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Intergovernmental Review Meeting of
Mediterranean Coastal States and
First Meeting of the Contracting Parties
to the Convention for the Protection of
the Mediterranean Sea against Pollution
and its related protocols

Geneva, 5 - 10 February 1979

Note by the Executive Director

The attached report is submitted to participants for their information.

INTERNATIONAL JURIDICAL ORGANIZATION

NON-GOVERNMENTAL

IJO/UNEP JOINT PROJECT
No. FP/1400-77-02 (1352)

FINAL REPORT

December 15, 1978

Original: English

Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil in the Mediterranean.

REPORT OF THE IJO/UNEP MEETING OF EXPERTS ON THE LEGAL ASPECTS OF POLLUTION RESULTING FROM EXPLORATION AND EXPLOITATION OF THE CONTINENTAL SHELF AND THE SEABED AND ITS SUBSOIL IN THE MEDITERRANEAN

1. The Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil in the Mediterranean, was convened as a contribution to the efforts of both the UNEP Working Group of Experts on Environmental Law and the Mediterranean Action Plan. The objective of the meeting is "to define the problems which may arise in this context and to propose legal actions - both national and regional - to prevent and remedy these problems". At the Intergovernmental Review meeting of the Mediterranean Coastal States of the Mediterranean Coastal States on the Mediterranean Action Plan, the Executive Director stated in his report (UNEP/IG 11/3 Annex III, Para. 34) that

> "If the meeting produces concrete results and recommendations, the Mediterranean coastal States may wish to request UNEP to begin, on basis of the information resulting from the IJO expert meeting, preparing guidelines for a Protocol concerning exploration and exploitation of the continental shelf and the seabed and its subsoil in connexion with Article 7 of the Barcelona Convention. These guidelines could then be considered at an intergovernmental consultation of legal and technical experts".

2. This non-governmental meeting, called in accordance with IJO/UNEP JOINT PROGRAM No. FP/1400-77-02 (1352), met in Rome from 11 to 15 December 1978. The list of participants and observers is attached as Annex A to this report.

At the opening of the meeting, Mr. Clelio Darida, Italian Under-Secretary of the Interior, gave a welcoming address on behalf of the Italian Government. Mr. Guttieres on behalf of the IJO presented a report regarding the preparatory work done by the Advisory Committee and the IJO Secretariat for the meeting. This report is attached as Annex B.

3. Mr. M. Guttieres (President of IJO - Italy) was elected Chairman of the Meeting and Mr. Gr. Timagenis (Member of the Advisory Committee - Greece) was elected Rapporteur. The Chairman was assisted during the meeting successively by Mr. J.A. Yturriaga (Spain) and Prof. B. Vukas (Yugoslavia) as Co-Chairmen.

4. The Meeting adopted its agenda and conducted its business as appears in the Informal Summary of Proceedings (IJO doc. ISP/1-4, and 3/Add 1 which are annexed to this Report (Annexes E-H).

5. On 14 December 1978 an open-ended Working Group was established under the Chairmanship of Mr. M. Guttieres to study more closely the questions of civil liability from the exploration and exploitation of the seabed in the Mediterranean Sea.

6. The report of the Working Group on Civil Liability was presented to the meeting which took note of it, recognised that it was the first step in the process of establishing the principles of civil liability in this context and agreed to include it in the final report of the meeting (Annex D).

7. The results of the work of the Meeting on Preventive Measures for the Protection of the Marine Environment in the Mediterranean from Pollution Resulting from Exploration and Exploitation of the Seabed are included in Annex C of this Report.

8. Background Paper No. 5, entitled "Study of requisite legal measures and controls for the prevention and control of pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil in the Mediterranean", which contains the recommendations prepared for discussion at the meeting by the IJO Advisory Committee, is attached to this report as Annex H.

9. The meeting adopted a resolution to thank UNEP, the IJO and the President of IJO in particular, and all the staff and colleagues of the IJO for all their hard work for the organisation and the preparation of this meeting, the FAO for their hospitality and the Italian Government for the support they gave to the work of this meeting and to its successful conclusion.

10. The meeting concluded at 18.40 hrs on December 15.

INTERNATIONAL JURIDICAL

ORGANIZATION

NON-GOVERNMENTAL

IJO/UNEP JOINT PROJECT
No. FP/1400-77-02 (1352)

ANNEX A

LIST OF PARTICIPANTS

AND OBSERVERS

Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil in the Mediterranean.

Rome, December 11-15, 1978

ANNEX A

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December 11-15

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INTERNATIONAL JURIDICAL
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NON-GOVERNMENTAL

IJO/UNEP JOINT PROJECT
No. FP/1400-77-02 (1352)

ANNEX B
INTRODUCTORY

December 11, 1978

Original: English

Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shelf, the Seabed and its Subsoil in the Mediterranean.

Rome, December 11-15, 1978

ANNEX B

INTRODUCTORY ADDRESS AND

REPORT OF PREPARATORY WORK FOR THE MEETING

by

MARIO GUTTIERES
President IJO

INTRODUCTION

It is my greatest pleasure to welcome you, on behalf of UNEP and the IJO, to Rome and to this experts' meeting.

As we all know, the alarming state of pollution in the Mediterranean has led to the concerted effort on the part of all states in the Mediterranean Coastal region to assist in programs to clean up the sea and to prevent further pollution and its damaging effects. The primary instruments in this regard are UNEP's Mediterranean Action Plan and the component Barcelona Convention.

The Action Plan adopted by 16 Coastal states at a February 1975 inter-governmental meeting has provided the basis for development of a comprehensive environmental program for the protection and development of the Mediterranean Basin.

The legal framework for the program was established at an inter-governmental conference convened by UNEP in Barcelona in February of 1976. At that time the Mediterranean Coastal States approved the texts of the Convention for the Protection of the Mediterranean Sea Against Pollution (what I have referred to as the Barcelona Convention) and two protocols thereunder - one related to dumping from ships and aircraft and the other concerning cooperation to combat pollution in cases of emergency. The two protocols, which enterred into force along with the Convention on 12 February 1978, obviously do not provide for all the specific concerns expressed in the Barcelona Convention. Pollution risks in the Mediterranean originate from many sources and it is the source mentioned in Article 7 of the convention - offshore exploration and exploitation activities - that

concerns us. Specifically, Article 7 states:

> "The contracting parties shall take all appropriate measures to prevent, abate and combat pollution of the Mediterranean Sea area resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil".

Admittedly, this source does not create as grave a pollution risk at present, in comparison with others, but it is necessary to consider the rising potential risk due to increasing offshore activities particularly drillings for hydrocarbons and the recent discoveries of crude oil in the Mediterranean. Particular attention must be given in any case to the risk of accidents.

BRIEF BACKGROUND

One major factor which was given special attention at the formative stage of the project, and which has been a constant guideline throughout, is that of avoiding duplication of work already being done by other bodies, namely the Third Conference on the Law of the Sea, and particularly, UNEP's Working Group of Experts on Environmental Law. With regard to the former, it was decided that there was very little prudence in awaiting its outcome, which was very uncertain, and especially since Article 3 (2) of the Barcelona Convention states that nothing in that Convention shall prejudice the codification or development of the Law of the Sea by the Third Conference. With regard to the latter, it was recognized that since this project was limited to the Mediterranean, and had a specific problem with well-defined limits

of application, it could not be, nor amount to, a duplication of the Working Group's mandate, which was to develop new legal principles at the global level.

The mandate and terms of reference of this project are therefor narrower than those of the two international bodies and the objective of this meeting, stated in very general terms, is to provide the necessary background information on the legal aspects of national and regional action to protect the marine environment from pollution resulting from this offshore activity, by examining the problems involved in the establishment of legal regimes for environmental protection in this region. I would like to note that in this context particular attention will be given to issues - on both national and international levels - of civil liability and compensation for damage deriving from this pollution source. In this regard we must also consider the possibility of establishing an interstate guarantee fund and consider questions of jurisdiction and recognition of foreign judgements.

