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ANNEX VI TO THE PROTOCOL ON ENVIRONMENTAL PROTECTION TO THE ANTARCTIC TREATY

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

ANNEX VI ON LIABILITY ARISING FROM ENVIRONMENTAL EMERGENCIES TO THE PROTOCOL ON ENVIRONMENTAL PROTECTION TO THE ANTARCTIC TREATY (ANNEX VI), ADOPTED ON JUNE 14, 2005

APRIL 2, 2009.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *April 2, 2009.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith Annex VI on Liability Arising From Environmental Emergencies to the Protocol on Environmental Protection to the Antarctic Treaty (Annex VI), adopted on June 14, 2005, at the twenty-eighth Antarctic Treaty Consultative Meeting held in Stockholm, Sweden. I also transmit for the information of the Senate the report of the Department of State, which includes an Overview of Annex VI.

The Protocol on Environmental Protection to the Antarctic Treaty (the "Protocol") together with its Annexes I–IV, adopted at Madrid on October 4, 1991, and Annex V to the Protocol, adopted at Bonn on October 17, 1991, received the advice and consent of the Senate to ratification on October 7, 1992, and entered into force for the United States on January 14, 1998, and May 24, 2002, respectively.

In Article 16 of the Protocol, the Parties undertook to elaborate, in one or more Annexes, rules and procedures relating to liability for damage arising from activities taking place in the Antarctic Treaty area and covered by the Protocol. Annex VI sets forth rules and procedures relating to liability arising from the failure of operators in the Antarctic to respond to environmental emergencies.

I believe Annex VI to be fully in the U.S. interest. Its provisions advance the U.S. goals of protecting the environment of Antarctica, establishing incentives for Antarctic operators to act responsibly, and providing for the reimbursement of costs incurred by the United States Government when it responds to environmental emergencies caused by others.

As the report of the Department of State explains, Annex VI will require implementing legislation, which will be submitted separately to the Congress for its consideration.

I recommend that the Senate give early and favorable consideration to Annex VI and give its advice and consent to ratification.

BARACK OBAMA.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, March 13, 2009.

The PRESIDENT,
The White House.

DEAR MR. PRESIDENT: I have the honor to submit to you Annex VI on Liability Arising From Environmental Emergencies to the Protocol on Environmental Protection to the Antarctic Treaty ("Annex VI"), adopted on June 14, 2005, at the twenty-eighth Antarctic Treaty Consultative Meeting held in Stockholm, Sweden. I recommend Annex VI be transmitted to the Senate for its advice and consent to ratification.

Pursuant to Annex VI, which has not yet entered into force for any State, the Parties agree to require their operators to take preventative measures and establish contingency plans for preventing and responding to environmental emergencies in the Antarctic Treaty area and to take prompt and effective response action to such emergencies arising from their activities. Annex VI also sets forth provisions relating to liability arising from the failure of operators in the Antarctic to respond to environmental emergencies. An Overview with a detailed article-by-article analysis of Annex VI is enclosed with this report.

Annex VI is not self-executing. Annex VI will require implementing legislation, which will be submitted shortly to Congress for its consideration. All interested departments and agencies join the Department of State in recommending that Annex VI be transmitted to the Senate as soon as possible for its advice and consent to ratification.

Respectfully submitted,

HILLARY RODHAM CLINTON.

Enclosures.

Executive Summary
Annex VI on Liability Arising From Environmental Emergencies to the Protocol on Environmental Protection to the Antarctic Treaty

The Protocol on Environmental Protection to the Antarctic Treaty (the Protocol), to which the United States is a party, was adopted at Madrid on October 4, 1991 and entered into force for the United States on January 14, 1998. In Article 16 of the Protocol the Parties undertook to elaborate, in one or more Annexes, rules and procedures relating to liability for damage arising from activities taking place in the Antarctic Treaty area and covered by the Protocol.

Pursuant to Article 16 of the Protocol, Annex VI on Liability Arising From Environmental Emergencies was adopted at Stockholm on June 14, 2005. The Annex will enter into force only when the Antarctic Treaty Consultative Parties that adopted the Annex notify the depositary government they have approved it.

