspection
   - The ship’s particulars;
   - Nautical chart with the ship’s positions, the exact name and number and the last correction date;
   - Fuel and ballast
     - Plan of the ship’s tanks;
     - Piping plan;
     - Ballast situation plan;
     - Fuel situation plan;
     - Tanks stripping tests;
     - Calibration tables for the tanks;
     - Fuel and ballast transfer orders for ship's bunkers and ballast from tank to tank on board;
     - Fuel delivery orders mentioning the specifications of the bunkers;
     - Oil record book (all ships), including all receipt notes for sludges, bilges, slops etc.;
   - Cargoes on board
     - Oil record book for tankers;
     - Cargo record book;
     - NLS (Noxius Liquid Substances) certificate;
     - P&A Manual, (Procedures and arrangements manual in compliance with MARPOL Annex II); Cargo stowage plan for the actual and the previous voyages;
     - Cargo sounding book;
     - Liquid cargo specifications;
   - Ship’s certificates
     - Certificate of registry;
     - International Load Lines Certificate;
     - Tonnage certificate;
     - International oil pollution prevention certificate;
     - Civil liability certificate;
     - Certificate of fitness for the carriage of noxious substances carried in bulk;
     - SOPEP: ship’s oil pollution emergency plan;

5) Crew Witness statements taken by the Police or other empowered personnel.

6) Availability of samples taken and/or sample analysis.

7) Result of computer modelling if applicable.
8) Environment impact statement if applicable.

9) Any other relevant documents related to the alleged infringement, e.g. report on counter pollution measures undertaken as a result of the incident.
7.4 Example of procedures on gathering and presenting evidence on the national level

Pollution of the marine environment attracts not only the attention of professional enforcers. The public regularly observes pollution by oil and sometimes even witnesses discharges. Captains of ships and contractors on offshore installations are obliged to report any accident whereby harmful substances are leaking or discharged into the sea. Such a report will be forwarded to the nearest coastal station.

In the Netherlands procedures have been developed and are used to deal with these reports and to streamline the follow-up (see further in the annexes).

The basis for the report of a pollution or polluter is the Bonn Agreement format "Pollution Observation report on Polluters and Combatable Spills" (see page 43). Professionals are familiar with the items in this format. The receiving station (coastguard) will, by asking the questions, collect as much information as possible from the reporting person.

Reports may concern various types of pollution such as oil, drums, garbage, large numbers of dead fish, birds and others.

The receiving station, in the Netherlands this is the Coast Guard Coordination Center, informs relevant authorities to follow-up. All information is forwarded to the Central Office acting as the secretariat to the Public Prosecutor. This Central Office is located at the Coast Guard Center. The officials in this Office are responsible for the completion of the case file, and are considered to be important links in the chain of detection towards prosecution.

Table 1 and Figure 1 (page 41 – 42) give an overview of the procedures which are detailed in the further Annex.
8 Global instruments for co-operation in the field of prosecuting illegal maritime pollution

8.1 Introduction

There are two fundamental instruments available to the international community for taking action against the perpetrators of illegal acts of marine pollution:

- The MARPOL 73/78 Convention relates to the prevention of pollution from ships, and to the protection of the marine environment from violations of discharge regulations which are stipulated in this Convention;
- The 1982 UNCLOS Convention is a more universal instrument which relates to matters governing the Law of the Sea including the protection of marine environments from the activity of shipping.

Both conventions lay down the extent of enforcement powers of the Coastal State, Port State and Flag State respectively. In order to meet the aims of these two Conventions, they must be implemented in national law through appropriate legislation.

Offences against both mentioned maritime conventions usually have an international character involving bordercrossing and legal co-operation between judicial authorities. This kind of international co-operation is laid down in a number of European criminal law Conventions which are also discussed in this chapter:

- European Convention on Extradition
- European Convention on Mutual Assistance in Criminal Matters
- European Convention on the Transfer of Proceedings in Criminal Matters

Finally, the possibilities of quick and direct international Police co-operation (INTERPOL, Schengen Agreement) is briefly discussed.

8.2 MARPOL 73/78

The general provision in Art. 6 of MARPOL 73/78 contains the obligation of Parties acting as Flag State, Port State or Coastal State, to co-operate in the detection of violations and the enforcement of the provisions of the Convention, using all appropriate and practicable measures of detection and environmental monitoring, adequate procedures for reporting and accumulation of evidence.

Contrary to UNCLOS (see 7.3), MARPOL 73/78 does not provide that a Port State can take proceedings when a violation takes place on the high seas or in areas under the jurisdiction of another State. So in principle, MARPOL 73/78 does not deviate from the exclusive jurisdiction of the Flag State (see 7.2.1). However, a Port State may inspect a ship that enters a port or offshore terminal under its jurisdiction, which in some circumstances may lead to the detention of that ship (see 7.2.2). A Coastal State can institute proceedings under its own laws in respect of any violation that occurred within its area of jurisdiction (see 7.2.3).

8.2.1 Enforcement by Flag State (Art. 4 of MARPOL 73/78)

The Convention provides that any violation of the Discharge Regulations or other MARPOL 73/78 requirements shall be an offence under the law of the Flag State wherever the violation occurs. If the Flag State is informed of such a violation and is satisfied that sufficient evidence is available to commence proceedings, it shall cause such proceedings to be taken as soon as possible, in accordance with its law. The Flag State shall promptly inform the Party which has reported the alleged violation, as well as the IMO, of the action taken. A Flag State may request a Port State control inspection.
8.2.2 Port State control (Art. 5 & 6 of MARPOL 73/78)

MARPOL 73/78 provides that a ship may, in any port or offshore terminal of a Port State which is party to the Convention, be subject to inspection by port state control officers for the purpose of verifying whether the ship has discharged any harmful substances in violation of the provisions of the regulations. However, the officers appointed or authorised by that Port State are bound to special rules on inspection of ships.

A Port State may also inspect a ship when it enters the ports or offshore terminals under its jurisdiction, if a request for an investigation is received from any Party together with sufficient evidence that the ship has discharged harmful substances into the sea. The report of the investigation is then passed on to the requesting Party and the Flag State for appropriate action.

In some circumstances, MARPOL 73/78 provides that a Port State has the right to detain a ship: in cases where a ship does not carry a valid certificate on board, or when the condition of the ship or its equipment does not correspond substantially with the particulars of that certificate, the Port State carrying out the inspection shall take the appropriate steps to ensure that the ship shall not sail until it can proceed to sea without presenting an unreasonable threat of harm to the marine environment.

With respect to the ship of non-Parties, a Port State shall apply the MARPOL 73/78 requirements as may be necessary to ensure that no more favourable treatment is given to such ships.

All of this is current practice between European countries participating in the Memorandum of Understanding (MOU) on Port State Control (see 7.4).

8.2.3 Enforcement by Coastal State (Art. 4 of MARPOL 73/78)

Any violation within the jurisdiction of a Coastal State party to the Convention shall be an offence under the law of that Coastal State - whether the ship flies the flag of a Party or not - and sanctions shall be imposed under that law. A Coastal State may request a Port State control inspection.

Whenever a violation occurs within the jurisdiction of a Coastal State, that State shall either take proceedings under its own laws or report the offence to the Flag State - which shall take proceedings as described above. In such circumstances most countries choose to take proceedings under their own laws, informing the Flag State that they have done so.

8.3 UNCLOS


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1 Following *inter alia* Art. 5 and Art. 6 of MARPOL 73/78 and the provisions for Port State control in its annexes, the International Maritime Organization published a document on Procedures for Port State Control, which is intended to provide basic guidance on the conduct of Port State control inspections and to afford consistency in the conduct of these inspections, the recognition of deficiencies of a ship, its equipment, or its crew, and the application of control procedures. It sets out the IMO Resolution A.787 (19) of 23 November 1995 (containing general procedural guidelines for Port State control officers), and includes a list of addresses of Head Offices of Port State control Administrations party to MARPOL 73/78 in order to assist Administrations and others interested in contacting the pertinent authorities.
UNCLOS *inter alia* provides jurisdiction to the Coastal States in the EEZ in addition to the sovereign rights of the territorial sea (Art. 211, § 5 and Art. 220). This is very important, since all Bonn Agreement Contracting Parties have established or are in the process of establishing an EEZ or an equivalent marine area.

UNCLOS further provides a powerful legal basis for international co-operation in exercising Flag State, Port State and Coastal State powers of enforcement in the territorial seas and EEZs or equivalent marine areas, such as the UK Pollution Zone, aiming, *inter alia*, at facilitating the enforcement and prosecution of MARPOL 73/78 offenders. The general UNCLOS provisions relevant to this international co-operation are discussed below.

It is important to note that these UNCLOS provisions break through the traditional supremacy of the jurisdiction of the Flag State in respect of discharge violations in areas outside the jurisdiction of a Coastal State: when a ship is voluntarily within a port, the Port State is granted extensive judicial powers in respect of a discharge violation committed by that ship outside its internal waters, territorial sea or EEZ (see 7.3.2). The provisions of UNCLOS concerning this universal Port State jurisdiction represent a key factor to successful prosecution of MARPOL 73/78 Offenders.

With respect to the prosecution of a MARPOL 73/78 offence committed in the territorial sea or EEZ of a Coastal State, UNCLOS provides the possibility for that Coastal State to:

- request a Port State to investigate a ship and report back to the Coastal State, for administrative or judicial proceedings;
- request a Port State to undertake judicial proceedings (Art. 218, see 7.3.2).

Furthermore, UNCLOS provides the possibility for a Coastal State to carry out an inspection on board and to detain or pursue a foreign ship at sea in respect of a serious discharge violation in its territorial sea or EEZ (under specific conditions) (Art. 220 + 111, see 7.3.3 and 7.3.4).

Breaking through the classic system of exclusive jurisdiction of the Flag State at sea made it necessary to establish certain guarantees to protect foreign ships. Such guarantees are provided with regard to the procedure of and conditions for inspecting ships (Art. 220 and 226), the suspension and restrictions on instituting proceedings (Art. 228, see 7.3.5), the notification to the Flag State (Art. 231, see 7.3.6), and liability of States arising from enforcement measures (Art. 232).

**8.3.1 Enforcement by Flag States (Art. 217 of UNCLOS)**

If a vessel commits a violation of MARPOL 73/78, the Flag State shall provide for immediate investigation and where appropriate institute proceedings in respect of the alleged violation, irrespective of where the violation occurred or where the pollution caused by such violation has occurred or has been spotted. Flag States conducting an investigation of the violation may request the assistance of any other State whose co-operation could be useful in clarifying the circumstances of the case.

At the request of any State, the Flag State shall investigate any violation alleged to have been committed by vessels flying their flag. If there is sufficient evidence available, Flag States shall without delay institute proceedings in accordance with their laws, and shall promptly inform the requesting State and the IMO of the action taken and its outcome.
8.3.2 Enforcement by Port States (Art. 218 and 219 of UNCLOS)

When a vessel is voluntarily within a port or at an off-shore terminal of a State, that Port State may undertake investigations and, where the evidence so warrants, institute proceedings in respect of any discharge from the vessel outside the internal waters, territorial sea or EEZ of that State in violation of MARPOL 73/78.