Our task at this meeting is therefore to identify and analyse all the problems involved and should be regarded as a preliminary foray into the issues and complexities raised by this topic. We are gathered here in our capacities as legal and technical experts, with our varied backgrounds and expertise, in order to achieve the necessary interdisciplinary cooperation that is required (and in this particular field, actually essential) for an intelligent and worthwhile contribution to environmental protection. This approach should facilitate free discussion and lead to an open, productive meeting where legal experts from Mediterranean countries will be able to take account of the technical

realities of offshore activities when considering the legal aspects of pollution from this source.

The results of this exercise are to be presented to the Executive-Director of UNEP and, as was reported at the last Intergovernmental Review meeting of the Mediterranean Coastal States on the Mediterranean Action Plan, may form the basis for the preparation of guidelines for a protocol concerning exploration and exploitation of the continental shelf and the seabed and its subsoil.

It is therefore incumbent upon us to study the information available in the backround papers and to supplement this with information from our individual experiences and expertise, in order to be able to arrive at sound conclusions and to make well-informed decisions.

PREPARATORY WORK

The objectives of this project demand very thorough preparatory work and I will take a few minutes to inform you about what preparation has taken place to date.

With the collaboration of UNEP, the project has been coordinated by the IJO, its staff of experts and the IJO Advisory Committee. Perhaps the most important preparatory work that had to be done by the Advisory Committee following its identification of problems and issues presented by the project was the formulation of outlines for the background papers. I say this because the contents of these documents will determine to an extent, the course which this meeting will take, the issues which it will highlight and eventually, the decision it will arrive at.

We drafted these outlines with one principle in mind - the need to treat the specific topic under consideration with the precision required to ensure that the most salient points in relation to the subject matter of the meeting as a whole became immediately obvious. We also had to decide the type of study that should be conducted for each paper - factual, analytical, discussion-provoking, etc.

For example, it was decided that for our specific purpose, scientific and technical background information should cover all the essential technical realities of offshore resource exploration and exploitation and, at the same time, be presented in a manner comprehensible by all; that is, information providing a factual basis from which legal experts could make reasoned judgements and recommend appropriate action.

As a result, and to give you an example of how this worked in practice, it was decided that the first background paper (the technical paper) should provide information such as:

- Characteristics of the Mediterranean and the types of resources available in the Mediterranean;
- the methods for extracting these;
- how accidents may occur;
- how the technical experts rate the pollution risk from such accidents in the light of existing experience;
- technical methods for reducing pollution, safety measures in accident situations, and prospects for

the future development of environmentally sound technology.

After this initial study of the main outline, the next step (and the stage at which we encountered numerous obstacles) was the stock-taking exercise. As you well know, offshore activities in the Mediterranean are not as prolific as they are, say, in the North Sea and there is a dearth of information due to the relatively recent nature of this activity in this region and the sensitive nature of the information regarding oil finds, production capacities, etc. This lack of information was a recurrent obstacle throughout the preparatory stage of the project. I will give you some examples of how we conducted this fact-finding exercise in our attempt to find a solution to this problem.

The examples I have chosen represent an attempt to collect technological and scientific information, legal information of a general nature and thirdly, information on specific legal problems such as civil liability and insurance.

In order to facilitate the survey, we prepared two questionnaires, one addressed to governments and the other to industries - the intention being that the replies, to the questionnaire to industries would provide some of the technological information required. We decided that rather than solicit information from individual industries - which had the possible disadvantage of duplication of efforts and information - it would be advisable to obtain the overall picture from an Industry Association. We therefore requested the

E & P Forum to complete the questionnaire. The reply, and supplementary information received from Petroconsultants, are attached to the E & P Forum policy paper. It obviously has to be read in conjunction with Background Paper No. 1 in order to arrive at a complete picture of the technological aspects of offshore exploration and exploitation.

It is hoped that the information therein will stimulate our discussions and I hope that the technical experts and observers present from industries and industry associations will provide us with what supplementary information or clarification we may require.

The questionnaire to governments, as you can see, dealt mainly with anti-pollution regulations and controls. At the beginning,I must say the responses were rather unsatisfactory and left a lot to be desired - the novelty of the subject and the multiplicity of competent departments dealing with various aspects of the subject tended to delays.

However, after repeated requests and several communications we were able to compile summaries for a majority of the countries. These are provided as part B of Background Paper No. 2.

With regard to the compilation of information concerning specialist legal topics, we decided that the best method was to draw upon the expertise of the Advisory Committee members. Most of the members were entrusted with the duty of conducting research on topics such as environmental impact assessment and, in fact, all the topics treated in Background Paper No. 5.

Apart from documentary research work, this research involved

one visit to an oil rig in order to get first hand knowledge or experience of operating techniques and other relevant information, and meetings and discussions with experts from specialised fields such as insurance. Particular attention has been given to the work done by the Third Law of the Sea Conference and UNEP's Working Group of Experts on Environmental Law.

CONCLUSION

In conclusion and noting the number of topics included in our agenda, I recognise that this is a vast subject to be treated in only 5 days and that many of the topics will require extensive discussions. But I am sure that with the expertise we have gathered here, these objectives will be achieved.

Before closing, I would like to thank UNEP for its collaboration and support throughout this joint project.

Particular gratitude is extended as well to the specialist consultants, the international organizations, the industrial associations, the IJO Advisory Committee and the Countries themselves who contributed to the background research and study for this meeting.

I would like finally to thank the Consiglio Nazionale delle Ricerche for its contribution of support to this project.

INTERNATIONAL JURIDICAL
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IJO/UNEP JOINT PROJECT
No. FP/1400-77-02 (1352)

ANNEX C

Results of the Meeting of Experts
December 15, 1978

Original: English

Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil in the Mediterranean.

ANNEX C

RESULTS OF THE WORK OF THE MEETING OF EXPERTS

The comments, observations and formulations contained herein are based upon discussions concerning paragraphs 2 thru 6 of Annex I (Background Paper No. 5) and should be read in conjunction with that document.

A. ENVIRONMENTAL IMPACT ASSESSMENT

1) Para. 2.1.1 The following text resulted from the discussion:

"The Mediterranean Coastal States should consider the environmental impact when authorising exploration or exploitation of the continental shelf and the seabed and its subsoil under their jurisdiction".

Note It was clearly undresood that the precise application of this recommendation should be determined at a later stage in the light of the developments in the Law of the Sea, and in accordance with the policy of Mediterranean States.

2) Para. 2.1.2 The following text resulted from the discussion:

"In formulating this policy, States should take into account the Specially Protected Marine and Coastal Areas in order to ensure that such areas are protected when considering the initiation or authorization of any exploration of exploitation project".

3) Para. 2.1.3 The following text resulted from the discussion:

"The Secretariat of the Barcelona Convention could, in accordance with this Convention, serve as a medium for notifying and consulting with other Mediterranean States on the potential and actual transfrontier impact of exploration or exploitation activities".

4) Para. 2.1.4 The following text resulted from the discussion:

"Prior to granting a permit for the exploration or exploitation of the seabed an environmental impact assessment should be prepared and form the basis for granting or refusing the permit.

5) Para. 2.1.5 It was the general view of the national experts that the recommendation should not dictate to States the consequences to be drawn from the Environmental Impact Assessment in such an absolute manner. In this context it was suggested to replace the word "pollution" by the phrase "significant pollution of the waters of the Mediterranean Sea Area". On the other hand, the uncertainties of the term "significant" were noted but also that it is a term used in other instances. In the same connection, it was suggested to qualify pollution as "unacceptable" or "long-term".

It was also suggested that the permit should be denied if pollution is likely to occur "adding to the already existing total pollution

load of the ecosystem" at least "until the applicant proposes an alternative remedial action of the same site or another in the same ecosystem, ensuring that no further deterioration of the ecosystem would occur". An Observer requested the deletion of this sub-paragraph as being unrealistic and too far reaching.

The following text resulted from the discussion:

> "The Coastal State shall grant the permit in accordance with the requirements of this protocol and other additional requirements established in its national legislation or internationally agreed".