Pursuant to Annex VI, the Parties agree to require their operators to take preventative measures and establish contingency plans for preventing and responding to environmental emergencies in the Antarctic Treaty area and to take prompt and effective response action to such emergencies arising from their activities. The Annex also sets forth rules and procedures relating to liability resulting from the failure of an operator to take such prompt and effective response action.

The Administration is in the process of preparing legislation to implement Annex VI, which will be submitted separately to Congress.

Overview of
Annex VI on Liability Arising From Environmental Emergencies
to the Protocol on Environmental Protection to the Antarctic Treaty

The Protocol on Environmental Protection to the Antarctic Treaty (the Protocol), to which the United States is a party, was adopted at Madrid on October 4, 1991, and entered into force for the United States on January 14, 1998. In Article 16 of the Protocol the Parties undertook to elaborate, in one or more Annexes, rules and procedures relating to liability for damage arising from activities taking place in the Antarctic Treaty area and covered by the Protocol.

Annex VI to the Protocol on Liability Arising From Environmental Emergencies (Annex VI or the Annex) was adopted at Stockholm on June 14, 2005. It sets forth rules and procedures relating to liability resulting from the failure of an operator to take prompt and effective response action to environmental emergencies arising from its own activities in Antarctica. The Annex will only enter into force when the Antarctic Treaty Consultative Parties that adopted the Annex notify the depositary government they have approved it.

Legislation will be required for the United States to implement many of the provisions of the Annex. Draft implementing legislation has been prepared and will be submitted to the appropriate congressional committees. The following article-by-article analysis provides a review of the salient aspects of Annex VI.

Article 1 – Scope

Article 1 provides that the Annex is to apply to environmental emergencies in the Antarctic Treaty area that relate to scientific research programs, tourism, and all other governmental and non-governmental activities in the Antarctic Treaty area for which advance notice is required under Article VII(5) of the Antarctic Treaty. Article VII(5) of the Antarctic Treaty requires each Party to give the other Parties advance notice of all expeditions to and within Antarctica, on the part of its ships or nationals, and all expeditions to Antarctica organized in or proceeding from its territory. Article 1 makes clear that the Annex applies to tourist vessels that enter the Antarctic Treaty area. The Antarctic Treaty area is the area south of 60° South Latitude. The Annex does not apply to fishing vessels, which are not subject to Article VII(5)'s advance notification requirement.

Article 2 – Definitions

Article 2 sets forth definitions of terms used in the Annex.

"Environmental Emergency" is defined to make clear that the Annex does not apply retroactively.

"Operator" is defined to mean any natural or juridical person, whether governmental or non-governmental, which organizes activities to be carried out in the Antarctic Treaty area. The definition has the effect of excluding coverage of, for example, a captain of a ship employed by, or a contractor of, an entity or person that organizes the activity. As a general matter, the definition is designed to identify one operator per expedition.

"Operator of the Party" is defined to mean an operator that organizes, in that Party's territory, activities to be carried out in the Antarctic Treaty area and those activities are subject to authorization by that Party or to a comparable regulatory process. The purpose of this definition is to establish a regulatory link between a Party and an operator. As the United States does not formally authorize activities for the Antarctic Treaty area, as some other Parties do, but does administer the advance notification process, the second condition applies for the United States, namely, that the activities are subject to a "comparable regulatory process."

"Response Action" is defined as reasonable measures taken after an environmental emergency has occurred to avoid, minimize, or contain the impact of that environmental emergency, which to that end may include clean-up in appropriate circumstances.

Article 3 – Preventative Measures

Article 3 requires each Party to require its operators to undertake reasonable preventative measures that are designed to reduce the risk of environmental emergencies and their potential adverse impact. Article 3 provides a non-exclusive list of preventative measures that operators may take. This Article is not subject to the dispute resolution mechanisms set forth in Article 7 and discussed further below.