In cases where the discharge violation occurs in the internal waters, territorial sea or EEZ of another State however, the Port State may only institute proceedings upon request of that Coastal State, the Flag State, or another State damaged or threatened by the discharge violation. The Port State shall, as far as practicable, comply with these requests. It shall likewise, as far as practicable, comply with requests from the Flag State for investigation of a violation, irrespective of where the violation occurred. The records of the investigation carried out by a Port State shall be transmitted upon request to the Flag State, the Coastal State or a third State involved.

A Port State may also institute proceedings when the violation, committed in the internal waters, territorial sea or EEZ of another State, has caused or is likely to cause pollution in its own internal waters, territorial sea or EEZ.

Any proceedings instituted by the Port State on the basis of an investigation may be suspended at the request of the Coastal State (when the violation has occurred within its area of jurisdiction). The evidence and records of the case, together with any bond or other financial security, shall in that event be transmitted to the Coastal State. Also the Flag State can suspend proceedings instituted by the Port State (see 7.3.6).

In cases where a vessel within one of its ports or off-shore terminals is in violation of applicable international rules and standards relating to seaworthiness and thereby threatens damage to the marine environment, Art. 219 of UNCLOS provides that the Port State, upon request or on its own initiative, has the authority to take administrative measures to prevent the ship from sailing.

Port States enforcement could be vital for the co-operation between North Sea States as to illegal discharges committed by foreign ships in each other's territorial seas or EEZs. The amendment to the general German Penal Code, which gives a German court the possibility to prosecute criminal offences against MARPOL 73/78 discharge regulations that took place outside the German territorial sea and EEZ, is an example of this: at the request of another North Sea or Baltic Coastal State, proceedings can be brought before a German court for a case involving a foreign ship which has offended discharge regulations in the territorial sea or EEZ of that other Coastal State, provided that the act is also liable to prosecution in that Coastal State.

8.3.3 Enforcement by Coastal States (Art. 211 §5, 220, 226 and 218 of UNCLOS)

For the purpose of enforcement, Coastal States may in respect of their EEZ adopt laws and regulations for the prevention, reduction and control of pollution from vessels conforming to and giving effect to MARPOL 73/78.

When a vessel is voluntarily within a port or at an off-shore terminal of a Coastal State, that State may institute proceedings in respect of any violation of its laws and regulations adopted in accordance with MARPOL 73/78 and UNCLOS, when the violation has occurred within its territorial sea or EEZ.

If there are clear grounds for believing that a vessel navigating in the territorial sea of a Coastal State, has, during its passage therein, violated laws and regulations of that State adopted in accordance with MARPOL 73/78, that Coastal State may undertake a
physical inspection of the vessel “on the spot”, relating to the violation and may, where the evidence so warrants, institute proceedings, including detention of the vessel, in accordance with its laws.

Coastal States may also enforce discharge regulations in their EEZ in accordance with Art. 220 of UNCLOS, which provides that a Coastal State may request information from a ship navigating in the EEZ or the territorial sea and suspected of a violation in the EEZ. In case of a serious pollution, the Coastal State may undertake a thorough inspection of such a ship “on the spot” (following specific procedures; Art. 226), or even institute proceedings, including detention of the vessel. The extent of these actions that can be undertaken by a Coastal State at sea depends on the available evidence, the gravity of the violation and the magnitude of (possible) damage to the marine environment. Some governments are in the process of establishing objective criteria to define such situations.

In case of illegal pollution within the area of jurisdiction of a Coastal State, Art. 218 of UNCLOS provides for co-ordination and co-operation between the Coastal State and Port State (see 7.3.2).

8.3.4 Right of hot pursuit (Art. 111 of UNCLOS)

Art. 111 regulates the right of hot pursuit, which under certain conditions allows a Coastal State to pursue a foreign ship in the event of a violation of its laws and regulations committed within the waters under its jurisdiction, including the EEZ. It provides that the right ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State. The text of the Convention does not preclude the possibility of co-operation between States on this matter; in other words, it seems evident that this restriction can be lifted in bi- or multilateral agreements.

8.3.5 Measures to facilitate proceedings

Art. 223 of UNCLOS provides the obligation for States instituting proceedings to take measures to facilitate the hearing of witnesses and the admission of evidence submitted by authorities of another State, and to facilitate the attendance at such proceedings of official representatives of e.g. the Flag State and any State affected by pollution arising out of any violation.

8.3.6 Notification to the Flag State and other States concerned (Art. 231 of UNCLOS)

States shall promptly notify the Flag State and any other State concerned of any measures taken against foreign vessels, and shall submit to the Flag State all official reports concerning such measures. However, with respect to violations committed in the territorial sea, the foregoing obligations of the Coastal State apply only to such measures as are taken in legal proceedings.

8.3.7 Suspension and restrictions on institution of proceedings (Art. 228 of UNCLOS)

Proceedings initiated by a State to impose penalties in respect of any violation of MARPOL 73/78 by a foreign vessel beyond its territorial sea, shall be suspended upon the taking of proceedings by the Flag State within six months of the date on which proceedings were first instituted. When the Flag State has requested a suspension, it shall in due course make available to the State previously instituting proceedings a full dossier of the case and the records of the proceedings. Only when proceedings instituted
by the Flag State have been brought to conclusion, the suspended proceedings shall be terminated.

The proceedings that were first instituted shall not be suspended however if they relate to a case of major damage to the Coastal State or if the Flag State in question has repeatedly disregarded its obligation to enforce MARPOL 73/78 effectively.

8.4 The Memorandum of Understanding on Port State Control (MOU) and the European Port State Directive

8.4.1 The Memorandum of Understanding on Port State Control

The Maritime Authorities of Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, The Netherlands, Norway, Poland, Portugal, Russia, Spain, Sweden, and the United Kingdom cooperate in the Paris Memorandum of Understanding on Port State Control (MOU) on 26 January 1982. This Memorandum took effect on 1 July 1982. Some of the countries have acceded afterwards.

The MOU provides that these Maritime Authorities will maintain an effective system of Port State control with a view to ensuring that, without discrimination as to flag, foreign ships visiting the ports under their jurisdiction comply with the standards laid down in the relevant maritime conventions, *inter alia* MARPOL 73/78.

The MOU is primarily an administrative instrument for the detection of deficiencies of ships as regards maritime conventions including MARPOL 73/78, and for administrative exchange of information. When an inspection is carried out under the MOU and deficiencies are detected which are hazardous to the marine environment, the Maritime Authority will ensure that the hazard is removed before the ship is allowed to proceed to sea and for this purpose will take appropriate action, which may include detention. However, when exercising control under the Memorandum, the Authorities will make all possible efforts to avoid unduly detaining or delaying a ship. It should also be noted that in applying a relevant legal instrument for the purposes of Port State control such as MARPOL 73/78, the authorities will ensure that no more favourable treatment is given to ships entitled to fly the flag of a State which is not a Party to that instrument.

The Maritime Authority of a Port State will, upon the request of a Coastal State or Flag State, visit in port the ship suspected of a MARPOL 73/78 violation and carry out an administrative and technical inspection in order to obtain information, to secure evidence relating to the suspected violation, and where appropriate to take a sample of any alleged pollutant.

The MOU has introduced an electronic mail facility (mailbox system) which provides fast communication between Port State control authorities and is one of the means used to request inspection in the next port of call of a ship suspected of having violated the discharge regulations. The speed of this MOU mailbox system is certainly an advantage in facilitating prosecution of MARPOL 73/78 offenders, and it could have a strong deterrent effect. However, although the technical report may be part of the judicial file, the Port State controls under the MOU are of an administrative and technical nature and are not always adequate to deliver valid or sufficient evidence for criminal prosecution purposes. As mentioned above, the main purpose of the MOU was - and still is - to prevent the operation of sub-standard ships, and sanctions do not necessarily follow.

Also within the MOU, an information system on Port State Control inspections has been agreed and developed. The MOU authorities send daily messages on all the ships inspected in their national ports to the “Centre Administratif des Affaires Maritimes” at Saint-Malo in France (C.A.A.M.). The C.A.A.M. compiles all received messages in the central Port State Control information system. Port State Control officers can directly consult this database. Other authorities can do this by contacting the MOU. The
Secretariat, which is provided by the Ministry of Transport and Public Works and Water Management is in The Hague (Netherlands).

The possibility of also using the network of MOU Port States for the exchange of judicial inquiries and information regarding the exercise of jurisdiction under the EEZ regime should be studied. As mentioned in 7.3.2, it is obvious that for the legitimate institution of proceedings by Port States, an adequate legal basis relating thereto in accordance with their national legal system is required. Together with additional arrangements within the MOU-framework on the institution of proceedings as regards discharge violations, Port State enforcement in the North Sea area could thus be strengthened considerably.

8.4.2 European Port State Directive

Because there was a need for uniformity in executing the Port State Control procedures (inspection and detention), and in order to provide a clear legal basis for the actions under the MOU (being an administrative agreement), the European Commission elaborated the Directive 95/21/CE of 19 June 1995, which is regularly amended.

The European Port State Directive however provides no legal basis for the institution of proceedings by Port States. The Directive mainly aims at a more uniform execution of the MOU obligations, inter alia by listing (1) ships eligible for a priority inspection, (2) legitimate reasons for a detailed inspection (e.g. a notification report of another Maritime Authority), and (3) criteria for the detention of a ship. During the fifth Ministerial Conference on Port State Control in Copenhagen on 14 September 1994, the MOU was amended, so that the new MOU text closely fits the European Port State Directive.

8.5 Relevant European Conventions on international legal assistance in criminal matters

As regards the prevention and control of crime, the Council of Europe\(^2\) has created several European Conventions in the field of Penal Law. The most relevant European Conventions on international legal assistance in criminal matters are discussed below.

8.5.1 European Convention on Extradition

The European Convention on Extradition of 13 December 1957 entered into force on 18 April 1960. It has been ratified and has entered into force in all North Sea States and EU Member States.

This Convention provides for the extradition\(^3\) between Parties of persons wanted for criminal proceedings or for the carrying out of a sentence or detention order. Extradition shall be granted in respect of offences punishable under the laws of both the requesting and the requested Party by deprivation of liberty, or under a detention order for a maximum period of at least one year, or by a more severe penalty. Any requested Party has the right to refuse extradition of its nationals.

With respect to violations of the MARPOL 73/78 discharge regulations in the EEZ of a European Coastal State, extradition will only be applied by way of exception, since extradition according to the Convention presupposes the threat of a custodial sentence for an individual suspect, whereas UNCLOS (Art. 73, § 3 and Art. 230, § 1) excludes

\(^2\) The Council of Europe is a regional, intergovernmental organisation, which aims at achieving a greater (political) unity between its Members States. It has set up a programme for legal co-operation in Europe, by creating legal procedures which are both less complicated and more flexible (thus making the European legal system more efficient). The Council now counts 40 Member States.

\(^3\) Extradition means surrendering a person upon request to the requesting State, so that the person can be prosecuted or a custodial sentence can be executed in the requesting State.
imprisonment or any other form of corporal punishment as a form of penalty for such violations in the EEZ.