6) Para. 2.2.1 It was the general view of the experts that this paragraph requires further study. The view was expressed that the protocol should only lay down certain general principles on the environmental impact assessment and should not enter into details as to its exact contents. In this connection the suggestion was made to replace para. 2.2.2 by the following sentence: "The impact assessment must be adequate to make the evaluation". On the other hand, it was pointed out that even if details of the assessment were to be left to be determined at the national level, it would still be useful to include them in an international instrument as an example or guideline. It was further suggested that if details are agreed, these should be included in an Annex to the Protocol. A distinction was drawn between exploration and exploitation and it was suggested that the contents of the assessment might be different in either case. Similarly, a distinction was drawn between small and major projects and a suggestion was made to avoid overburdening minor projects with unnecessarily complicated and expensive impact assessments.

On a more detailed basis, there was an enquiry as to the meaning of the term "impact statement" and it was suggested to amend the chapeau of the paragraph as follows: "The environmental impact assessment should cover at least the following points". It was suggested to add at the end of sub-para. (d) the phrase "and the qualities of personnel". In sub-para. (f) it was noted that it would be difficult for the operator to specify the effects on endangered species. It was also suggested to avoid the cross-reference to other instruments. In sub-paras. (g) and (h) it was suggested to delete the words "or risk of damage" and to replace the words "and in particular" by the word "including". As for sub-para (i) it was suggested that this is a matter which should be left to the State and not to the operator.

Finally, in connection with this paragraph, it was pointed out that there should always be borne in mind the various stages of the projected activity which are the following: (a) application for permit (b) environmental impact assessment (c) minimum contents (which may be agreed at a regional level) (d) submission of the statement to the State authority (e) minimum common evaluation standards (f) rejection of the application or acceptance, plus monitoring and rehabilitation requirements in the latter case.

7) Para 2.2.2 The following text resulted from the discussion:

"The installations for the exploration or exploitation of the seabed should be staffed by trained and qualified personnel in accordance with acceptable professional standards".

8) Para. 2.3 The following text resulted from the discussion:

"The coastal State may request the applicant operator to provide further details in addition to the minimum required for the environmental impact assessment".

9) Para 2.4 The following text resulted from the discussion:

"Each State should designate an appropriate authority for issuing permits for the exploration or exploitation of the seabed under its national jurisdiction".

10) Paras 2.5.1 and 2.5.2 Both paragraphs were criticized as being too detailed and as placing too heavy a burden upon States. However, some of the prinicples included in them were acceptable. Thus there was agreement that some public participation is advisable, but the extent of such participation should be determined by each State in accordance with its political and legal system. In this context it was believed that some kind of public information on projects should be given, the extent being left up to States. Similarly, interested parties should be given an opportunity to express their views in accordance with the laws of each State. Public participation was more acceptable for nationals of the licensing State, while there were serious doubts as to the participation of nationals of third States and for foreign States, but it was agreed that this should be ultimately determined by the law of the licensing State. Finally, it was suggested that a distinction should be drawn between exploration (or even stages of exploration) and exploitation (or even major exploitation projects) and public participation or its extent to differ in various stages of the entire procedure. A distinction was also suggested between minor and major projects. It was agreed that no recommendations should be drafted, but that these points be included in the report as suggested principles.

11) Para. 2.7 Comments were made to the effect that this paragraph is too vague. It does not specify who may contest (nationals or also non-nationals), on what grounds, etc. It was noted that, as in the previous paragraphs, participation of foreign nationals might be difficult, particularly if the exploration or exploitation is within internal waters or territorial seas.

A suggestion which could lead to agreement reads as follows: "Any

decision of the permit-granting authority may be contested in a national forum of competent jurisdiction in accordance with the national legislation of the Coastal State". The comment was made that perhaps the decisions of other authorities relating to the exploration or exploitation of the seabed should be subject to contest.

12) Para. 2.6 The following text resulted from the discussion:

"Coastal States should require installations established prior to the entry into force of these rules to comply with and/or adjust to the requirements of these rules as far as practicable and reasonable".

13) Para. 2.8 The following text resulted from the discussion:

"States will submit to the secretariat information on permits issued by them and the specified measures to ensure protection of the marine environment during and after operations concerning the exploration for and exploitation of the continental shelf and the seabed and its subsoil".

B. DESIGN, CONSTRUCTION, SITING AND REGISTRATION OF INSTALLATIONS

14) Paragraphs 3.1.1, 3.1.2, 3.1.5, 3.2.1 and 3.2.5 were discussed together the text which resulted from the discussion is as follows:

"Installations, including pipelines, should be so designed, constructed, placed, equipped and maintained, in accordance with technically accepted standards, and operated so as:

(a) to avoid any operational discharges which exceed prescribed national limits;

(b) to prevent discharge, leakage or spillage during handling of the produced product at any time;

(c) to monitor any discharge into the sea;

(d) to minimize risk of any accident that could cause pollution; and

(e) to minimize risks of unintentional harm to the marine environment.

15) A new sub-paragraph was agreed to be added to para. 3 to be as following:

"States shall endeavour to develop common minimum standards for design, construction, equipment and discharges for the protection of the marine environment from pollution arising from the exploration and exploitation of the seabed".

16) Para. 3.1.3 The text which resulted from the discussion is as follows:

"Any ship to or from which pumping, piping or discharge is carried out from or to an installation should be equipped so as to avoid any discharge into the sea in connection with such operation".

17) Para. 3.1.4 The text which resulted from the discussion reads as follows:

"All installations should have adequate equipment and storage room to safely retain the extracted product".

In this connection it was noted that the agreed new sub-paragraph (see above under 15) has application to this situation, also.

18) Para. 3.2.2 The text which resulted from the discussion reads as follows:

"Coastal States may, where necessary, establish reasonable safety zones around such installations in which they may take appropriate measures to ensure the safety both of navigation and of the installation. Due notice shall be given of the exact position of the installation and the extent of the zones".

This language was taken from Article 60 (4) and (6) of the ICNT.

19) Para. 3.2.3 The text which resulted from the discussion reads as follows:

"Coastal States shall require that the location of installations is easily ascertainable by the use of uniform appropriate and effective warning signals".

20) Para. 3.2.4 The text which resulted from the discussion reads as follows:

"Coastal States should specify uniform maximum size for the compartments of the storage facilities, with due regard to the size and nature of the installation, thus reducing the extent of pollution of the marine environment in cases of accidental discharges".

21) Para. 3.3.1 The text which resulted from the discussion reads as follows:

"Submarine pipelines should be located and, where environ-

mentally appropriate, buried under the seabed in a manner minimizing risk of accidents from contacts with ships or other objects".

22) Para. 3.4 . The following text resulted from the discussion:

"Coastal States should require all installations to be registered and should create and maintain public records of such registration".

23) Para. 3.5 The following text resulted from the discussion:

"Upon the termination of the operation of an installation, the installation should be removed to the extent that rehabilitation of the marine environment so requires, and all necessary reasonable measures should be taken to rehabilitate those aspects of the environment which are adversely affected".

C. MONITORING, INJUNCTIONS AND SANCTIONS

24) It was agreed that the title is to narrow and it was formulated as follows:

MONITORING AND ENFORCEMENT

25) All paragraphs of this part were discussed together and several comments were made. Finally it was agreed to avoid drafting any text but to express the principles agreed. Thus it was agreed that periodical inspections and surveys of the installations should be carried out. However, it was thought that the periods should not be specified in the recommendations because they depend on various factors and this should be decided by each Government concerned. The idea of having regular inspections was also pointed out. On the other hand, it was agreed that in addition to inspection and survey of the installation, periodical assessment of the environment should be carried out, and the criteria for such assessment should be specified at the later stage. The following suggestion was also made: A tridimensional network of monitoring stations should be established around the installation (point source of pollution) and the permissible concentration of the pollutant should be established. (The analytical procedures should be in accordance with the ones established during the UNEP MED POL Pilot projects at present in progress).
It was, also, agreed that an enforcement authority or authorities (not agency) should be designated. It was, also, pointed out that the operator should not have direct contact with the Secretariat, but the Secretariat to be contacted by the appropriate national

authorities. In connection with the periodic assessment, the role and the importance of independent scientific bodies was stressed.