Article 4 – Contingency Plans

Article 4 requires each Party to require its operators both to establish contingency plans for responses to incidents with potential adverse impacts on the Antarctic environment or dependent and associated ecosystems and to cooperate in the formulation and implementation of such contingency plans. Article 4 lists seven items that must be included in contingency plans when appropriate. It also requires the Parties to establish and implement procedures for immediate notification and responses to environmental emergencies. This Article is not subject to the dispute resolution mechanisms set forth in Article 7.

Article 5 – Response Action

Article 5 requires each Party to require each of its operators to take prompt and effective response action to environmental emergencies arising from the activities of that operator. Paragraph 2 provides that, in the event an operator does not take prompt and effective response action, the Party of that operator and other Parties are encouraged (but not obligated) to take such action, including through their agents and operators specifically authorized by them to take such action on their behalf. Thus, in order for a non-governmental entity or individual to take a response action that may lead to recovery under this Annex, there must be specific authorization from a Party.

Paragraph 3 provides a procedure whereby the Party of the operator has an opportunity to take the response action in the first instance, unless there is a threat of imminent significant and harmful impact to the Antarctic environment and it would be reasonable in all the circumstances for another Party to take immediate response action.

Paragraphs 4 and 5 emphasize the importance of coordinating and consulting where two or more Parties take response action or are otherwise impacted by or in the vicinity of the environmental emergency.

Article 6 – Liability

Article 6 deals with two different situations and two different potential actors. Those situations are: (1) where an operator fails to take prompt and effective response action to environmental emergencies arising from its activities and a Party took a response action voluntarily; and (2) where an operator should have taken prompt and effective response action but did not, and no response

action was taken by any Party. In the first instance, the Annex assesses liability as the cost of the response action that was voluntarily taken by the Party, and devises ways to reimburse the Party for the costs of the response action. In the second instance, the Annex sets forth ways to determine what the costs would have been if prompt and effective response actions had been taken and provides for payment into a special fund administered by the Antarctic Treaty Secretariat. This approach is intended to ensure that there is a financial cost for failure to take a response action where it should have been taken, on the premise that an operator should not benefit from the possibility that no Party will take a response action.

The two different potential actors are: (1) State operators and (2) non-State operators. They are treated differently because the Protocol already includes detailed State-to-State dispute resolution mechanisms. As discussed in relation to Article 7 below, actions involving non-State operators will require the creation of a domestic cause of action and the establishment of an administrative enforcement mechanism.

Article 6, paragraph 1, provides that an operator that fails to take prompt and effective response action to environmental emergencies arising from its activities is liable to pay the costs of response action voluntarily taken by a Party.

Paragraph 2 covers situations where an operator should have taken response action but did not, and no response action was taken by any Party. Paragraph 2 provides different treatment for State and non-State operators. In the situations covered by paragraph 2, the State operator must pay the costs of the response action which should have been taken directly into a special fund. The non-State operator in such situations must pay an amount of money that reflects as much as possible the costs of the response action that should have been taken. This money is to be paid either directly into the special fund or to the Party of the operator or a Party that collects such money through an enforcement mechanism, which would then make best efforts to make a contribution to that special fund.

Paragraph 3 provides for strict liability. Paragraph 4 provides for joint and several liability, except that an operator that establishes that only part of the environmental emergency results from its activities is liable in respect of that part only.

Paragraph 5 provides that the Annex is not intended to affect the sovereign immunity under international law of a Party's warships, naval auxiliaries or other ships or aircraft. However, it makes clear that a Party is liable for failure to

provide for prompt and effective response action to environmental emergencies caused by its warships, naval auxiliaries, or other ships or aircraft owned or operated by it and used, for the time being, only on government non-commercial service.

Article 7 – Actions

Article 7 provides for legal actions. There are different provisions for State and non-State operators.