The same remark can also be made with respect to violations of the MARPOL 73/78 discharge regulations in the territorial sea of a Coastal State. However, in case of a wilful and serious act of pollution in the territorial sea, this restriction does not apply (see Art. 230, § 2).

**8.5.2 European Convention on Mutual Assistance in Criminal Matters**

All North Sea States and EU Member States are party to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (entry into force: 12 June 1962).

Under this Convention, Parties agree to afford each other the widest measure of mutual assistance with a view to gathering evidence (audition of witnesses, experts and prosecuted persons, service of writs and records of judicial verdicts) or to communicate the evidence (records or documents) in criminal proceedings undertaken by the judicial authorities of the requesting Party. This legal assistance is provided for the purpose of investigations, prosecution and conviction in the requesting State.

The Convention also specifies the requirements that requests for mutual assistance and letters rogatory have to meet (transmitting authorities, languages, refusal of mutual assistance). It provides for instance that in case of urgency, letters rogatory may be addressed directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party. This direct transmission may take place through the International Criminal Police Organisation INTERPOL (see 7.6).

The Convention further provides for the laying of information by one Party with a view to proceedings in the courts of another Party. However, it does not imply an obligation for the latter Party to institute proceedings. This provision can be considered as the precursor or informal variant of the European Convention on the Transfer of Proceedings in Criminal Matters (see 7.5.3).

The European Convention on mutual assistance in criminal matters clearly affords greater scope. It can also serve as a basis for interpreting the provisions of UNCLOS concerning co-operation between Port State, Coastal State and Flag State in the field of providing legal assistance.

**8.5.3 European Convention on the Transfer of Proceedings in Criminal Matters**

Only a few North Sea States and EU Member States (Denmark, The Netherlands, Norway, Sweden, Spain and Austria) have ratified the European Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972 (entry into force: 30 March 1978).

This Convention sets out rules and procedures for a Party to request another Party to take proceedings against a suspected person in its stead. The requested State shall have competence to prosecute under its own criminal law any offence to which the law of another Contracting State is applicable.

UNCLOS (see 7.3) also provides for the transfer of proceedings, on the minimum condition that the requested (Port or Flag) State, like the requesting (Coastal) State, has
claimed jurisdiction in respect of the offence for which prosecution is being sought, regardless of where the offence was committed. It should be further examined whether the rules and procedures in the European Convention on the Transfer of Proceedings in Criminal Matters appear to provide a suitable basis for the transfer of proceedings against seagoing vessels flying a foreign flag.
8.5.4 Implications for the implementation of UNCLOS

Most of the aforementioned articles of UNCLOS deal with or presuppose international co-operation in criminal matters. On the other hand, the Council of Europe elaborated general Conventions on legal assistance in criminal matters, which can contribute to a regional co-operation regarding the implementation of the provisions of UNCLOS and the enforcement of the rules and standards of MARPOL 73/78.

However, it should be carefully examined to what extent the rules and procedures provided in these European Conventions do (or do not) meet the specific restrictions and conditions which UNCLOS imposes with respect to legal co-operation between Coastal State, Port State and Flag State in instituting proceedings against suspect ships (e.g. urgent requests from Coastal State to Port State to institute proceedings, or ways for a Port State to oblige a ship to provide financial security on behalf of another State, and transferring it that State).

8.6 ICPO-INTERPOL

The International Criminal Police Organisation INTERPOL (ICPO-INTERPOL) aims to ensure a co-ordinated international police co-operation between the police forces of INTERPOL Member States. It plays a vital role in supplying criminal information of a transnational nature to the national police forces. One of INTERPOL’s prime objectives is to ensure that INTERPOL Member States have a rapid, reliable, secure and permanently available electronic computer-to-computer mail service. In addition to the transmission of text messages, this mail system also enables law enforcement agencies to instantly transmit images, photographs, etc.

INTERPOL’s permanent departments constitute the General Secretariat (in the Headquarters in Lyon, France), whose close contacts with the INTERPOL National Contact Bureaux (NCBs) in the various member countries provide the framework for day-to-day international police co-operation. The Organisation - through the NCBs - provides logistic support in police co-operation and requests for legal assistance (e.g. letters rogatory in urgent cases, see 7.5.2). The NCBs can rapidly transmit requests for legal or police co-operation made by their own courts or police departments to the NCBs of other countries. The contacted NCB will ensure that the police actions or investigations requested by another country’s NCB are carried out on its territory. INTERPOL covers all types of criminal activity with international ramifications.

Close co-operation in combating environmental crime⁴ is also encouraged via the INTERPOL network. This means for instance that, with respect to a MARPOL 73/78 offender, request for police or judicial investigation of a suspect ship at the next port of call may be sent directly and rapidly from one law enforcement agency to another through INTERPOL.

8.7 Schengen Agreement

Closer and direct police co-operation between several European Member States is also provided in the Convention from 19 June 1990 applying the Schengen Agreement of 14 June 1985. The EC Member States party to this Convention are Belgium, Federal Republic of Germany, France, Luxembourg, The Netherlands, Italy, Greece, Austria, Portugal and Spain.

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⁴ Environmental offences can be classified as “international” because of the behaviour of the offenders (e.g. an offender may escape across a border after committing his offence).
In the context of art. 39, the Convention provides that States should ensure that their Police authorities shall, in compliance with national legislation and within the limits of their responsibilities, assist each other for the purposes of preventing and detecting criminal offences, insofar as national law does not stipulate that the request is to be made to the legal authorities and provided that the request or the implementation thereof does not involve the application of coercive measures by the requested State.
### 8.8 Compilation

#### 8.8.1 Enforcement by Flag State

<table>
<thead>
<tr>
<th><strong>MARPOL 73/78 offences, irrespective of location</strong></th>
<th><em>(Global instruments)</em></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1.</strong> A Flag State may request a Port State control</td>
<td>- MARPOL 73/78, Art. 6</td>
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<tr>
<td></td>
<td>- via MOU on PSC</td>
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<tr>
<td><strong>2.</strong> A Flag State shall institute proceedings (if sufficient evidence) when receiving a request/report from another State.</td>
<td>- MARPOL 73/78, Art. 4</td>
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<td></td>
<td>- UNCLOS, Art. 217</td>
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<tr>
<td><strong>3.</strong> A Flag State may request the legal assistance of a Port State and Coastal State</td>
<td>- UNCLOS, Art. 217</td>
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<td></td>
<td>- European Convention on Mutual Assistance in Criminal Matters, via INTERPOL in urgent cases</td>
</tr>
<tr>
<td><strong>4.</strong> A Flag State may request a Port State to institute proceedings in cases where the offence took place in the area of jurisdiction of a Coastal State</td>
<td>- UNCLOS, Art. 218</td>
</tr>
<tr>
<td><strong>5.</strong> A Flag State can suspend proceedings instituted by a State in respect of an offence beyond its territorial sea, upon the taking of proceedings within six months of the date on which proceedings were first instituted (with certain exceptions).</td>
<td>- UNCLOS, Art. 228</td>
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### MARPOL 73/78 offences in the territorial sea of a Coastal State

<table>
<thead>
<tr>
<th><strong>MARPOL 73/78 offences in the territorial sea of a Coastal State</strong></th>
<th><em>(Global instruments)</em></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>6.</strong> A Flag State cannot suspend proceedings instituted by the Coastal State; however, the Flag State has the obligation to institute proceedings if it receives a request thereto from that Coastal State.</td>
<td>- MARPOL 73/78, Art. 4</td>
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<td></td>
<td>- UNCLOS, Art. 228</td>
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<tr>
<td><strong>7.</strong> If so, then the Flag State has the same powers of enforcement as mentioned in points 1. to 4.</td>
<td><em>(see above)</em></td>
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</tbody>
</table>

(*) = unknown request procedure in urgent cases
### 8.8.2 Enforcement by Coastal State

#### MARPOL 73/78 offences in the territorial sea

<p>| | |</p>
<table>
<thead>
<tr>
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<th></th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>The Coastal State may request a Port State control (administrative investigation)</td>
</tr>
<tr>
<td>2.</td>
<td>The Coastal State may institute proceedings or report to the Flag State</td>
</tr>
<tr>
<td>3. If the Coastal State decides to institute proceedings:</td>
<td>- MARPOL 73/78, Art. 6</td>
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<td></td>
<td>- Via MOU on PSC</td>
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<tr>
<td></td>
<td>- MARPOL 73/78, Art. 4</td>
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<td></td>
<td>- UNCLOS, Art. 218</td>
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<td></td>
<td>- European Convention on Mutual Assistance in Criminal Matters, via INTERPOL in urgent cases</td>
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<td></td>
<td>- UNCLOS, Art. 218</td>
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<td>- (*)</td>
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#### MARPOL 73/78 offences in the EEZ

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<tbody>
<tr>
<td>4.</td>
<td>In cases where a Port State has instituted proceedings, the Coastal State may request that Port State to suspend its proceedings.</td>
</tr>
<tr>
<td>5.</td>
<td>The Coastal State has a right of hot pursuit (under certain conditions).</td>
</tr>
<tr>
<td>6.</td>
<td>When the suspect ship is navigating in the territorial sea, the Coastal State may undertake a physical inspection, which can lead to instituting proceedings, including the detention of the ship.</td>
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</tbody>
</table>

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8. When the suspect ship is navigating in the EEZ or the territorial sea, the Coastal State may, depending on the conditions, ask information or undertake a thorough inspection, which can lead to instituting proceedings, including the detention of the ship.

9. Proceedings shall be suspended upon the taking of proceedings by the Flag State |

(see above)

- UNCLOS, Art. 220

- UNCLOS, Art. 228
within six months of the date on which proceedings were first instituted (with certain exceptions).

(*) = unknown request procedure in urgent cases

### 8.8.3 Enforcement by Port State

**MARPOL 73/78 offences outside the territorial sea + EEZ**

<table>
<thead>
<tr>
<th>Section</th>
<th>Instruments</th>
</tr>
</thead>
</table>
| 1. A Port State can execute an administrative Port State control upon request of another State, which can lead to a temporary detention of the ship; the report of this investigation is passed on to the requesting State. | - MARPOL 73/78, Art. 5 & 6  
- UNCLOS, Art. 219  
- MOU on PSC |
| 2. A Port State may institute proceedings (if the universal Port State jurisdiction is established in national law), or may report to the Flag State. | - UNCLOS, Art. 218  
- MARPOL 73/78, Art. 4 |
| 3. In cases where the offence takes place in the area of jurisdiction of another State, a Port State may only institute proceedings: | - UNCLOS, Art. 218  
- (*) |
| - upon request of that Coastal State,  
- upon request of the Flag State,  
- upon request of another State damaged or threatened by the offence,  
- if the offence caused or is likely to cause pollution in its own territorial sea or EEZ. | |
| 4. Any proceedings instituted by a Port State on the basis of an investigation may be suspended at the request of a Coastal State. | - UNCLOS, Art. 218 |
| 5. A Port State shall as far as practicable comply with requests from the Flag State for investigation of an offence (irrespective of location). | - UNCLOS, Art. 218 |
| 6. Proceedings shall be suspended upon the taking of proceedings by the Flag State within six months of the date on which proceedings were first instituted (with certain exceptions). | - UNCLOS, Art. 228 |

**MARPOL 73/78 offences inside the territorial sea + EEZ**

<table>
<thead>
<tr>
<th>Section</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Port State acts as Coastal State (see 7.6.2).</td>
<td>(see 7.6.2)</td>
</tr>
</tbody>
</table>
(*) = unknown request procedure in urgent cases
The rule of the 7 W’s

WHO  ?[the perpetrator]
WHAT  ?[the complete facts]
WHERE  ?[the right position]
WHEN  ?[the exact time]
WHY  ?[the motive]
WAY  ?[the modus operandi]
WHO  ?[the responsible]

Find the full answer to these seven W-questions means that an (criminal) investigation is completed. Indeed because now one knows exactly the whole story in the most detailed way. The different responsibilities and liabilities are also recorded.