It also resulted from the discussion that recommendations should be prepared on a monitoring methodology and techniques for pollution resulting from seabed exploitation activities.

D. CONTINGENCY PLANNING

26) The remarks in Paper 5 were noted and it was agreed that this matter should not be discussed. Notwithstanding, the importance of contingency planning was stressed and the need to coordinate and connect local plans with the national plans where they exist.

E. EXCHANGE OF INFORMATION

27) On exchange of information the text of Paper 5 was found unsatisfactory but the principle has merits. In this connection it was agreed that exchange of information in the field of environmental protection from exploration and exploitation of the seabed is essential. However, proliferation of new despositaries was opposed. It was agreed that exchange of information should be made in the context and in harmony with the existing UN exchange of information system. However, it was also noted that such-system should further develop to be not only a reference center of sources of information but a data center of actual scientific information. This could be accomplished gradually since some of the exploration and exploitation information could be considered confidential by Governments or Companies.

F. ADDITIONAL PARAGRAPHS

It resulted from the discussion that it should be added as an express rule that the operator should notify the authorities of the exact location of the installations, as well as of any accident or spillage which occurred. Similarly, express rules should be included on marker buoys over "suspended wellheads".

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ANNEX D

Report of the Working Group on Civil Liability

December 15, 1978

Original: English

Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shlef, and the Seabed and its Subsoil in the Mediterranean.

ANNEX D

REPORT OF THE WORKING GROUP ON CIVIL LIABILITY, COMPENSATION FOR DAMAGE AND GUARANTEE FUNDS

The comments, observations and formulations contained herein are based upon discussions concerning the introduction to (terms and definitions) and paragraphs 7 and 8 of Annex I (Background Paper No. 5) and should be read in conjunction with that document.

Mr. Guttieres chaired the meeting and explained that the work procedure was to discuss the recommendations in Background Paper No. 5 on Civil Liability and compensation for damage (Para. 7) and guarantee funds (Para. 8).

The group agreed to define and clarify the various expressions used, and for this purpose discussed terms and definitions considered on Pages 2-6 in Background Paper 5, prior to discussing the specific provisions in Paras. 7 and 8.

A. DEFINITIONS

1) Pollution - P. 2

It was agreed that the comments made here adequately pointed out the difficulties raised by the definition of "pollution" in the Barcelona Convention.

2) Exploration and Exploitation - Pp. 3 and 4

Regarding the "ancillary activities" referred to on P. 4, the group recognised the need for more specificity with regard to ships and pipelines. It was suggested that the reference to transportation should specifically exclude transportation by ships, insofar as it is regulated by the 1969 Convention on Civil Liability for Oil Pollution Damage.

With reference to pipelines, it was pointed out that the text did not specify whether transnational pipelines (transporting products, not from an installation to shore but between two countries across the sea) were included. Since such activities involved a use of the continental shelf and posed a threat as a source of pollution, it was suggested that these could be considered either in these recommendations or, at a later stage, in another protocol.

3) Continental Shelf and the Seabed and its Subsoil - Pp. 4 and 5

It was generally accepted that the explanation on Page 5 was adequate.

4) Installations - P. 5

It was agreed that the last sentence under this heading should be modified to read:

> "Transportation systems such as submarine pipelines (but excluding transportation by ships insofar as it is regulated by the 1969 Convention on Civil Liability for Oil Pollution Damage, or any further agreement covering that form of liability) should be included in whatever definition is adopted".

5) Operator - P. 6

Some concern was expressed over whether the term "overall control" was sufficiently specific to facilitate designation of the effective operator. While acknowledging the complexities involved in this subject, it was agreed to retain this paragraph in the introduction and to insert a new paragraph (7.5.2) dealing with this in the civil liability context.

B. CIVIL LIABILITY AND COMPENSATION FOR DAMAGE

6) Para. 7 - Footnote- P. 16

The meeting considered two issues related to this footnote:

First: the feasibility of having a separate protocol on civil liability and compensation for damage from all sources of marine pollution in the Mediterranean (including, for example, land based sources, dumping, offshore exploration and exploitation) or of incorporating provisions on civil liability and compensation for damage arising from each source of pollution in respective/separate legal instruments.

The following three possibilities were discussed:

(i) rules should be included in the same protocol;

(ii) a separate protocol on liability should be adopted concerning all sources of pollution;

(iii) separate, independent protocols on liability should be adopted for each source of pollution.

Second: the feasibility of having separate liability and compensation provisions relating to pollution caused by hydrocarbons, as distinct from other substances (sand, gravel) because of the unique nature of such pollution and the activities of the oil industry.

The need for separate provisions applicable to the oil industry was widely accepted, but there was no agreement concerning the legal instrument within which these provisions should be incorporated.

7) Para. 7.1

Since the obvious intention was to compensate victims for POLLUTION arising from exploration and exploitation and not ACTIONS arising from such activities, the following formulation was accepted.

"Coastal States should, by their internal legal processes, provide that compensation be paid in accordance with the following provisions to persons suffering loss or injury

caused by pollution arising from exploration for, and exploitation of, the resources of the seabed and its subsoil within the limits of national jurisdiction".

8) Para. 7.2.1

It was agreed to amend the text in order to clarify that the concept of strict liability meant liability imposed irrespective of fault, and did not involve any considerations as to whether or not the activity was intentional, as the text implied. Consideration was given to the accuracy of the expression "environmental pollution or other damage" and it was agreed that in this context the adjective "environmental" was superfluous and should be omitted, as should the term "or other" because it implied inclusion of cases where no pollution results. The possibility of introducing, at a later stage, the notion of contamination into the definition of pollution damage was considered, but it was accepted that such an extension raised further difficulties, rather than offered clarifications.

The following formulation received general support.

"Subject to exceptions hereinafter stated, civil liability in accordance with the rules of strict liability (i.e. liability irrespective of the fault of the operator) should arise in any case where an operator engages in activities from which pollution damage results, provided that the operator should incur no liability for hindrance to fishing which results merely from the presence of an installation installed and operated in accordance with the terms of his licence".

9) Para. 7.2.2

It was agreed that liability should not attach after a reasonable period of time had elapsed after abandonment, particularly in cases where such abandonment had been done in accordance with certain specified standards. The following text was proposed:

"Such liability should attach and continue to attach to any act or omission at the instigation of, during, and after the operation of an installation. Abandonment of such installations should not insulate the operator of an installation from such liability unless a reasonable time has elapsed".

10) Para. 7.2.3

This additional sub-paragraph was proposed in response to the need to resolve questions involving the concept of damage dealt with in these recommendations. Such questions included the nature, extent of liability and on whom it should be imposed, particularly in

cases where the damage was a necessary consequence of the licensed activity. The text agreed reads as follows:

> "Liability and relief (injunctions, indemnification, etc.) should be for the protection against socio-economic as well as individual damages, and should cover damage to persons, to things and to the environment. Due consideration should be given as to who should have the right to bring actions for compensation or for other relief in different cases, as well as against whom such actions should be brought, including a public authority, where a permit has been issued by such authority in violation of applicable rules or without reasonable protection for others".

11) Para. 7.2.4

It was agreed to add this new sub-paragraph in order to resolve questions regarding persons who should be entitled to sue. The following text received general support:

> "At the national level, consideration should be given to the incorporation of clear and uniform rules on compensation for damage to collective interests and on the right of "intermediate bodies" especially local governmental bodies (municipalities, regions, etc.) to bring actions in civil courts".

12) Para. 7.3.

Paragraph 7.3 (e) was criticised by some observers representing industry interests as imposing too heavy a burden on the operator for acts which could rightly be termed "terrorist acts" and which should be, therefore, included in the list of exonerating circumstances under Para. 7.3 (c). It was generally agreed however, that damage in the event of acts of terrorism should not have to be borne by the person suffering injury or damage. It was suggested that unless such damage is covered by a guarantee fund, it was reasonable for this loss to fall on the operator, who was responsible for the existence of the installation or activity and who was generally in a better position to anticipate, provide for, and bear this loss. The original text was retained.