Paragraphs 1, 2, and 3 deal with non-State operators. Paragraph 1 provides that only a Party that has voluntarily taken a response action where an operator has failed to do so may bring an action against a non-State operator for liability pursuant to Article 6(1). Thus, the Annex does not require the Parties to create any cause of action whatsoever for private parties against non-State operators (or against State operators, as discussed below). Paragraph 1 also sets forth rules and procedures regarding where the action may be brought, as well as the time period for commencing the action. Paragraph 2 provides that each Party is to ensure that its courts possess the necessary jurisdiction to entertain actions under paragraph 1. Paragraph 3 provides that each Party is to ensure that there is a mechanism in place under its domestic law for the enforcement of Article 6(2) provisions regarding non-State operators. These are the provisions requiring a non-State operator to pay an amount of money that reflects as much as possible the costs of the response action that should have been taken but was not, where no other Party took that response action.

Paragraphs 4, 5, and 6 deal with liability of a Party as a State operator. Under paragraph 4, where a State operator has failed to take prompt and effective response action, and another Party has voluntarily taken a response action, the liability of the Party as a State operator will be resolved only through any enquiry procedure which may be established by the Parties, the dispute resolution provisions of the Protocol set forth in Articles 18, 19, and 20, and, as applicable, the Schedule to the Protocol on arbitration. Under paragraph 5, where a State operator should have taken a response action and did not, and no other Party took a response action, liability is to be resolved in the first instance by the Antarctic Treaty Consultative Meeting. The Antarctic Treaty Consultative Meetings act on the basis of consensus for matters of substance such as this. If the question remains unresolved, then liability is to be resolved only in accordance with any enquiry procedure that may be established by the Parties, the dispute resolution

provisions of the Protocol set forth in Articles 18, 19, and 20, and, as applicable, the Schedule to the Protocol on arbitration.

Article 8 – Exemptions from Liability

Article 8 provides that an operator is not to be liable if it proves that the environmental emergency was caused by certain specified acts; namely an act of terrorism; an act of belligerency against the activities of the operator; an act or omission necessary to protect human life or safety; or an unforeseeable natural disaster, provided reasonable preventative measures were taken.

Article 9 – Limits of Liability

Article 9 sets forth in detail the maximum amount for which each operator may be liable. For environmental emergencies arising from an event involving a ship the limits vary depending on the tonnage of the ship.

Article 10 – State Liability

Article 10 makes clear that a Party is not liable for failure of a non-State operator to take response action to the extent that that Party took appropriate measures within its competence, including the adoption of laws and regulations, administrative actions and enforcement measures, to ensure compliance with this Annex. Thus if a Party enacts necessary laws and regulations and implements them, it does not bear liability for acts taken by its nationals and non-State operators.

Article 11 – Insurance and Other Financial Security

Article 11 requires each Party to require its operators to maintain adequate insurance or other financial security to cover liability under Article 6(1) up to the limits of liability provided in Article 9. Article 11 does not require, but permits, Parties to require their operators to maintain insurance or other financial security to cover liability under Article 6(2). Article 11 permits a Party to maintain self-insurance in respect of its State operators.

Article 12 – The Fund

Article 12 requires the Secretariat of the Antarctic Treaty to maintain and administer a fund for the reimbursement of the reasonable and justified costs

incurred by a Party in taking a response action where an operator has failed to take prompt and effective response action. This is the fund to which operators will be required to make payments in accordance with Article 6.

Article 13 – Amendment or Modification

Article 13 sets forth final clauses regarding amendment and modification. It provides for amendments or modifications to become effective on an accelerated basis. Unless the amendment or modification specifies otherwise, it will enter into effect one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, provided that no Antarctic Treaty Consultative Party has notified the depositary that it wishes an extension of that period or that it is unable to approve the amendment or modification. In the event that an amendment or modification were adopted that was of such a nature that it needed to be sent to the Senate for advice and consent in order for the United States constitutionally to be bound by it, the Executive Branch would take the necessary steps to ensure that such an amendment or modification did not enter into force for the United States absent such advice and consent.

Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty

Liability Arising From Environmental Emergencies

Preamble

The Parties,

Recognising the importance of preventing, minimising and containing the impact of environmental emergencies on the Antarctic environment and dependent and associated ecosystems;

Recalling Article 3 of the Protocol, in particular that activities shall be planned and conducted in the Antarctic Treaty area so as to accord priority to scientific research and to preserve the value of Antarctica as an area for the conduct of such research;

Recalling the obligation in Article 15 of the Protocol to provide for prompt and effective response action to environmental emergencies, and to establish contingency plans for response to incidents with potential adverse effects on the Antarctic environment or dependent and associated ecosystems;

Recalling Article 16 of the Protocol under which the Parties to the Protocol undertook consistent with the objectives of the Protocol for the comprehensive protection of the Antarctic environment and dependent and associated ecosystems to elaborate, in one or more Annexes to the Protocol, rules and procedures relating to liability for damage arising from activities taking place in the Antarctic Treaty area and covered by the Protocol;

Noting further Decision 3 (2001) of the XXIVth Antarctic Treaty Consultative Meeting regarding the elaboration of an Annex on the liability aspects of environmental emergencies, as a step in the establishment of a liability regime in accordance with Article 16 of the Protocol;

Having regard to Article IV of the Antarctic Treaty and Article 8 of the Protocol;

Have agreed as follows:

Article 1

Scope

This Annex shall apply to environmental emergencies in the Antarctic Treaty area which relate to scientific research programmes, tourism and all other governmental and non-governmental activities in the Antarctic Treaty area for which advance notice is required under Article VII(5) of the Antarctic Treaty, including associated logistic support activities. Measures and plans for preventing and responding to such emergencies are also included in this Annex. It shall apply to all tourist vessels that enter the Antarctic Treaty area. It shall

also apply to environmental emergencies in the Antarctic Treaty area which relate to other vessels and activities as may be decided in accordance with Article 13.

Article 2

Definitions

For the purposes of this Annex:

(a) "Decision" means a Decision adopted pursuant to the Rules of Procedure of Antarctic Treaty Consultative Meetings and referred to in Decision 1 (1995) of the XIXth Antarctic Treaty Consultative Meeting;

(b) "Environmental emergency" means any accidental event that has occurred, having taken place after the entry into force of this Annex, and that results in, or imminently threatens to result in, any significant and harmful impact on the Antarctic environment;

(c) "Operator" means any natural or juridical person, whether governmental or non-governmental, which organises activities to be carried out in the Antarctic Treaty area. An operator does not include a natural person who is an employee, contractor, subcontractor, or agent of, or who is in the service of, a natural or juridical person, whether governmental or non-governmental, which organises activities to be carried out in the Antarctic Treaty area, and does not include a juridical person that is a contractor or subcontractor acting on behalf of a State operator;

(d) "Operator of the Party" means an operator that organises, in that Party's territory, activities to be carried out in the Antarctic Treaty area, and:

(i) those activities are subject to authorisation by that Party for the Antarctic Treaty area; or

(ii) in the case of a Party which does not formally authorise activities for the Antarctic Treaty area, those activities are subject to a comparable regulatory process by that Party.

The terms "its operator", "Party of the operator", and "Party of that operator" shall be interpreted in accordance with this definition;

(e) "Reasonable", as applied to preventative measures and response action, means measures or actions which are appropriate, practicable, proportionate and based on the availability of objective criteria and information, including:

(i) risks to the Antarctic environment, and the rate of its natural recovery;

(ii) risks to human life and safety; and

(iii) technological and economic feasibility;

(f) "Response action" means reasonable measures taken after an environmental emergency has occurred to avoid, minimise or contain the impact of that environmental

emergency, which to that end may include clean-up in appropriate circumstances, and includes determining the extent of that emergency and its impact;

(g) "The Parties" means the States for which this Annex has become effective in accordance with Article 9 of the Protocol.

Article 3

Preventative Measures

1. Each Party shall require its operators to undertake reasonable preventative measures that are designed to reduce the risk of environmental emergencies and their potential adverse impact.

2. Preventative measures may include:

(a) specialised structures or equipment incorporated into the design and construction of facilities and means of transportation;

(b) specialised procedures incorporated into the operation or maintenance of facilities and means of transportation; and

(c) specialised training of personnel.