The prosecutor can now introduce the dossier to the court of justice.
Evidence required in different Bonn Agreement countries\(^5\)

None of the Contracting Parties to the Bonn Agreement have formal requirements for evidence based on legislation and any kind of evidence may be taken into account for prosecution purposes. The importance of the different kinds of evidence differs from country to country.

The following examples illustrate what kind of evidence was obtained and used by different courts.

**France**

**Basic principles**

In France, the legal framework is provided by law (Law of 5 July 1983, modified 31 May 1990 and 4 January 1993). The law is applicable to French vessels and to foreign vessels and offshore platforms in the EEZ and territorial sea. The fines can be as high as 1 million Francs (158 461 euro). The master is liable to a sentence provided by French law but the Court can decide to sentence the owner or the operator.

In French criminal law, all types of evidence are allowed, although officers are required to look for evidence in accordance with IMO Resolution A.542.

**Cases**

1. On 16 March 1994, the Liberian flag tanker TRAQUAIR was reported to have discharged oil into French territorial sea. The ship master was fined 30 000 FF on 27 January 1995 by the Court of Brest, the judge having considered that there was “a network of clues and serious, precise and corroborating presumptions, enabling him to be prosecuted; that effectively, the report statement made on board the Customs plane and the aerial photographs taken established that at 9h local time, in territorial sea and in the wake of the ship the Traquair, there was a polluting discharge extending 10 to 15 meters wide over eight nautical miles long, appearing as an oily slick with brownish broken-up stains, a description sufficiently characterising the oil contained in the discharged liquid”.

   Furthermore, according to the judge, the immediate halt to the discharge as the Customs plane approached represented a presumption of violation. The judge also used the oil register as complementary evidence (the oil register was provided by the maritime inspectors of Antwerp, next port of call, at the request of the French Authorities).

   This judgement was the object of an appeal procedure, the defendant having challenged a means of nullity relating to procedure; this concerned the expert not having been sworn in (article 77 of the Penal Code). On 19 September 1996 the Appeal Court of Rennes confirmed the judgement given by the Court and fined the master 250 000 FF (€ 39 615), i.e. over eight times more than what had been decided by the Court of Brest.

   In its conclusions, the Appeal Court of Rennes confirmed the condemnation on the grounds of photographs taken, “considering that samples are not essential to prove an offence that can be proved by direct visual observation from an airplane or an helicopter, corroborated by colour photograph”.

   (The judge then gave a summary of the scientific knowledge underpinning the identification of oil at sea, and pointed to the impossibility of detecting visually a discharge of under 15 mg/l and to the impossibility of detecting from an airplane, in standard visibility conditions, a discharge of under 100 mg/l).

\(^5\) Any additional information for this chapter will be available on the Bonn Agreement website.
"Considering that these findings establish that the visual observation from an aircraft of an oil spill of over eight nautical miles long and 10 to 15 meters wide is sufficient to prove that the discharge of oil is over 15 ppm with no need for sampling which is not always possible.

Considering that photographs (...) are of sufficient quality to prove the darker colour of the sea in the wake of the ship (...) and the absence of any other ship in the same area at the same time.

Hence it is sure that the spill, with split brownish stains, observed by the agents is in fact from the MV Traquair". The fine has been paid in February 1999.

2. On the 20 September 1995, the Greek tanker SALAMINA was observed discharging in the French EEZ (off Ouessant). On 26 May 1996 the master was fined 300 000 FF by the Court of Paris on the following evidence: photographs (8); official report; telex of the master denying the facts (argued that his ship had encountered the oil); copies of the log book, engines books and oil record book provided by the Dutch coastguard at the request of the French Authorities (the next port of call was Vlissingen). No samples were taken. The judge merely considered “that as a result of the elements in the dossier and the debate, prosecution is justified and the offence legally established, and that X can be declared guilty for acts described as discharging oil in the French economic zone”.

Germany

Basic principles

According to German Penal Law, individual persons can only be prosecuted and convicted on the grounds of their personal guilt. The facts found during aerial surveillance alone are not sufficient to justify a conviction - even if SLAR, IR/UV Scanner, MWR as well as photo or video camera systems are employed.

Cases

1. During a surveillance flight, the crew of the surveillance plane detected a ship flying a foreign flag, pumping oily residues overboard in the Baltic Sea in the area of German territorial sea. The oil film which the ship left behind extended to approximately two nautical miles. When sighting the plane, the ship stopped the discharge.

In this case, further investigations as detailed below were necessary:

- Details concerning periods of responsibility, separated into department deck/engine.
- Questioning of the culprit including instructions as to the right against self-incrimination.
- Questioning of possible witness.
- Water samples as well as comparison samples from the ship were taken and secured, e.g. from different engine room bilges, from the sludge tank and the bunker tank respectively.
- Tank soundings of the bunkers tanks, sludge tanks and other tanks for storing oily residues.
- Inspection of the engine room pumping system and technical details about the system, if possible, inspection of the outlet duct overboard.
- Details about the oily water separator (OWS).
- Investigation as to whether by-passes or flexible pipes could be found at the OWS system or the pumping system.
- Details about the quantity discharged.
- Position/routing of the ship at time of offence (port of departure, interim port, port of destination).
- Copies of the entries from the engine log book, bridge log book and oil record book (copies to be signed by the Captain).
- Name and address of the shipping company.

The court at Kiel sentenced the Captain and the Chief Engineer to fines the amount of which is determined taking into consideration the personal and economical circumstances of the culprit. The court usually proceeds on the assumption of an average net income per diem that the culprit obtains or could obtain.

2. Facts similar to Case 1, with the difference, however, that the offence was committed in the area of the German exclusive economic zone of the North Sea and the oil pollution was twice the size of the one described in Case no 1.

The investigation showed the following special features:

Upon questioning, the suspected ship had replied via ultra-shortwave maritime radio service that her next port of call would be Antwerp in Belgium.

Because of a suspected punishable act in the form of water pollution, a request for investigation (contents similar to Case no 1) was addressed by the German Bundeskriminalamt (Federal Criminal Authority) to the Belgian authorities who proceeded correspondingly after the ship's arrival in Antwerp. The analyses of the samples were carried out in Germany.

After termination of the investigations, the Department of Public Prosecution of Hamburg urgently requested a warrant of arrest against the individual culprits under suspicion of having committed the water pollution, i.e. in this case the engineer and the nautical officer on duty, who intentionally had cooperated in the offence. Both persons accused were then out of reach for the German prosecution Authorities.

Following the request, the warrant of arrest was issued by the court at Hamburg under the provision that exemption from custody would be granted against payment of a security deposit amounting to the court fine to be expected. Subsequently, the Department of Public Prosecution of Hamburg initiated a national search.

When approximately two months later the culprits called at a German port they were arrested by the police during the entry control and brought before the judge in charge. After payment of the security deposit both were released.

Both the accused were subsequently sentenced to a Court fine, the amount of the fine taking into account their personal and economical circumstances.

The Netherlands

**Basic principles**

The operational procedures in the Netherlands are based on the following document established as guidance for the follow up of reports of illegal discharges: Control Procedures Environmental Offences North Sea. The procedures are included in Chapter 5 below.

The party held responsible for the offence is usually the shipowner. In “regular” cases the imposed fine ranges from 15 000 Dutch guilders to 30 000 Dutch guilders (€ 6,806 - 13,613). The maximum fine is one million Dutch guilders (€ 453,780). Most cases are resolved without a trial because it is possible to settle out of court.
The most important evidence is a witness statement by qualified observers declaring that a ship has been illegally discharging oil. In September 1994 the Dutch Supreme Court accepted that when traces of mineral oil can be observed visually, this means that the oil concentration discharged exceeds 15 ppm (which is an offence). This finding was based on the report "Visibility limits of oil discharges of Annex 1 of MARPOL 73/78". Photographs taken from an aircraft showing the ship and the oil spill are very useful but not necessary. Shipowners have been convicted on the sole basis of witness statements by qualified observers. However, if there is additional proof that the ship has caused the spill this reinforces the case, e.g. when an inspection of the particular ship showed that the oil/water-separator was out of order.

Case
In May 1998 a case was brought before the Court in Amsterdam. A large amount of oil had been found on the coast of Holland and in the North Sea. After thorough investigation including the sampling and analysis of the oil, checking all relevant ships which sailed in Dutch waters at the time and running computer models, the suspected ship was found and convicted to a fine of 300,000 guilders. An appeal is lodged against this verdict.

United Kingdom

ENGLAND, WALES AND NORTHERN IRELAND

Basic principles
The prosecution must prove beyond all reasonable doubt that the accused committed an offence. The requirements of MARPOL 73/78 have been embodied into English Law by the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996. Under these regulations if any ship fails to comply with the requirements of MARPOL the owner and the Master shall each be guilty of an offence. The matter can be heard before magistrates or in some circumstances before a judge and jury.

Any evidence can be used provided it is presented to the court in the correct format and can be supported by oral testimony from a witness. Such evidence includes aerial photographs, SLAR images, witness statements from aviators and surveyors and evidence in Oil Record Books. Suspects are given the opportunity of formally admitting their guilt which alleviates the need for a trial. Matters can be brought before the magistrates for sentencing in a matter of hours once an investigation has been completed. Importantly the Regulations provide that a ship may be detained if it is suspected of pollution and this provision encourages shipowners to assist the Maritime and Coastguard Agency (MCA) with its enquiries.

The MCA has a dedicated Enforcement Unit tasked to investigate breaches of Merchant Shipping Law. The Enforcement Unit can investigate pollution offences, interview suspects, prepare matters for court, and (as the Prosecuting Surveyor is also a lawyer) present the case to the court. In this way cases can be dealt with extremely swiftly.