13) Para. 7.4

The group considered the negative and positive aspects of imposing a limitation on liability. Some were in favor of imposing a limitation on liability, while others stressed the danger of allowing injury or loss surrered by individuals to go uncompensated where a system of limited liability was adopted. It was suggested that the imposition of limited liability should be considered only if a system of guarantee (e.g. a guarantee fund) existed. In the absence of agreement, the original text was retained.

14) Para. 7.5.1

No consensus was reached on a suggestion that it would be preferable to have a limit on insurance liability in order to facilitate a clearer quantification of the Insurance Industry's maximum exposure to risks. The following text resulted from the discussion:

"An obligation should be imposed on the operator requiring him to have and maintain insurance or other financial security to cover his liability. The obligation of the insurer could be limited to a certain amount, even if the operator will be liable without limitation. It is recommended that for this purpose a provision which is similar to that in Article 8 of the 1976 London Convention should be adopted, in addition to the requirement that the State or an international fund guarantee any part of the operator's liability which remains uncovered by such insurance or security".

15) Para. 7.5.2

This additional sub-paragraph was proposed following a discussion of the need to impose liability on the effective operator in cases where for example, only a part of a large group of companies was actively engaged in the operation of an installation. The text agreed to reads as follows:

"Consideration should be given to the attribution of liability to the effective operator, even if not coincident with the operator who appears legally as such (but is only "longa manus" of the former) with adequate provisions for lifting the corporate veil in order to impose liability on any company or companies which, solely or in conjunction with others, exercise ultimate control over the venture. Such provisions could be limited to cases of non-fulfilment of the compulsory insurance or guarantee requirements".

16) Para. 7.6.1

The original text was retained.
A suggestion was made that the arbitration system could be utilised for the settlement of disputes between operators and States, where the particular legal system permits.

17) Para. 7.6.2

The following text was approved:

"Each State should ensure that its courts possess the necessary jurisdiction to entertain such actions for compensation, and that its courts entertain on a fair and non-discriminatory basis, actions by other member States or their residents and accept witnesses brought by such parties, and evidence gathered by responsible authorities in other member States".

18) Para. 7.6.3

This additional sub-paragraph was thought to be necessary in order to avoid any conflict relating to the choice of the applicable law. The following text was proposed:

> "Each State should ensure the harmonization and adjustment of private international law of each system, so as to render uniform the regimes of competence, jurisdiction and choice of national law applicable to the matter under review".

19) Para. 7.7.1 and 7.7.3

The original texts of Paras. 7.7.1 and 7.7.2 regarding recognition and enforcement of foreign judgment were retained.

C. GUARANTEE FUNDS

19) All subsections of Paragraph 8 were discussed together and several comments were made. Differing views regarding the Fund's objectives and obligations were expressed. Some suggested that the primary objective should be to guarantee compensation to victims of pollution damage, while others thought that the prevention of pollution should be an additional objective.

No agreement was reached with regard to the sources of contribution to the Fund. Some thought that States might wish to contribute the Fund's resources themselves, in recognition of the value of exploration and exploitation activities to the State and its citizens. Others thought that, as an application of the "Polluter-pays-principle" the operators should be obliged to contribute to the Fund in the form of licence fees and production royalties (with the ultimate effect that the expenses would be borne by the consumers of oil). It was pointed out that if the Fund was financed by the oil industry, the latter would have to pay indirectly through the fund what it was not obliged to pay directly under the liability provisions. If so, the exceptions and limitations under the liability provisions were meaningless. In this context, consideration was given to adopting a provision similar to the exceptions to Fund liability under Art. 4 (3) of the 1971 Convention for the establishment of an International Fund for Compensation for Oil Pollution Damage as well as to Article 5 (3) under which non-compliance with the requirements on taking preventive measures would result in the loss of the operator's right to limit his liability.

It was pointed out however, that since the exceptions under Para. 7.3 (c) were narrower than the exceptions to Shipowner liability under the 1969 Civil Liability Convention, each of the exceptions should be considered separately in order to justify their being financed by the industry.

20) At the conclusion of the discussion, the following communication was received from Mr. J.R. Keates, Managing Director of the OPOL Association. It was asked that it be included in the recorde, but did not form the basis of any further discussion by the working group:

"OPOL is structured so that it can be extended to any country with the approval of the parties to it. Accordingly, if this conference were to take the view that OPOL may have a purpose to serve, on an interim basis, in the Mediterranean Area, any request that OPOL should be extended either to the Mediterranean as a whole or to specific Mediterranean States can be placed before the parties to OPOL. This can be for advice in principle or for actual extension. It would be useful, if this is to be done, for a specific request to be made, possibly either as a resolution of the Conference separate from its recommendations, or as a request from I.J.O.".

21) Title para. 8

It was decided that a proper title for this paragraph would be:

INTERSTATE FUND FOR THE MEDITERRANEAN SEA AREA

22) Para. 8.1

"An Interstate Fund for the Mediterranean Sea Area concerning pollution from offshore activities should be established. This Fund should finance activities relating to preventive and remedial measures for marine pollution in the Mediterranean at both the national and international levels, and should be used for the following specific purposes:".

23) It was decided to re-number Paras. 8.2 - 8.5 as 8.1 (A) - 8.1 (D), since they related to the various purposes of the Fund.

24) Para. 8.1 (A) (formerly 8.2)

It was agreed that because of the lack of consensus on this particular use of the fund the original text be re-formulated as follows:

ENVIRONMENTAL PROTECTION

"States may wish to constitute a separate Fund or a separate part of the Fund for purposes of environmental protection. It should be used for the preservation and improvement of the environment including, inter alia, financing scientific research, protection of the environment, training of personnel, establishing effective monitoring and enforcement methods, financing clean-up operations and rehabilitating the damaged environment".

25) Para. 8.1 (B) (formerly 8.3)

The title of this paragraph was eliminated, and an additional subsection (IV) was included in order to take account of the "collective interests" considered in Para. 7.2. The following text received general support:

"The portion of the fund allocated for compensation purposes should be used for compensation of victims at the international level under the following circumstances:

(i) Where, by reason of a statutory exemption clause, the operator was deemed not to be liable for the pollution damage.

(ii) Where the liability of an operator fell short of the damage done, as a result of any statutory limitation to his liability imposed in accordance with these recommendations.

(iii) Where the operator for any reason was unable to meet in full his legal liabilities for the pollution damage, preventive and remedial measures, and any further damage resulting therefrom.

(iv) Where damage has been caused to identifiable collective interests, of particular social imprtance, to the extent that the operator is not liable for such damage."

26) Para. 8.1 (C) (formerly 8.4)

This paragraph was left as it stood.

27) Para. 8.1 (D) (formerly 8.5)

It was emphasized that in establishing research, monitoring and early warning systems, account should be taken of institutions and centers already operating in this area. The original text was retained.

28) The paragraph beginning "No recommendations are ...." was retained but re-numbered Para. 8.2.

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ANNEX E

ISP/1
11 Dec 1978

Original: English

Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil in the Mediterranean.

ANNEX E

Informal Summary of Proceedings

11 December 1978

The meeting started at 10:30 hours.

Mr. M. Guttieres, President of IJO, welcomed the experts and observers and asked Mr. Clelio Darida, Under-Secretary of the Interior, to open the meeting. Mr. Darida welcomed the Mediterranean Experts on behalf of the Government of Italy and expressed the great interest of the Government in the protection of marine environment from the exploration and exploitation of the seabed, and in the results of this meeting. Experts were also greeted by Mr. Battaglini, Head of the Official Italian Delegation, who attended the meeting as observers. Finally, Mr. Guttieres described the preparatory work done by the Advisory Committee and the IJO Secretariat to the meeting.

There was an intermission at 11.15 hours.

The meeting was resumed at 12.00 hours.

A. Election of Officers

Mr. Guttieres invited nominations from the floor for the offices of Chairman and Rapporteur for the meeting. Mr. Yturriaga (Spain) proposed that Mr. Guttieres be elected Chairman of the meeting, and that Mr. Timagenis, member of the Advisory Committee of IJO, be Rapporteur. This proposal was seconded by Mr. Vukas (Yugoslavia), Mr. Nicolazo (France) and Mr. El Shinawi (Egypt).