Article 4

Contingency Plans

1. Each Party shall require its operators to:

(a) establish contingency plans for responses to incidents with potential adverse impacts on the Antarctic environment or dependent and associated ecosystems; and

(b) co-operate in the formulation and implementation of such contingency plans.

2. Contingency plans shall include, when appropriate, the following components:

(a) procedures for conducting an assessment of the nature of the incident;

(b) notification procedures;

(c) identification and mobilisation of resources;

(d) response plans;

(e) training;

(f) record keeping; and

(g) demobilisation.

3. Each Party shall establish and implement procedures for immediate notification of, and co-operative responses to, environmental emergencies, and shall promote the use of notification procedures and co-operative response procedures by its operators that cause environmental emergencies.

Article 5

Response Action

1. Each Party shall require each of its operators to take prompt and effective response action to environmental emergencies arising from the activities of that operator.

2. In the event that an operator does not take prompt and effective response action, the Party of that operator and other Parties are encouraged to take such action, including through their agents and operators specifically authorised by them to take such action on their behalf.

3. (a) Other Parties wishing to take response action to an environmental emergency pursuant to paragraph 2 above shall notify their intention to the Party of the operator and the Secretariat of the Antarctic Treaty beforehand with a view to the Party of the operator taking response action itself, except where a threat of significant and harmful impact to the Antarctic environment is imminent and it would be reasonable in all the circumstances to take immediate response action, in which case they shall notify the Party of the operator and the Secretariat of the Antarctic Treaty as soon as possible.

(b) Such other Parties shall not take response action to an environmental emergency pursuant to paragraph 2 above, unless a threat of significant and harmful impact to the Antarctic environment is imminent and it would be reasonable in all the circumstances to take immediate response action, or the Party of the operator has failed within a reasonable time to notify the Secretariat of the Antarctic Treaty that it will take the response action itself, or where that response action has not been taken within a reasonable time after such notification.

(c) In the case that the Party of the operator takes response action itself, but is willing to be assisted by another Party or Parties, the Party of the operator shall coordinate the response action.

4. However, where it is unclear which, if any, Party is the Party of the operator or it appears that there may be more than one such Party, any Party taking response action shall make best endeavours to consult as appropriate and shall, where practicable, notify the Secretariat of the Antarctic Treaty of the circumstances.

5. Parties taking response action shall consult and coordinate their action with all other Parties taking response action, carrying out activities in the vicinity of the environmental emergency, or otherwise impacted by the environmental emergency, and shall, where practicable, take into account all relevant expert guidance which has been provided by permanent observer delegations to the Antarctic Treaty Consultative Meeting, by other organisations, or by other relevant experts.

Article 6

Liability

1. An operator that fails to take prompt and effective response action to environmental emergencies arising from its activities shall be liable to pay the costs of response action taken by Parties pursuant to Article 5(2) to such Parties.

2. (a) When a State operator should have taken prompt and effective response action but did not, and no response action was taken by any Party, the State operator shall be liable to pay the costs of the response action which should have been undertaken, into the fund referred to in Article 12.

   (b) When a non-State operator should have taken prompt and effective response action but did not, and no response action was taken by any Party, the non-State operator shall be liable to pay an amount of money that reflects as much as possible the costs of the response action that should have been taken. Such money is to be paid directly to the fund referred to in Article 12, to the Party of that operator or to the Party that enforces the mechanism referred to in Article 7(3). A Party receiving such money shall make best efforts to make a contribution to the fund referred to in Article 12 which at least equals the money received from the operator.

3. Liability shall be strict.

4. When an environmental emergency arises from the activities of two or more operators, they shall be jointly and severally liable, except that an operator which establishes that only part of the environmental emergency results from its activities shall be liable in respect of that part only.

5. Notwithstanding that a Party is liable under this Article for its failure to provide for prompt and effective response action to environmental emergencies caused by its warships, naval auxiliaries, or other ships or aircraft owned or operated by it and used, for the time being, only on government non-commercial service, nothing in this Annex is intended to affect the sovereign immunity under international law of such warships, naval auxiliaries, or other ships or aircraft.