Cases
Between January 1997 and March 1999, nine shipowners have been prosecuted. All of the prosecution’s evidence has been put before the suspect shipowner before proceedings have been commenced and the evidence has been sufficient in each case for the shipowner to formally admit the offence and plead guilty before the court. Sentences have varied but average about £20,000 for an accidental operational spill.
SCOTLAND

Scotland has a separate legal system to the rest of the UK although the same Regulations apply. Some of the basic principles apply although the criminal proceedings will be managed by the Procurator Fiscal who conducts matters on behalf of the people of Scotland. MARPOL offences are normally seized to the courts local to the headquarters of the MCA in Southampton regardless of the location of the violation. Hence English jurisdiction normally applies.
## Table 1. Overview of available procedures

<table>
<thead>
<tr>
<th>Type</th>
<th>Location and destination</th>
<th>Procedure (see Annex)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreign vessel: Outside</td>
<td>port of destination in the same coastal state</td>
<td>National observer</td>
</tr>
<tr>
<td>Foreign vessel: Inside</td>
<td>port of destination in another state + Focal Point</td>
<td>Procedure 2</td>
</tr>
<tr>
<td>Foreign vessel: Outside</td>
<td>port of destination unknown</td>
<td>Procedure 3</td>
</tr>
<tr>
<td>Foreign vessel: Inside</td>
<td>port of destination in the same coastal state</td>
<td>National observer</td>
</tr>
<tr>
<td>Foreign vessel: Inside</td>
<td>port of destination in another state + Focal Point</td>
<td>Procedure 5</td>
</tr>
<tr>
<td>Foreign vessel: Inside</td>
<td>port of destination unknown</td>
<td>Procedure 6</td>
</tr>
<tr>
<td>National vessel * Inside/outside</td>
<td>port of destination same state</td>
<td>National observer *</td>
</tr>
<tr>
<td>National vessel * Inside/outside</td>
<td>port of destination foreign country</td>
<td>Procedure 7</td>
</tr>
<tr>
<td>National vessel Inside/outside</td>
<td>port of destination foreign country</td>
<td>Procedure 8</td>
</tr>
<tr>
<td>Unknown polluter Vessel:</td>
<td>inside territorial waters and outside territorial waters but inside continental shelf boundary</td>
<td>Procedure 11</td>
</tr>
<tr>
<td>National vessel In a port</td>
<td>flag state inspection by national authority</td>
<td>Procedure 12</td>
</tr>
<tr>
<td>National vessel In a port</td>
<td>During port state control in another port state</td>
<td>Procedure 13</td>
</tr>
<tr>
<td>Foreign vessel In a port</td>
<td>During port state control by marine surveyors organisation</td>
<td>Procedure 14</td>
</tr>
<tr>
<td>Foreign vessel Inspection</td>
<td>Inspection on request of another coastal state on board a suspected vessel on arrival in a national port</td>
<td>Procedure 15</td>
</tr>
<tr>
<td>Vessel All nationalities</td>
<td>Attention required due to suspicion of an illegal discharge:</td>
<td>Procedure 16</td>
</tr>
<tr>
<td>Vessel All nationalities</td>
<td>- attention by national authorities</td>
<td>Procedure 17</td>
</tr>
<tr>
<td>Vessel All nationalities</td>
<td>- attention requested to national authorities</td>
<td></td>
</tr>
</tbody>
</table>

* the flag of the vessel, the coastal state and the observer are of the same nationality.
Figure 1 Diagram for the selection of the proper reporting and follow-up procedure.

Note: The numbers between brackets refer to the relevant procedure (cf. Annex)
POLLUTION OBSERVATION REPORT ON POLLUTERS AND COMBATABLE SPILLS

1. REPORTER:
   a. Reporting State : ...........................................
   b. Observer (organisation/aircraft/ship/platform) : ........................................... aircraft: Callsign .......
   c. Observe(s) (family name(s)) : 1......................................, 2......................................

2. DATE AND TIME:
   a. Date (yy,mm,dd) : Date........................................... Time.................................UTC
   b. Time of observation : Date........................................... Time.................................UTC

3. LOCATION OF THE POLLUTION:
   a. Position of the pollution (lat./long) begin : .............................................N ...........................................E/W
      end : .............................................N ...........................................E/W
   b. Inside/outside territorial waters : ☐ Inside ☐ Outside

4. DESCRIPTION OF THE POLLUTION:
   a. Type of substance discharged : ...........................................................................................
   b. Estimated quantity : ............................cub. metres
   c. Length d. Width e. Total cover : Length.........km Width............km Total cover.......................%
   f. Percentage of covered area coloured (%) : 1..................% 4.....................% 7.................................. %
       2..................% 5......................% 8.................................. %
       3..................% 6......................% i.e.................................

5. METHOD OF DETECTION AND INVESTIGATION:
   a. Detection method (visual,SLAR,IR,UV,MWRM LFS, video cam., identification cam., other i.e.) :
      ☐ visual ☐ SLAR ☐ IR ☐ UV ☐ MWRM LFS, video cam., id. cam ☐ Other
   b. Discharge observed : yes/no
   c. Photographs taken : yes/no
   d. Samples taken : yes/no
   e. Need of combating : yes/no
   f. Other ships/platforms in vicinity (names): ................................................................................

6. WEATHER AND SEA CONDITIONS:
   a. Wind direction b. Windforce c. Visibility : Direction......degr Force..........bft Vis............ km
   d. Cloud coverage e. Current direction : Clouds............octa Current........degr

7. SHIP INVOLVED:
   a. Name : ......................................................................................................
   b. Callsign : ......................................................................................................
   c. Flag State : ......................................................................................................
   d. Home Port : ......................................................................................................
   e. Type of ship : ......................................................................................................
   f. Position (lat/long) : .............................................N .......E/W at......................UTC
                        .............................................N .......E/W at......................UTC
   g. Heading : Heading ..........degr Speed ....................kts
   h. Colour of the hull : .................................................................................................
   i. Colour of the funnel and funnel mark : ...........................................................................

8. INFORMATION BY RADIO CONTACT:
   a. Radio contact b. Means of communication : Contact; yes/no Means: VHF/Telep, ...........Chn/Freq
   c. Last port of call : ......................................................................................................
   d. Next port of call, ETA (yy,mm,dd) : ...........................................................................
   e. Statements of captains/officer on duty : ...........................................................................

9. OFFSHORE INSTALLATION INVOLVED:
   a. Platform name : ......................................................................................................
   b. Position (lat./long) : .............................................N .......E/W at......................UTC
   c. Type of platform (production/drilling/rig etc) : ...........................................................................
   d. Company name : ......................................................................................................
10. INFORMATION BY RADIO CONTACT:
   a. Radio contact
   b. Means of communication
      : Contact: yes/no Means: VHF/Telep, ..........Chn/Freq
   c. Contact with (position)
      : ...........................................................................................................
   d. Statements
      : ...........................................................................................................
      : ...........................................................................................................
      : ...........................................................................................................

11. REMARKS AND ADDITIONAL INFORMATION:
    : ...........................................................................................................
    : ...........................................................................................................
PROCEDURE 1
SHIP FOREIGN FLAG
(Dutch observer)

Discharge:  
a. OUTSIDE Netherlands territorial waters,  
b. KNOWN Dutch port of destination.

1. COAST GUARD CENTRE COLLECTS INFORMATION IN STANDARD MARINE POLLUTION REPORT.  
b. Coast Guard Centre takes reporters of the public through the 11 points of the Standard Marine Pollution Report.

2. COAST GUARD CENTRE PASSES INFORMATION OF THE SMPR ON TO:  
a. Response authorities,  
b. Marine Surveyors Authorities.  
c. Police in port of destination.  
d. Special assigned co-ordinator maritime pollution. He consults with the Public Prosecutor and may inform the Flag State in order to invite a request for legal assistance and setting up a criminal investigation.

3. INSPECTION IN PORT OF DESTINATION:  
a. MSA performs an extensive technical inspection on board.  
b. Police institutes a criminal investigation on board.  

Note: MSA and Police in port of destination are likely to combine efforts.

4. ALL OFFICIALS INVOLVED FORWARD THEIR REPORT ON FINDINGS (STATEMENTS OR PROCES-VERBAL) TO THE CENTRAL OFFICE OR THE PUBLIC PROSECUTOR.

5. CENTRAL OFFICE SENT - WHEN CORRECT AND COMPLETE - THE ORIGINAL DOSSIER TO:  
a. Department of Transport/MSA  
or to:  
b. Council of the Public Prosecutor entrusted with pollution cases, when a criminal investigation was also instituted;  
and:  
inform Department of Transport/MSA.

6a. DEPARTMENT OF TRANSPORT / MSA (case 5a):  
a. Forwards dossier through Ministry of Foreign affairs to the Flag state.  
b. Informs Central Office  
c. Informs Central Office about results achieved by the Flag State.

6b. CENTRAL OFFICE (case 5 b):  
Forward dossier to Public Prosecutor entrusted with marine pollution cases who transfers the same through the Ministry of Justice and Ministry of Foreign Affairs to the requesting Administration.

7. DEPARTMENT OF TRANSPORT:  
Reports alleged violations and follow-up in case of prosecution in an obliged annual report to IMO.

8. CENTRAL OFFICE INFORM OFFICIALS INVOLVED ABOUT THE PROGRESS AND FINAL RESULT.

9. CENTRAL OFFICE CLOSES THE DOSSIER.
PROCEDURE 2

SHIP FOREIGN FLAG
(Dutch observer)

Discharge: a. OUTSIDE Netherlands territorial waters,
    b. KNOWN port of destination in other Port state with Focal Point.

1. COAST GUARD CENTRE COLLECTS INFORMATION IN STANDARD MARINE POLLUTION REPORT.
   b. Coast Guard Centre takes reporters of the public through the 11 points of the Standard Marine Pollution Report.

2. COAST GUARD CENTRE PASSES INFORMATION OF THE SMPR ON TO:
   a. Response authorities,
   b. Focal Point (IMO-MARPOL) in the Port state where the suspected polluter is bound for with the request to:
      1. Hold an inspection on board,
      2. Send the report on the findings to the Central Office.
         (if this focal point is not a 24-hours centre, one can contact the focal point of the Bonn Agreement/Helsinki Convention/Barcelona Convention, with the request to pass the message on to the MOU-PSC focal point)
   c. Marine Surveyors Authorities.
   d. Ministry of Environment (if requested)
   e. Special assigned co-ordinator maritime pollution. He consults with the response authorities about the seriousness of the pollution and with the Public Prosecutor and may inform the Flag State in order to invite a request for legal assistance and setting up a criminal investigation

3. CRIMINAL INVESTIGATION:
   In case a request for legal assistance has been received from the Flag state, the Police force in the area where the pollution occurred institutes a criminal investigation. Preferably the Police force and the MSA co-operate in this investigation.

4. ALL OFFICIALS INVOLVED FORWARD THEIR REPORT ON FINDINGS (STATEMENTS OR PROCES-VERBAL) TO THE CENTRAL OFFICE OR THE PUBLIC PROSECUTOR.

5. CENTRAL OFFICE SENT - WHEN CORRECT AND COMPLETE - THE ORIGINAL DOSSIER TO:
   a. Department of Transport/MSA
   or to:
   b. Council of the Public Prosecutor entrusted with pollution cases, when a criminal investigation was also instituted;
      and:
      informs Department of Transport/MSA.

6a. DEPARTMENT OF TRANSPORT / MSA (case 5a):
   a. Forwards dossier through Ministry of Foreign affairs to the Flag state.
   b. Informs Central Office
   c. Informs Central Office about results achieved by the Flag State.

6b. CENTRAL OFFICE (case 5 b):
   Forward dossier to Public Prosecutor entrusted with marine pollution cases who transfers the same through the Ministry of Justice and Ministry of Foreign Affairs to the requesting Administration.