Mr. Guttieres accepted the nomination as Chairman of the session on condition that he was to be helped in directing the debates by various experts. Mr. Timagenis accepted the post of Rapporteur. Mr. Guttieres then requested that Mr. Yturriaga act as Co-Chairman on the first day and proposed having different chairmen on various subjects.

B. Organization of the work of the meeting

Mr. Yturriaga, as Co-Chairman of the meeting, pointed out the need for amending the provisional agenda in order that more time be allocated to the discussions of paper 5 which was the basic paper, including the draft recommendation to be elaborated and submitted to UNEP. Mr. Yturriaga suggested, in this context, that the agenda start with presentation of the various background papers, without discussion on their substance except for questions of clarification. A general debate was proposed to follow for identifying the basic issues and views and defining the exact objectives of the meeting. Finally, discussion should be concentrated on paper 5. Further discussion might be carried on on the background papers if time allowed. He also suggested that there should be flexibility both on the exact allocation of various items and on the procedures. There being no objection, the agenda was adopted as presented by Mr. Yturriaga:

1. Presentation of background papers 1-4 and additional papers
2. General Debate on main purpose of the meeting

3. Discussion on paper 5 and adoption of recommendations

4. Further discussion on background papers 1-4.

C. Presentation of background papers 1 - 4

Mr. V. Pravdic of the Centre for Marine Research "Rudjev Baskovic" Institute, Zagreb, was asked by the Co-Chairman to present his paper. Mr. Pravdic presented a brief summary of Paper 1 (Part A) on the "Implications of Potential Exploration and Exploitation of the Resources of the Seabed and its Subsoil".

Following this presentation, technical questions were asked and comments made by Mr. Lymberides (Greece), Mr. Tsompanopoulos (Greece) and Mr. Oren (Israel).

The meeting was raised at 13.00 hours

The meeting was resumed at 14.45 hours

The Co-Chairman invited Mr. David A. Ross of the Woods Hole Oceanographic Institution, to present his paper. Mr. Ross presented a brief summary of paper No. 1 (Part C) on "General Oceanographic Setting of, and Recent Offshore Hydrocarbon Activity in, the Mediterranean". The presentation was accompanied by projection of illustrative slides.

In order to expedite proceedings, the Co-Chairman suggested that extensive discussion of the papers be avoided at this stage; unless there were any questions for clarification. That not being the case, the Chairman invited Mr. C.V.A. Testoni, Director of the Naval Hydrographic Institute (Italy) to present his paper, which was an additional paper and was closely connected to the one presented by Mr. Ross. Mr. Testoni presented his paper on "Facts about Circulation in the Mediterranean". The presentation was accompanied by projection of slides.

Subsequently, the Co-Chairman invited Mr. C.P. Garner-Richards to present his paper. Mr. Garner-Richards presented a summary of paper No. 1 (Part B) on "Scientific and Technological Aspects of the Exploration and Exploitation of Petroleum Resources of the Continental Shelf with Particular Reference to any Possibilities of Associated Marine Pollution". Following this presentation the meeting was raised at 16.30 hours and the participants moved to another room to attend a projection of a film connected with this paper.

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ANNEX F

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ANNEX F

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C. Presentation of background papers (cont'd)

1) The Chairman asked Mr. Yturriaga to continue assisting him as Co-Chairman. Subsequently Mr. E. Du Pontavice, Professor at the "Université de droit, d'économie et de sciences sociales de Paris" was invited to present his paper.
Mr. Du Pontavice presented Paper No. 2 (Part A) on "Comparative Analysis of Legislation in Mediterranean Countries Regarding the Protection of the Marine Environment Against Pollution Caused by Exploration on and Exploitation of the Continental Shelf".

2) Comments were made and questions were asked by Mr. Lahlou (Morocco), Mr. Vukas (Yugoslavia), Mr. Hellman (Israel), Mr. Fleischer (Norway), Mr. Oren (Israel), Mr. Barnard (E & P Forum), Mr. Patrono (Italian Delegation), Mr. Ural (Turkey), Mr. Poley (E & P Forum), Mr. McLoughlin (U.K.) and Mr. Yturriaga (Spain).

3) The experts from Mediterranean Countries made additions and clarifications on the legislation of their countries. The Co-Chairman suggested that written comments be handed to Prof. Du Pontavice for completion and revision of the paper where appropriate.

4) Subsequently the Co-Chairman invited questions (if any) on the paper of Mr. Garner-Richards as well as the relevant film, which was a matter pending from the meeting of 11 December 1978. Comments were made and questions were asked by Mr. Hellman (Israel), Mr. Lymberides (Greece), Mr. Bouayad (Morocco) and Mr. Pravdic (Yugoslavia).

5) The Co-Chairman invited Mr. T. Treves, Professor of Public International Law, University of Turin, to present his paper. Mr. Treves presente Paper No. 3 on "Survey of International and Regional Agreements Relevant to the Protection of the Mediterranean Sea from Pollution Resulting from Exploration and Exploitation of the Continental Shelf, the Seabed and its Subsoil and a Study of the Participation of the Mediterranean States in These".

6) Comments were made and questions asked by Mr. Vukas (Yugoslavia), Mr. Nicolazo (France), Mr. Lymberides (Greece), Mr. Oren (Israel), Mr. Yturriaga (Spain), Mr. Du Pontavice (France) and Mr. Fleischer (Norway).

7) In view of the limited time available before the lunch break, Mr. J.L. Nicolazo Crach, Director of the Section of the Ministry of Environment and the Quality of Life (France) was invited to present his paper which was a short one. Mr. Nicolazo presented an additional report on "Contingency Plans in the case of Accidental Pollution - French Measures".

The Meeting was adjourned at 13.00 hours

The meeting was resumed at 14.30 hours

8) The Chairman invited Mr. McLoughlin, of the University of Manchester, to present his paper. Mr. McLoughlin presented paper No. 4 on "Civil Liabilities and Guarantee Fund".

9) Immediately after this presentation, Mr. J. Mayda, Professor of the University of Puerto Rico, was asked to present his study. Mr. Mayda presented his study on "Environmental Impact Assessment".

10) Subsequently the Chairman gave the floor to Mr. A.R. Selli, Professor of Geology at the University of Bologna, for a brief description of "Mineral Resources of the Mediterranean".

11) By this description, the presentation of background papers and other background information was concluded.

12) The Chairman invited comments on the preceding papers. Comments were made and questions asked by Mr. Pravdic (Yugoslavia), Mr. Meñdia (IJO), Mr. Ross, Mr. Tsompanopoulos (Greece), Mr. Hellman (Israel), Mr. Lymberides (Greece).

The meeting was adjourned at 17.00 hours

INTERNATIONAL JURIDICAL

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ANNEX G

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Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil in hte Mediterranean

ANNEX G

Informal Summary of Proceedings

13 December 1978

The meeting opened at 09.45 hours

D. General Debate

1) The Chairman invited Mr. Yturriaga to co-chair the meeting.

2) Mr. Yturriaga took the Chair and described the work schedule planned for the day. He suggested that the meeting would be open for a general debate before the detailed discussion of Paper 5. He called upon Mr. Timagenis (Rapporteur) to introduce the objective of this debate.

3) Mr. Timagenis explained that the purpose of Paper 5 was to introduce the three major topics, namely: environmental impact assessment, preventive measures, civil liability, for discussion; and to request the experts to advise, firstly, on the areas of concentration and, secondly, to answer these questions:

(1) the technical feasibility of the recommendations in Paper 5;
(2) the level of specificity of these recommendations;
(3) whether these recommendations may be adjusted to the national legal systems of their countries; and
(4) whether, in their personal opinion, the recommendations could meet the needs and gain the acceptance of the Mediterranean Governments.

4) The Co-Chairman invited general comments and asked for the views of the participants on the question raised in the footnote appearing on page 16 of Paper 5, in particular whether liability rules should be included in the same or in a separate protocol.

5) Mr. Nicolazo (France) in answering the question of the Chairman said that priority should be given to preventive measures. Liability could be discussed at a later stage and perhaps it would be advisable to deal with it separately, either in one protocol for all the sources of pollution distinguishing among various types of pollution or, preferably, in separate protocols for the liability for each type of pollution.