Article 7

Actions

1. Only a Party that has taken response action pursuant to Article 5(2) may bring an action against a non-State operator for liability pursuant to Article 6(1) and such action may be brought in the courts of not more than one Party where the operator is incorporated or has its principal place of business or his or her habitual place of residence. However, should the operator not be incorporated in a Party or have its principal place of business or his or her habitual place of residence in a Party, the action may be brought in the courts of the Party of the operator within the meaning of Article 2(d). Such actions for compensation shall be brought within three years of the commencement of the response action or within three years of the date on which the Party bringing the action knew or ought reasonably to have known

the identity of the operator, whichever is later. In no event shall an action against a non-State operator be commenced later than 15 years after the commencement of the response action.

2. Each Party shall ensure that its courts possess the necessary jurisdiction to entertain actions under paragraph 1 above.

3. Each Party shall ensure that there is a mechanism in place under its domestic law for the enforcement of Article 6(2)(b) with respect to any of its non-State operators within the meaning of Article 2(d), as well as where possible with respect to any non-State operator that is incorporated or has its principal place of business or his or her habitual place of residence in that Party. Each Party shall inform all other Parties of this mechanism in accordance with Article 13(3) of the Protocol. Where there are multiple Parties that are capable of enforcing Article 6(2)(b) against any given non-State operator under this paragraph, such Parties should consult amongst themselves as to which Party should take enforcement action. The mechanism referred to in this paragraph shall not be invoked later than 15 years after the date the Party seeking to invoke the mechanism became aware of the environmental emergency.

4. The liability of a Party as a State operator under Article 6(1) shall be resolved only in accordance with any enquiry procedure which may be established by the Parties, the provisions of Articles 18, 19 and 20 of the Protocol and, as applicable, the Schedule to the Protocol on Arbitration.

5. (a) The liability of a Party as a State operator under Article 6(2)(a) shall be resolved only by the Antarctic Treaty Consultative Meeting and, should the question remain unresolved, only in accordance with any enquiry procedure which may be established by the Parties, the provisions of Articles 18, 19 and 20 of the Protocol and, as applicable, the Schedule to the Protocol on Arbitration.

(b) The costs of the response action which should have been undertaken and was not, to be paid by a State operator into the fund referred to in Article 12, shall be approved by means of a Decision. The Antarctic Treaty Consultative Meeting should seek the advice of the Committee on Environmental Protection as appropriate.

6. Under this Annex, the provisions of Articles 19(4), 19(5), and 20(1) of the Protocol, and, as applicable, the Schedule to the Protocol on Arbitration, are only applicable to liability of a Party as a State operator for compensation for response action that has been undertaken to an environmental emergency or for payment into the fund.

Article 8

Exemptions from Liability

1. An operator shall not be liable pursuant to Article 6 if it proves that the environmental emergency was caused by:

(a) an act or omission necessary to protect human life or safety;

(b) an event constituting in the circumstances of Antarctica a natural disaster of an exceptional character, which could not have been reasonably foreseen, either generally or in the particular case, provided all reasonable preventative measures have been

taken that are designed to reduce the risk of environmental emergencies and their potential adverse impact;

(c) an act of terrorism; or

(d) an act of belligerency against the activities of the operator.

2. A Party, or its agents or operators specifically authorised by it to take such action on its behalf, shall not be liable for an environmental emergency resulting from response action taken by it pursuant to Article 5(2) to the extent that such response action was reasonable in all the circumstances.

Article 9

Limits of Liability

1. The maximum amount for which each operator may be liable under Article 6(1) or Article 6(2), in respect of each environmental emergency, shall be as follows:

(a) for an environmental emergency arising from an event involving a ship:

(i) one million SDR for a ship with a tonnage not exceeding 2,000 tons;

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that referred to in (i) above:

- for each ton from 2,001 to 30,000 tons, 400 SDR;
- for each ton from 30,001 to 70,000 tons, 300 SDR; and
- for each ton in excess of 70,000 tons, 200 SDR;

(b) for an environmental emergency arising from an event which does not involve a ship, three million SDR.