7. DEPARTMENT OF TRANSPORT:
   Reports alleged violations and follow-up in case of prosecution in an obliged annual report to IMO.

8. CENTRAL OFFICE INFORM OFFICIALS INVOLVED ABOUT THE PROGRESS AND FINAL RESULT.

9. CENTRAL OFFICE CLOSES THE DOSSIER.
PROCEDURE 3

SHIP FOREIGN FLAG
(Dutch observer)

Discharge:  a. OUTSIDE Netherlands territorial waters,
b. UNKNOWN port of destination, or
c. KNOWN port of destination without FOCAL POINT.

1. COAST GUARD CENTRE COLLECTS INFORMATION IN STANDARD MARINE POLLUTION REPORT.
   b. Coast Guard Centre takes reporters of the public through the 11 points of the Standard Marine Pollution Report.
   c. Continues to trace the port of destination of the suspected polluter (point 15 SMPR).

2. COAST GUARD CENTRE PASSES INFORMATION OF THE SMPR ON TO:
   a. Response authorities,
   b. Marine Surveyors Authorities. A message about the pollution is place in the “Mailbox” of PSC with a request to report arrival of the vessel in port and to hold a detailed technical inspection and forward the findings to the Central Office. (After three weeks the message is automatically removed from the mailbox). As soon as the port of destination is known the Central Office will inform the MSA.
   c. Ministry of Environment (if requested).
   d. Special assigned co-ordinator maritime pollution. He consults with the Public Prosecutor and may inform the Flag State in order to invite a request for legal assistance and setting up a criminal investigation.

3. CRIMINUAL INVESTIGATION:
   In case a request for legal assistance has been received from the Flag state, the Police force in the area where the pollution occurred institutes a criminal investigation. Preferably the Police force and the MSA co-operate in this investigation.

4. ALL OFFICIALS INVOLVED FORWARD THEIR REPORT ON FINDINGS (STATEMENTS OR PROCES-VERBAL) TO THE CENTRAL OFFICE OR THE PUBLIC PROSECUTOR.

5. CENTRAL OFFICE SENDS - WHEN CORRECT AND COMPLETE - THE ORIGINAL DOSSIER TO:
   a. Department of Transport/MSA
   or to:
   b. Council of the Public Prosecutor entrusted with pollution cases, when a criminal investigation was also instituted;
      and:
      informs Department of Transport/MSA.

6a. DEPARTMENT OF TRANSPORT / MSA (case 5a):
   a. Forwards dossier through Ministry of Foreign affairs to the Flag state.
   b. Informs Central Office
   c. Informs Central Office about results achieved by the Flag state.

6b. CENTRAL OFFICE (case 5 b):
   Forward dossier to Public Prosecutor entrusted with marine pollution cases who transfers the same through the Ministry of Justice and Ministry of Foreign Affairs to the requesting Administration.

7. DEPARTMENT OF TRANSPORT:
   Reports alleged violations and follow-up in case of prosecution in an obliged annual report to IMO.

8. CENTRAL OFFICE INFORM OFFICIALS INVOLVED ABOUT THE PROGRESS AND FINAL RESULT.

9. CENTRAL OFFICE CLOSES THE DOSSIER.
PROCEDURE 4

SHIP FOREIGN FLAG

Discharge: a. INSIDE Netherlands territorial waters,
   b. KNOWN Dutch port of destination.

1. COAST GUARD CENTRE COLLECTS INFORMATION IN STANDARD MARINE POLLUTION REPORT.
   b. Coast Guard Centre takes reporters of the public through the 11 points of the Standard Marine Pollution Report.

2. COAST GUARD CENTRE PASSES INFORMATION OF THE SMPR ON TO:
   a. Coastal Police force where the pollution occurred. (in charge of investigation and takes or co-ordinates sample taking).
   b. Response authorities,
   c. Police in port of destination,
   d. Marine Surveyors Authorities.
   e. Ministry of Environment (if requested).
   f. Special assigned co-ordinator maritime pollution.

3. INSPECTION IN PORT OF DESTINATION:
   a. Police in port of destination institutes a criminal investigation on board. With regard to a possible summary execution and/or security procedure (caution money) in compliance with art 37 of the Dutch equivalent of MARPOL, the Police are obliged to consult with the special assigned Public Prosecutor on the shortest possible term.
   b. MSA performs an extensive technical inspection on board.

   Note: MSA and Police in port of destination are likely to combine efforts. They consult with the Public Prosecutor with regard to summary execution and with response authorities to estimate the recovery costs and the seriousness of the pollution.

4. ALL OFFICIALS INVOLVED FORWARD THEIR REPORT ON FINDINGS (STATEMENTS OR PROCES-VERBAL) TO THE CENTRAL OFFICE OR THE PUBLIC PROSECUTOR.

5. CENTRAL OFFICE SENDS:
   - when correct and complete - the original procès-verbal to the Public Prosecutor entrusted with marine pollution cases.

6. CENTRAL OFFICE INFORM OFFICIALS INVOLVED ABOUT THE PROGRESS AND FINAL RESULT.

7. DEPARTMENT OF TRANSPORT:
   Reports alleged violations and follow-up in case of prosecution in an obliged annual report to IMO.

8. CENTRAL OFFICE CLOSES THE DOSSIER.
PROCEDURE 5

SHIP FOREIGN FLAG

Discharge:  
   a. INSIDE Netherlands territorial waters,  
   b. KNOWN port of destination in other Port state with Focal Point.

1. COAST GUARD CENTRE COLLECTS INFORMATION IN STANDARD MARINE POLLUTION REPORT.  
   b. Coast Guard Centre takes reporters of the public through the 11 points of the Standard Marine Pollution Report.

2. COAST GUARD CENTRE PASSES INFORMATION OF THE SMPR ON TO:  
   a. Coastal Police force in the area where the pollution occurred (in charge of investigation and takes or co-ordinates sample taking).  
   b. Response authorities.  
   c. Focal Point (IMO-MARPOL) in the Port state where the suspected polluter is bound for with the request to:  
      1. Hold an inspection on board,  
      2. Sent the report on the findings to the Central Office.  
      (if this focal point is not a 24-hours centre, one can contact the focal point of the Bonn Agreement/Helsinki Convention/Barcelona Convention, with the request to pass the message on to the MOU-PSC focal point)  
   d. Marine Surveyors Authorities.  
   e. Ministry of Environment [if requested].  
   f. Special assigned co-ordinator maritime pollution (he consults the Public Prosecutor entrusted with marine pollution cases with regard to request for legal assistance to the Flag state and further Police actions).

3. (CRIMINAL) INVESTIGATION:  
   Police force (2a) or the Central Office consults without delay with the Public Prosecutor entrusted with marine pollution cases about the desirability and possibility of instituting investigations on board the suspected vessel at high sea (inspection at sea; seize the ship; request for legal assistance; consult the owner). In all cases the Central Office will involve MSA (inspection on board) and the response authority (assessing the pollution and estimate the costs) in the consultation.

4. ALL OFFICIALS INVOLVED FORWARD THEIR REPORT ON FINDINGS (STATEMENTS OR PROCES-VERBAL) TO THE CENTRAL OFFICE OR THE PUBLIC PROSECUTOR.

5. CENTRAL OFFICE SENDS:  
   - when correct and complete - the original process-verbal to the Public Prosecutor entrusted with marine pollution cases.

6. CENTRAL OFFICE INFORM OFFICIALS INVOLVED ABOUT THE PROGRESS AND FINAL RESULT.

7. DEPARTMENT OF TRANSPORT:  
   Reports alleged violations and follow-up in case of prosecution in an obliged annual report to IMO.

8. CENTRAL OFFICE CLOSES THE DOSSIER.
PROCEDURE 6

SHIP FOREIGN FLAG

Discharge:
  a. INSIDE Netherlands territorial waters,
  b. UNKNOWN port of destination, or
  c. KNOWN port of destination without FOCAL POINT.

1. COAST GUARD CENTRE COLLECTS INFORMATION IN STANDARD MARINE POLLUTION REPORT.
   b. Coast Guard Centre takes reporters of the public through the 11 points of the Standard Marine Pollution Report.
   c. Continues to trace the port of destination of the suspected polluter (point 15 SMPR).

2. COAST GUARD CENTRE PASSES INFORMATION OF THE SMPR ON TO:
   a. Police force in the area where the pollution occurred (in charge of investigation and takes or co-ordinates sample taking and will immediately be informed when port state or port of destination is known).
   b. Response authorities,
   c. Marine Surveyors Authorities. A message about the pollution is place in the "Mailbox" of PSC with a request to report arrival of the vessel in port and to hold a detailed technical inspection and forward the findings to the Central Office. (After three weeks the message is automatically removed from the mailbox). As soon as the port of destination is known the Central Office will inform the MSA.
   d. Ministry of Environment [if requested].
   e. Special assigned co-ordinator maritime pollution. He consults with the Public Prosecutor entrusted with marine pollution cases with regard to request for legal assistance to the Flag state and further Police actions).

3. (CRIMINAL) INVESTIGATION:
   Police force (2a) or the Central Office consults without delay with the Public Prosecutor entrusted with marine pollution cases about the desirability and possibility of instituting investigations on board the suspected vessel at high sea (inspection at sea; seize the ship; request for legal assistance; consult the owner). In all cases the Central Office will involve MSA (inspection on board) and the response authority (assessing the pollution and estimate the costs) in the consultation.

4. ALL OFFICIALS INVOLVED FORWARD THEIR REPORT ON FINDINGS (STATEMENTS OR PROCES-VERBAL) TO THE CENTRAL OFFICE OR THE PUBLIC PROSECUTOR.

5. CENTRAL OFFICE:
   when correct and complete - the original process-verbal to the Public Prosecutor entrusted with marine pollution cases.

6. CENTRAL OFFICE INFORM OFFICIALS INVOLVED ABOUT THE PROGRESS AND FINAL RESULT.

7. DEPARTMENT OF TRANSPORT:
   Reports alleged violations and follow-up in case of prosecution in an obliged annual report to IMO.

8. CENTRAL OFFICE CLOSES THE DOSSIER.
PROCEDURE 7

SHIP DUTCH FLAG

Discharge: a. REGARDLESS OF POSITION AT SEA;
   b. DETECTED and/or OBSERVED by Dutch observer,
   c. KNOWN Dutch port of destination.

1. COAST GUARD CENTRE COLLECTS INFORMATION IN STANDARD MARINE POLLUTION REPORT.
   b. Coast Guard Centre takes reporters of the public through the 11 points of the Standard Marine Pollution Report.

2. COAST GUARD CENTRE PASSES INFORMATION OF THE SMPR ON TO:
   a. Police force in the area where the pollution occurred (in charge of investigation and takes or co-ordinates sample taking),
   b. Response authorities,
   c. Marine Surveyors Authorities,
   d. Police in port of destination,
   e. Ministry of Environment (if requested),
   f. Special assigned co-ordinator maritime pollution.

3. INSPECTION IN PORT OF DESTINATION:
   a. MSA performs an extensive technical inspection on board.
   b. Police institutes a criminal investigation on board.
   Note: MSA and Police in port of destination are likely to combine efforts.