6) Mr. Hellman (Israel) agreed that the work should concentrate on preventive meausres which, by itself, is an ambitious project and could be the pattern for other regional conventions or even a global one. He pointed out that emphasis should be placed on acquisition, analysis and sharing of data. However, he thought it would be useful to discuss liability and place the conclusions of the meeting before the politicians for action.

7) Mr. Ural (Turkey) suggested a focus on preventive measures and dealing with liability in a separate protocol.

8) Mr. Deeb (Lebanon) agreed that efforts should be concentrated on preventive measures.

9) Mr. Buttigieg (Malta) agreed that priority should be given to preventive measures. He emphasized the need for sharing data, fixing minimum standards and finding the "golden rule" on the level of strictness of the suggested measures.

10) Mr. Lahlou (Morocco) agreed that emphasis must be placed on preventive measures. Liability could be left aside for the moment. Neither the Barcelona Convention nor the existing protocols were adequately specific on the matter. He further called attention to Recommendation 37 of the report of the meeting of Monaco adopted by the Parties, and to Resolution 4 of the Barcelona Conference which suggested discussion of liability by governmental experts which might render the discussion at the present meeting redundant.

11) Mr. Pravdic (Yugoslavia) pointed out that during the work of the meeting, attention should be paid to the changes which are brought to the seabed by the exploration and exploitation, and then he made some comments on specific parts of Paper 5. He concluded that requirements for remedies of damages caused to the environment did not mean that prevention of damage should not be taken care of.

12) Mr. Belgacem (Tunisia) said that all seemed to be interested in liability but there was a divergence of views as to the type of liability: fault liability or strict liability, etc. He agreed that preventive measures should be emphasized but said that attention must also be paid to compensation.

13) Mr. Yturriaga (Spain) noted that the meeting should take into account the precedent of the Convention on Civil Liability for damage caused by the exploration and exploitation of the North Sea. The experts should also bear in mind the differences between the Mediterranean and the North Sea. Account should also be taken of the existing Convention of Barcelona and the existing protocols and the protocol on land-based sources which is under preparation. The starting point for the meeting should be Article 12 of the Barcelona Convention which implied that, first, preventive rules should be adopted for all sources of pollution, and then liability rules. However, liability should not be ignored. His preference was to have a protocol on liability for all sources of pollution. As to the territorial limits of the protocol, he suggested the widest possible scope in order to cover the entire Mediterranean seabed.

14) Mr. Imperti (Monaco) said that all forms of pollution should be tackled in due course and stressed the importance of the meeting because of the participation of both legal and technical experts.

15) Mr. Selli (Italy) said that during the discussions in the meeting, the limit of tolerance of pollution should be discussed and also regular pollution from exploitation of the seabed which is not so impressive as the blow-out, but still harmful to the environment.

16) Mr. Lymberides (Greece) suggested that the order of Paper 5 be followed. He said a distinction should be drawn between technical and legal matters and suggested the setting up of two groups of experts: one for legal matters and one for technical matters, with the purpose of examining in particular what is missing at the moment from the existing conventions and regulations concerning the Mediterranean Sea. In his opinion, the work of the Meeting was to supplement existing rules and not to take overlapping action.

17) Mr. El Shinnawi (Egypt) said that the term "offshore activities" seemed a better illustration of the scope of the work of the meeting. He agreed that liability was a complicated matter of international law but believed, nevertheless, that it would be useful to include at least the general principles on liability in the same protocol.

18) Mr. Guttieres (Chairman) made a summary of the debate and explained the mandate given to the IJO from UNEP for the Meeting.

19) Miss Kuwabara (UNEP) informed the meeting that views of the Mediterranean Coastal States would be sought at the first meeting of the Contracting Parties to the Barcelona Convention scheduled to be convened early 1979, to exaimine the possibilities of adopting additional protocols. Suggested topics for such protocols included a) exploration and exploitation of the seabed non-living resources and b) liability and compensation.

20) Mr. Yturriaga (Co-Chairman) summed up the debate as follows:
(a) Attention should be concentrated on preventive measures;

(b) on liability, three views had been expressed:
  (i) rules should be included in the same protocol;
  (ii) a separate protocol on liability should be adopted concerning all sources of pollution;
  (iii) separate, independent protocols on liability should be adopted for each source of pollution. The proposal on establishing groups could be better examined at a later stage.

The meeting adjourned at 11.45 and reconvened at 12.30 hours

E. Consideration of Paper 5

21) The Co-Chairman opened the discussion on Paper 5.

22) Paragraphs 2.1.1 and 2.1.2 were discussed together and comment were made by Prof. Mayda (USA), Mr. Oren (Israel), Prof. Fleischer (Norway), Prof. Treves (Italy), Mr. Lymberides (Greece), Prof. Vukas (Yugoslavia), Mr. El Shinnawi (Egypt), Mr. Nicolazo (France), Mr. Yturriaga (Spain), Mr. Hellman (Israel) and Prof. Piquemal (France).

23) Discussion started on para. 2.1.3 of Paper 5 and comments were made by Mr. Yturriaga (Spain).

The meeting adjourned at 13.30 and reconvened at 15.00 hours

24) The Chairman invited Prof. Vukas (Yugoslavia) to assist him as Co-Chairman and, there being no objection by the participants, Mr. Vukas acted as Co-Chairman.

25) Consideration of para. 2.1.3 of Paper 5 was continued and comments were made by Mr. Lymberides (Greece), Mr. Nicolazo (France), Prof. Vukas (Yugoslavia) and Mr. Konaris (Greece).

26) The discussion was continued on paragraphs 2.1.4 and 2.1.5. Comments were made by Prof. Mayda (USA), Mr. Hellman (Israel), Mr. McLoughlin (U.K.), Prof. Pravdic (Yugoslavia), Mr. Lymberides (Greece), Mr. Ross (USA), Prof. Mendia (Italy), Mr. El Shinnawi (Egypt), Mr. Nicolazo (France), Prof. Vukas (Yugoslavia) and Mr. Van de Vijier (ICC).

27) During the discussion on Para. 2.2.1 comments were made by Mr. Konaris (Greece), Prof. Mayda (USA), Mr. Lymberides (Greece), Prof. Treves (Italy), Mr. Hellman (Israel), Ms. Mariani (France), Prof. Vukas (Yugoslavia), Prof. Mendia (Italy), Mr. Nicolazo (France), Mr. Tsompanopoulos (Greece), Mr. McLoughlin (U.K.), Mr. Bouayad (Morocco) and observers from the E & P Forum and ICC.

28) During the discussion on Para. 2.2.2 comments were made by Prof. Mendia (Italy), Mr. Lymberides (Greece), Mr. Konaris (Greece), Mr. McLoughlin (U.K.), Prof. Vukas (Yugoslavia), Mr. Hellman (Israel), Mr. Nicolazo (France) and Mr. El Shinnawi (Egypt).

29) During the discussion on Para. 2.3 comments were mady by Mr. Lymberides (Greece), Prof. Vukas (Yugoslavia), Prof. Treves (Italy), Mr. Ural (Turkey) and Prof. Mayda (USA).

30) During the discussion on Para. 2.4 comments were made by Mr. Lymberides (Greece), Mr. Ural (Turkey), Mr. Nicolazo (France), Ms. Mariani (France), Mr. Guttieres (IJO) and Prof. Mayda (USA).

The meeting was adjourned at 17.30 hours

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ANNEX G-

Add after paragraph 10 the following text:

10a) Mr. Vukas (Yugoslavia) said that Paper 5 provided a useful basis for discussion. However, not all problems connected with pollution from the exploration or exploitation of the seabed should be dealt with on a regional basis; some should be decided on a global basis.
An example of this is the difference of the definition of pollution in the Barcelona Convention and in the ICNT drafted by the UN Conference on the Law of the Sea. Some of the concepts to be dealt on a global level were the concept of loss or damage and the basic principles on Civil Liability.
Further, he pointed out that the territorial scope of the suggested recommendation, should be clarified that is whether they refer to the Continental Shelf, only or also to the territorial sea or even the seabed of the high seas.
In this connection, he noted, even the Barcelona Convention is not adequately clear.
Summing up, he pointed out that (a) it should be borne in mind that environmental action should be taken at three levels (international, regional and national); (b) that the territorial scope should be clarified (c) that efforts should be concentrated to preventive measures, and he concluded by reminding that these views are entirely personal.