2. (a) Notwithstanding paragraph 1(a) above, this Annex shall not affect:

(i) the liability or right to limit liability under any applicable international limitation of liability treaty; or

(ii) the application of a reservation made under any such treaty to exclude the application of the limits therein for certain claims;

provided that the applicable limits are at least as high as the following: for a ship with a tonnage not exceeding 2,000 tons, one million SDR; and for a ship with a tonnage in excess thereof, in addition, for a ship with a tonnage between 2,001 and 30,000 tons, 400 SDR for each ton; for a ship with a tonnage from 30,001 to 70,000 tons, 300 SDR for each ton; and for each ton in excess of 70,000 tons, 200 SDR for each ton.

(b) Nothing in subparagraph (a) above shall affect either the limits of liability set out in paragraph 1(a) above that apply to a Party as a State operator, or the rights and

obligations of Parties that are not parties to any such treaty as mentioned above, or the application of Article 7(1) and Article 7(2).

3. Liability shall not be limited if it is proved that the environmental emergency resulted from an act or omission of the operator, committed with the intent to cause such emergency, or recklessly and with knowledge that such emergency would probably result.

4. The Antarctic Treaty Consultative Meeting shall review the limits in paragraphs 1(a) and 1(b) above every three years, or sooner at the request of any Party. Any amendments to these limits, which shall be determined after consultation amongst the Parties and on the basis of advice including scientific and technical advice, shall be made under the procedure set out in Article 13(2).

5. For the purpose of this Article:

(a) "ship" means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms;

(b) "SDR" means the Special Drawing Rights as defined by the International Monetary Fund;

(c) a ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

Article 10

State Liability

A Party shall not be liable for the failure of an operator, other than its State operators, to take response action to the extent that that Party took appropriate measures within its competence, including the adoption of laws and regulations, administrative actions and enforcement measures, to ensure compliance with this Annex.

Article 11

Insurance and Other Financial Security

1. Each Party shall require its operators to maintain adequate insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under Article 6(1) up to the applicable limits set out in Article 9(1) and Article 9(2).

2. Each Party may require its operators to maintain adequate insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under Article 6(2) up to the applicable limits set out in Article 9(1) and Article 9(2).

3. Notwithstanding paragraphs 1 and 2 above, a Party may maintain self-insurance in respect of its State operators, including those carrying out activities in the furtherance of scientific research.

Article 12

The Fund

1. The Secretariat of the Antarctic Treaty shall maintain and administer a fund, in accordance with Decisions including terms of reference to be adopted by the Parties, to provide, *inter alia*, for the reimbursement of the reasonable and justified costs incurred by a Party or Parties in taking response action pursuant to Article 5(2).

2. Any Party or Parties may make a proposal to the Antarctic Treaty Consultative Meeting for reimbursement to be paid from the fund. Such a proposal may be approved by the Antarctic Treaty Consultative Meeting, in which case it shall be approved by way of a Decision. The Antarctic Treaty Consultative Meeting may seek the advice of the Committee of Environmental Protection on such a proposal, as appropriate.

3. Special circumstances and criteria, such as: the fact that the responsible operator was an operator of the Party seeking reimbursement; the identity of the responsible operator remaining unknown or not subject to the provisions of this Annex; the unforeseen failure of the relevant insurance company or financial institution; or an exemption in Article 8 applying, shall be duly taken into account by the Antarctic Treaty Consultative Meeting under paragraph 2 above.

4. Any State or person may make voluntary contributions to the fund.

Article 13

Amendment or Modification

1. This Annex may be amended or modified by a Measure adopted in accordance with Article IX(1) of the Antarctic Treaty.

2. In the case of a Measure pursuant to Article 9(4), and in any other case unless the Measure in question specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes any extension of that period or that it is unable to approve the Measure.

3. Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 or 2 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.