4. ALL OFFICIALS INVOLVED FORWARD THEIR REPORT ON FINDINGS (STATEMENTS OR PROCES-VERBAL) TO THE CENTRAL OFFICE OR THE PUBLIC PROSECUTOR.

5. CENTRAL OFFICE:
   a. Is in charge of entire investigation;
   b. Sends - when correct and complete - the original process-verbal to the Council of the Public Prosecutor entrusted with pollution cases.

6. CENTRAL OFFICE INFORM OFFICIALS INVOLVED ABOUT THE PROGRESS AND FINAL RESULT.

7. DEPARTMENT OF TRANSPORT:
   Reports alleged violations and follow-up in case of prosecution in an obliged annual report to IMO.

8. CENTRAL OFFICE CLOSES THE DOSSIER.
PROCEDURE 8
SHIP DUTCH FLAG

Discharge: a. REGARDLESS OF POSITION AT SEA;
   b. DETECTED and/or OBSERVED by Dutch observer,
   c. KNOWN port of destination in other Port state.

1. COAST GUARD CENTRE COLLECTS INFORMATION IN STANDARD MARINE POLLUTION
   REPORT.
   a. Coast Guard-, Police- and Navy vessels/aircraft report information in compliance with 11 points
   b. Coast Guard Centre takes reporters of the public through the 11 points of the Standard Marine
      Pollution Report.

2. COAST GUARD CENTRE PASSES INFORMATION OF THE SMPR ON TO:
   a. Police force in the area where the pollution occurred (in charge of investigation and takes or co-
      ordinates sample taking),
   b. Response authorities,
   c. Marine Surveyors Authorities,
   d. Special assigned co-ordinator maritime pollution.

3. (CRIMINAL) INVESTIGATION:
   Police force (2a) or the Central Office consults without delay with the Public Prosecutor entrusted with
   marine pollution cases about the desirability and possibility of instituting investigations on board the
   suspected vessel at high sea (inspection at sea; seize the ship; request for legal assistance; consult the
   owner). In all cases the Central Office will involve MSA (inspection on board) and the response
   authority (assessing the pollution and estimate the costs) in the consultation.
   Note: MSA and Police in port of destination are likely to combine efforts. It should be considered that
   the police force in the port of registration could/should be involved in the investigation.

4. ALL OFFICIALS INVOLVED FORWARD THEIR REPORT ON FINDINGS (STATEMENTS OR
   PROCES-VERBAL) TO THE CENTRAL OFFICE OR THE PUBLIC PROSECUTOR.

5. CENTRAL OFFICE:
   Sends - when correct and complete - the original process-verbal to the Council of the Public
   Prosecutor entrusted with pollution cases.

6. CENTRAL OFFICE INFORM OFFICIALS INVOLVED ABOUT THE PROGRESS AND FINAL RESULT.

7. DEPARTMENT OF TRANSPORT:
   Reports alleged violations and follow-up in case of prosecution in an obliged annual report to IMO.

8. CENTRAL OFFICE CLOSES THE DOSSIER.
PROCEDURE 9

SHIP DUTCH FLAG

Discharge:  
a. REGARDLESS OF POSITION AT SEA;  
b. DETECTED and/or OBSERVED by foreign observer,  
c. KNOWN Dutch port of destination.

1a. REPORT IS RECEIVED AT THE OFFICE OF THE MSA, FROM PARTY TO THE MARPOL CONVENTION:  
a. MSA forwards files for follow-up to the Central Office for the Public Prosecutors entrusted with  
   marine affairs.  
b. Central Office sends files when correct and complete:  
   → when the ship has not yet arrived, to the police force in the port of destination with a  
      request to institute an investigation on arrival, or  
   → (in other situations) to the police in the port of registration with a request to institute an  
      investigation.

1b. REPORT IS DIRECTLY RECEIVED BY COAST GUARD CENTRE (e.g. from other Focal Point,  
    observation crew of another country or by a person of the public):  
a. Coast Guard Centre fills out the Standard Marine Pollution Report in consultation with the  
   reporter.  
b. Coast Guard Centre passes the information on to:  
   → Police force in the port of destination (in charge of investigation)  
   → Response authorities,  
   → Marine Surveyors Authorities,  
   → Special assigned co-ordinator maritime pollution.

2a. (CRIMINAL) INVESTIGATION IN PORT OF DESTINATION:  
a. MSA performs an extensive technical inspection on board.  
b. Police institutes a criminal investigation on board.  
   Note: MSA and Police in port of destination are likely to combine efforts. Bear in mind to consult with  
   Public Prosecutor entrusted with maritime affairs for possible request for legal assistance at foreign  
   reporting authority.

2b. (CRIMINAL INVESTIGATION BY POLICE IN PORT OF REGISTRATION:  
Central Office sends all files to the Police in the Port of registration if the ship has already left the port  
of destination. Police is in charge of the criminal investigation and consults with the Public Prosecutor  
(note: investigation at the office of the shipowner; interrogate discharged crew; request for legal  
assistance; criminal investigation on board on return of the vessel in Dutch port).

3. ALL OFFICIALS INVOLVED FORWARD THEIR REPORT ON FINDINGS (STATEMENTS OR  
   PROCES-VERBAL) TO THE CENTRAL OFFICE OR THE PUBLIC PROSECUTOR.

4. CENTRAL OFFICE:  
   Sends - when correct and complete - the original process-verbal to the Council of the Public  
   Prosecutor entrusted with pollution cases.

5. CENTRAL OFFICE INFORM OFFICIALS INVOLVED ABOUT THE PROGRESS AND FINAL RESULT.

6. DEPARTMENT OF TRANSPORT:  
Reports alleged violations and follow-up in case of prosecution in an obliged annual report to IMO.

7. CENTRAL OFFICE CLOSES THE DOSSIER.
PROCEDURE 10

SHIP DUTCH FLAG

Discharge: a. REGARDLESS OF POSITION AT SEA;
   b. DETECTED and/or OBSERVED by foreign observer,
   c. Port of destination OUTSIDE the Netherlands.

1a. REPORT IS RECEIVED AT THE OFFICE OF THE MSA, FROM PARTY TO THE MARPOL
    CONVENTION:
   a. MSA forwards files for follow-up to the Central Office for the Public Prosecutors entrusted with
      maritime affairs.
   b. Central Office sends files, when correct and complete, to the police force in the port of
      destination with a request to institute an investigation on arrival.

1b. REPORT IS DIRECTLY RECEIVED BY COAST GUARD CENTRE (e.g. from other Focal Point,
    observation crew of another country or by a person of the public):
   a. Coast Guard Centre fills out the Standard Marine Pollution Report in consultation with the
      reporter.
   b. Coast Guard Centre passes the information on to:
      → Response authorities,
      → Marine Surveyors Authorities,
      → Special assigned co-ordinator maritime pollution.

2. CENTRAL OFFICE CONSULTS:
   a. MSA,
   b. Public Prosecutor entrusted with maritime affairs whether criminal investigation can or should
      be instituted in the Netherlands (a request for legal assistance can be considered).

3. IF IT IS DECIDED TO INSTITUTE A CRIMINAL INVESTIGATION:
   Central Office sends all files to the Police in the Port of registration if the ship has already left the port
   of destination. Police is in charge of the criminal investigation and consults with the Public Prosecutor
   (note: investigation at the office of the shipowner; interrogate discharged crew; request for legal
   assistance; criminal investigation on board on return of the vessel in Dutch port).

4. ALL OFFICIALS INVOLVED FORWARD THEIR REPORT ON FINDINGS (STATEMENTS OR
   PROCES-VERBAL) TO THE CENTRAL OFFICE OR THE PUBLIC PROSECUTOR.

5. CENTRAL OFFICE:
   Sends - when correct and complete - the original process-verbal to the Council of the Public Prosecutor
   entrusted with maritime pollution cases.

6. CENTRAL OFFICE INFORM OFFICIALS INVOLVED ABOUT THE PROGRESS AND FINAL RESULT.

7. DEPARTMENT OF TRANSPORT:
   Reports alleged violations and follow-up in case of prosecution in an obliged annual report to IMO.

8. CENTRAL OFFICE CLOSES THE DOSSIER.
PROCEDURE 11

UNIDENTIFIED POLLUTER

Discharge: a. INSIDE Netherlands territorial waters, or
   b. WITHIN the boundaries of the Netherlands part of the Continental shelf.
   c. IDENTITY of the polluter is not known.

1. **COAST GUARD CENTRE COLLECTS INFORMATION IN STANDARD MARINE POLLUTION REPORT.**
   b. Coast Guard Centre takes reporters of the public through the 11 points of the Standard Marine Pollution Report.
   c. Takes required steps in compliance with special procedures for Legal Investigation Team North Sea Pollution (LITNP).

2. **COAST GUARD CENTRE PASSES INFORMATION OF THE SMPR ON TO:**
   a. Coastal Police force in the area where the pollution occurred (in charge of investigation and takes or co-ordinates sample taking).
   b. Official in charge of the LITNP
   c. Response authorities,
   d. Marine Surveyors Authorities.
   e. Special assigned co-ordinator maritime pollution. He consults with the Public Prosecutor and may inform the Flag State in order to invite a request for legal assistance and setting up a criminal investigation.

3. **(CRIMINAL) INVESTIGATION:**
   It is important that the official in charge of the LITNP as soon as possible gathers information to identify possible polluters. Therefore the first action necessary is to collect samples at the position of the pollution, analyse the samples in order identify the details of the pollution. These details form the basis for a message that can be placed in the "mailbox" of MOU-PSC with a request to Parties to the MOU for extra attention to arriving vessels and report suspected vessels to the Coast Guard Centre. Similar information and request will be forwarded to Focal Points of Bonn Agreement Parties, Helsinki Convention Parties and Parties to the Barcelona Convention. Similar tracks can be followed through INTERPOL.

   It is obvious that the effort stressed also depends on the seriousness of the pollution.
PROCEDURE 12
SHIP DUTCH FLAG

SITUATION: FLAG STATE CONTROL INSPECTION

Marine Surveyor Authorities determine during:
   a. regular inspection on board, or
   b. annual check on dispatched oil- and/or cargo records (administrative check)
that a discharge at sea might have taken place.

1a. REGULAR INSPECTION ON BOARD:
MSA executes an extensive technical inspection on board the suspected vessel.

1b. ADMINISTRATIVE CHECK OF OIL AND/OR CARGO RECORDS:
   a. MSA checks at random the annually dispatched oil- and/or cargo records;
   b. MSA informs the shipowner at irregularities.

2. FINDING AN OFFENCE:
   a. as a result of inspection mentioned under 1a:
      Police and MSA co-operate in an investigation.
   b. as a result of check mentioned under 1b:
      MSA informs the Central Office by forwarding all relevant documents.

3. CENTRAL OFFICE:
   a. Checks the documents and opens/labels a dossier;
   b. Consults with MSA, police and Public Prosecutor entrusted with maritime affairs;
   c. Sends relevant document (2b) to the Police force in the Port of Registration.

4. CRIMINAL INVESTIGATION.
   a. as a result of inspection mentioned under 1a:
      - Police institutes a criminal investigation on board the suspected vessel,
      - MSA executes an extensive technical inspection on board
   b. as a result of check mentioned under 1b:
      - Starting-point is that the Police concentrates the criminal investigation on the shipowner,
      - Police involves MSA as experts in the investigation,
      - If the Public Prosecutor so decides an investigation will be instituted on board the suspected
        vessel, in which case Police and MSA will join effort.

5. ALL OFFICIALS INVOLVED FORWARD THEIR REPORT ON FINDINGS (STATEMENTS OR
   PROCES-VERBAL) TO THE CENTRAL OFFICE.

6. CENTRAL OFFICE: Sends - when correct and complete - the original process-verbal to the Council of
   the Public Prosecutor entrusted with maritime pollution cases
   and: informs Department of Transport, MSA and Police.

7. CENTRAL OFFICE INFORM OFFICIALS INVOLVED ABOUT THE PROGRESS AND FINAL RESULT.

8. CENTRAL OFFICE CLOSES THE DOSSIER.
PROCEDURE 13

SHIP DUTCH FLAG
PORT STATE CONTROL INSPECTION
(foreign port)

SITUATION: Foreign MSA determines during port state control inspection that a ship sailing the Dutch Flag has discharged in contravention of the MARPOL-regulations.

1. FOREIGN AUTHORITY SENDS REPORT ON FINDINGS (STATEMENT) TO PORT STATE CONTROL AUTHORITIES IN THE NETHERLANDS (MSA).

2. MSA SENDS ORIGINAL STATEMENT TO THE CENTRAL OFFICE FOR THE PUBLIC PROSECUTOR.

3. CENTRAL OFFICE:
   a. Checks the documents and opens/labels a file;
   b. Consults with MSA, Police and/or Public Prosecutor entrusted with maritime affairs (with regard to request for legal assistance);
   c. Sends documents to Police force in Port of Registration.

4. CRIMINAL INVESTIGATION:
   a. Starting-point is that the Police concentrates the criminal investigation on the shipowner,
   b. Police and MSA join effort in the investigation,
   c. If the Public Prosecutor decides that an investigation on board is required, Police and MSA join effort again.

5. MARINE SURVEYOR AUTHORITY:
   a. traces the trade the ship is in,
   b. if it is found that the ship regularly comes to a Dutch port, a Flag State inspection will be performed (procedure 12);
   c. If the Public Prosecutor entrusted with maritime affairs decides to institute an investigation on board, the Central Office will be informed by MSA on arrival of the ship in a Dutch port.

6. POLICE SENDS PROCESS-VERBAL TO THE CENTRAL OFFICE:

7. CENTRAL OFFICE: Sends - when correct and complete - the original process-verbal to the Council of the Public Prosecutor entrusted with maritime pollution cases and:
   informs Department of Transport, MSA and Police.

8. CENTRAL OFFICE INFORM OFFICIALS INVOLVED ABOUT THE PROGRESS AND FINAL RESULT.

9. DEPARTMENT OF TRANSPORT:
   Reports alleged violations and follow-up in case of prosecution in an obliged annual report to IMO.

10. CENTRAL OFFICE CLOSES THE DOSSIER.
PROCEDURE 14

SHIP FOREIGN FLAG
PORT STATE CONTROL INSPECTION
(Dutch port)

SITUATION: Dutch MSA determines during port state control inspection that a ship sailing a foreign Flag has discharged in contravention of the MARPOL-regulations.

1. INSPECTION IN PORT.
   a. Dutch MSA performs an extensive technical inspection on board the suspected vessel.
   b. Dutch MSA reports findings to Central Office for the Public Prosecutor.
   c. Police force in port of call institutes a criminal investigation.

2. CENTRAL OFFICE:
   a. Checks the documents and opens/labels a file;
   b. Consults with Public Prosecutor entrusted with maritime affairs with regard to invite Flag State to request for legal assistance;

3. RESULT OF INVESTIGATION:
   If it is evident that the vessel has discharged:
   a. OUTSIDE Dutch territorial waters investigation follows PROCEDURE 1, point 3;
   b. INSIDE Dutch territorial waters investigation follows PROCEDURE 4, point 3
PROCEDURE 15

SHIP FOREIGN FLAG

FOCAL POINT IN A COUNTRY REPORTS DISCHARGE TO FOCAL POINT IN THE NETHERLANDS

Discharge: a. Discharge within the zone of jurisdiction of the state of the reporting Focal Point
   b. KNOWN Dutch port of destination

1. REPORT by FOCAL POINT:
   Report is received according to the Standard Marine Pollution Report (11 points format) or a format is
   filled out using the reported data. In addition, a request for investigation is received. The Netherlands
   is obliged to follow this request.

2. COAST GUARD CENTRE (= Netherlands Focal Point) PASSES INFORMATION ON:
   a. Marine Surveyor Authorities,
   b. Central Office to the Public Prosecutor entrusted with maritime affairs,
   c. Police force in port of call. They will institute a criminal investigation.

3. CENTRAL OFFICE FOR THE PUBLIC PROSECUTOR:
   a. Checks the information and opens a dossier.
   b. Consults (if necessary) with MSA, Police in port of call and the Public Prosecutor with regard to
      invite the Flag State to request for legal assistance and to institute a criminal investigation.
   c. Provides MSA with all relevant documents, or
   d. Provides the Police in the port of call with all relevant documents, when a request for legal
      assistance has been received.

INVESTIGATION IN PORT OF CALL:
   a. MSA performs an extensive and detailed technical inspection on board.
   b. If required the Police in the port of call and MSA join efforts.
   c. In case of a request for legal assistance the Police in the port of call institutes, ordered by the
      Public Prosecutor, a criminal investigation on board the suspected vessel.
      note: MSA and Police in port of call join effort in the earliest possible phase.

4. ALL OFFICIALS INVOLVED FORWARD THEIR REPORT ON FINDINGS (STATEMENTS OR
   PROCES-VERBAL) TO THE CENTRAL OFFICE OR THE PUBLIC PROSECUTOR:

5. CENTRAL OFFICE:
   Sends - when correct and complete - the original dossier to:
   a. Focal Point requesting the investigation;
   or to:
   b. Council of the Public Prosecutor entrusted with maritime affairs, when it concerns a criminal
      investigation due to a request for legal assistance that was invited at the Flag state. The Public
      Prosecutor will transfer - through Ministry of Justice and Ministry of Foreign Affairs - the dossier
      to the requesting Administration;
      and
      informs the Department of Transport/MSA on this.

6. DEPARTMENT OF TRANSPORT/MSA:
   Reports alleged violations and follow-up in case of prosecution in an obliged annual report to IMO.

7. CENTRAL OFFICE INFORM OFFICIALS INVOLVED ABOUT THE PROGRESS AND FINAL RESULT.

8. CENTRAL OFFICE CLOSES THE DOSSIER.
PROCEDURE 16

CALL ATTENTION TO SHIP
(Report by Dutch authority)

SITUATION: The authority tasked with investigation or inspection finds a vessel intending to leave a Dutch port while there are clear indications that goods on board are likely to be discharged or dumped at sea.

1. COMPE TENT AUTHORITY:
Reports relevant information, preferably by using the 11 points in the Standard Marine Pollution Report without delay to the Coast Guard Centre.
At all events, one has to report:
a. Identity of the ship.
b. Port of destination.
c. Type of goods involved.
d. Brief description of the goods and the grounds for suspicion. (photographs or video)

2. COAST GUARD CENTRE:
a. Passes relevant information (using SMPR) on to:
   - Focal Point at the Port of destination with a request for inspection to find out whether the goods identified are still on board and to report the results of the inspection.
   - Central Office to the Public Prosecutor.
b. Informs Central Office about the results of the inspection in the port of call.

3. CENTRAL OFFICE TO THE PUBLIC PROSECUTOR:
a. Checks the documents and opens a dossier.
b. Informs the reporting authority and the MSA about the result of the inspection in the port of call.
c. Further action is taken, depending on result of inspection, in concert with MSA, Police in last port of call, reporting authority and (if required) the Public Prosecutor.

4. RESULT OF INVESTIGATION:
a. Ship has not discharged or dumped goods:
   ➔ no action
b. Ship has discharged or dumped the goods:
   ➔ investigations continues according point 5, given hereunder.

5. FOLLOW-UP ON (CRIMINAL) INVESTIGATION:
a. It concerns a ship sailing the Dutch Flag;
   ➔ investigation according PROCEDURE 13, point 3
b. It concerns a ship sailing a Foreign Flag, discharged / dumped INSIDE Dutch territorial waters
   ➔ investigation according PROCEDURE 5, point 3
discharged / dumped OUTSIDE Dutch territorial waters
   ➔ investigation according PROCEDURE 2, point 3

Goods comprise all - packed or not - substances which, based on any article of the law or regulation of a Convention, are not allowed to be discharged or dumped at sea.
PROCEDURE 17

CALL ATTENTION TO SHIP
(Report by Foreign authority)

SITUATION: The authority tasked with investigation or inspection finds a vessel intending to leave one of their ports, bound for a Dutch port, while there are clear indications that goods on board are likely to be discharged or dumped at sea.

1. COMPETENT AUTHORITY:
Reports relevant information, but in any event (as appears to be good practice) following details without delay to the Coast Guard Centre.
a. Identity of the ship.
b. Port of destination.
c. Type of goods involved.
d. Brief description of the goods and the grounds for suspicion.

2. COAST GUARD CENTRE:
Passes relevant information (using SMPR) on to:
a. Police force in port of call.
b. Marine Surveyors Authority.
c. Central Office to the Public Prosecutor.

3. INVESTIGATION IN PORT OF CALL:
Police in port of call (2a) and MSA jointly institute an investigation and by mutual arrangement. Taking into consideration the swift action required, a combined investigation is not always possible. However, in all event the starting point will be:
a. MSA to perform an extensive and detailed technical inspection on board and
b. The Police force in the port of call to institute a criminal investigation.

4. CENTRAL OFFICE TO THE PUBLIC PROSECUTOR:
a. Checks the documents and opens a dossier.
b. Consults with MSA, Police force in port of call, reporting (foreign) authority and (if necessary) the Public Prosecutor entrusted with maritime cases on the ways the investigation will be instituted.

5. RESULT OF INVESTIGATION:
a. Ship has goods still on board; no discharge or dumping of goods:
   ➔ no action
b. Goods are not on board; suspected of discharge or dumping the goods:
   ➔ investigations continue according point 6, given hereunder.

6. FOLLOW-UP ON (CRIMINAL) INVESTIGATION:
a. It concerns a ship sailing the Dutch Flag:
   ➔ investigation according PROCEDURE 12, point 1a
b. It concerns a ship sailing a Foreign Flag,
discharged / dumped INSIDE Dutch territorial waters
   ➔ investigation according PROCEDURE 4, point 3
discharged / dumped OUTSIDE Dutch territorial waters
   ➔ investigation according PROCEDURE 1, point 3

Goods comprise all - packed or not - substances which, based on any article of the law or regulation of a Convention, are not allowed to be discharged or dumped at sea.