1) The meeting was opened at 09.45 hours

2) Prof. Vukas (Yugoslavia) was asked by the Chairman to continue acting as Co-Chairman.

3) At the beginning of the meeting Prof. C.A. Fleischer (Norway) presented a paper on "Civil Liability in the North Sea Area" and Mr. M. Guttieres presented Paper No. 4 (Part B) on Guidelines for a Uniform and Harmonized Régime for Civil Liability and Related Problems of Coordination of Individual National Laws (in Mediterranean Coastal States).

4) The Meeting established an open-ended Working Group for the purpose of studying more closely the problems of civil liability connected with damage caused by pollution arising from the exploration and exploitation of the seabed, and presenting its report to the Plenary Meeting on 15 December 1978.

The meeting was adjourned at 11.30 hours and resumed at 12.00 hours

E. Consideration of Paper 5 (cont'd)

5) During discussion of paragraphs 2.5.1, 2.5.2 and 2.7 comments were made by Mr. Nicolazo (France), Mr. Lymberides (Greece), Prof. Treves (Italy), Prof. Mayda (USA), Mr. Garner-Richards (Consultant to IJO), Prof. Vukas (Yugoslavia) and Mr. Bouayad (Morocco).

6) During discussion of paragraph 2.6 comments were made by Mr. Lymberides (Greece), Prof. Piquemal (France), Prof. Vukas (Yugoslavia), Mr. Nicolazo (France), Prof. Lee (USA), Prof. Treves (Italy) and Prof. Mendia (Italy).

The meeting was adjourned at 13.15 hours and resumed at 14.45 hours

7) Paragraphs 3.1.1, 3.1.2, 3.1.5, 3.2.1, 3.2.5 were discussed together. In the discussion of these paragraphs comments were made by Observers of E & P Forum, Mr. Lymberides (Greece), Mr. Nicolazo (France), Mr. Tsompanopoulos (Greece), Mr. Deeb (Lebanon), Prof. Mayda (USA) and Ms. Kuwabara (UNEP).

8) Paragraph 3.1.3 was discussed and comments were made on it by Prof. Lee (USA), Mr. Tsompanopoulos (Greece), Ms. Kuwabara (UNEP) and Observers from E & P Forum.

9) Paragraph 3.1.4 was discussed and comments were made by Mr. Tsompanopoulos (Greece).

10) Paragraph 3.2.3 was discussed and comments were made theron by Prof. Mayda (USA), Mr. Lymberides (Greece) and Observers from E & P Forum.

11) Paragraph 3.2.4 was discussed and comments were made by Observers for E & P Forum and Mr. Ross (USA).

12) Paragraph 3.3.1 was discussed and comments were mady by Mr. Tsompanopoulos (Greece), Prof. Mendia (Italy) and Observers from E & P Forum.

13) Paragraph 3.4 was discussed and comments were made by Prof. Mayda (USA), Mr. Nagelmachers (EEC), Prof. Vukas (Yugoslavia) and Mr. Tsompanopoulos (Greece).

14) Paragraph 3.5 was discussed and comments were made by Prof. Mendia (Italy), Prof. Vukas (Yugoslavia), Mr. Nicolazo (France), Prof. Mayda (USA), Prof. Pravdic (Yugoslavia), Mr. Deeb (Lebanon), Prof. Treves (Italy) and Mr. Lymberides (Greece) and Mr. Tsompanopoulos (Greece).

The meeting was adjourned at 17.30 hours

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ANNEX H

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ANNEX H

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14 December 1978

INTERNATIONAL JURIDICAL

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ANNEX I

BACKGROUND PAPER NO. 5

Original: English

Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil in the Mediterranean.

Rome, 11-15 December 1978

STUDY OF REQUISITE LEGAL MEASURES AND CONTROLS FOR THE PREVENTION AND CONTROL OF POLLUTION RESULTING FROM EXPLORATION AND EXPLOITATION OF THE CONTINENTAL SHELF AND THE SEABED AND ITS SUBSOIL IN THE MEDITERRANEAN

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BACKGROUND PAPER NO. 5

Original: English

Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil in the Mediterranean.

Rome, December 11-15, 1978

STUDY OF REQUISITE LEGAL MEASURES AND CONTROLS FOR THE PREVENTION AND CONTROL OF POLLUTION RESULTING FROM EXPLORATION AND EXPLOITATION OF THE CONTINENTAL SHELF AND THE SEABED AND ITS SUBSOIL IN THE MEDITERRANEAN

Recommendations prepared by

the working group of the IJO Advisory Committee

The recommendations herein represent the conclusions arrived at at the last IJO Advisory Committee meeting in June, 1978 and not the final recommendations to be submitted to UNEP. They are presented to the experts'meeting as a useful point of departure for its discussions on requisite legal measures and controls and it is hoped that it will assist the meeting in formulating final recommendations to be submitted to UNEP.

INTRODUCTION

The Convention for the Protection of the Mediterranean Sea Against Pollution, 1976, provides in Art. 7, which relates to "pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil" that

> "The Contracting Parties shall take all appropriate measures to prevent, abate and combat pollution of the Mediterranean Sea Area resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil".

Thus, the geographical scope of the present study will be limited to the Mediterranean Sea Area as defined in Art. 1 para. 1 of the Barcelona Convention. The general obligation mentioned above raises questions involving the definitions of the key words contained therein. Since any definitions adopted would determine the scope and content of the discussions and study, it is proposed to examine carefully the definitions and meanings of the following key words:

1) Pollution

Art. 2 para. (a) of the Barcelona Convention gives the following definition.

> "Pollution means the introduction by man, directly or indirectly, of substances or energy into the marine environment resulting in such deleterious effects as harm to living resources, hazards to human health, hindrance to marine activities including fishing, impairment of quality for use of sea water and reduction of amenities".

One may wonder whether this definition is wide enough to

include all kinds of deterioration of the marine environment. In particular, this definition does not include certain activities which are recognised as sources of pollution. It may be recalled that the term exploration and exploitation of the seabed and its subsoil is used to cover both offshore mining and offshore drilling. Offshore mining may consist of excavating or scraping the seabed, and may have deleterious effects which would harm living resources, but which is not included in the above definition of pollution. As a consequence, it would be preferable for these recommendations to consider not only "pollution" stricto sensu, but any damage to the marine environment which causes ecological imbalance in that environment. And indeed, the Third Conference on the Law of the Sea has already modified the above definition to cover marine life and other marine activities. It is however advisable to await its establishment of a new definition in international law before proposing a corresponding amendment to the Barcelona Convention. The objective of this introduction is to point out the need for future improvement of this definition.

2) Exploration and exploitation

This expression encompasses all the various methods used in the exploration and exploitation process, whether they are offshore mining, drilling or any other means of exploration and exploitation. These recommendations are intended to cover all these activities but it is pointed out that in certain instances, by virtue of the very nature of the method used, a need to modify these recommendations or to develop new ones might arise. If these recommendations concentrate in certain areas on offshore drilling for hydrocarbons, this is because at the present stage that is the most important and widespread exploration and exploita-

tion activity in the Mediterranean.

A further clarification of this expression is necessary because there are three classes of activities involved:

- exploration for, and exploitation of, the resources of the seabed;
- ancillary activities, e.g., submarine pipelines and transportation of the extracted product from the installation to shore, which can hardly be separated from offshore mining and drilling;
- other uses of the seabed, such as the laying down of underwater cables, which in themselves could not be termed "exploration and exploitation" in the conventional meaning of that expression.

The activities in the third category could nevertheless have harmful effects on the marine environment and it is felt that a substantial gap will be created if such activities are not considered in these recommendations. As a result, and in order to give the subject the detailed treatment that it deserves, the experts are requested to discuss and clarify the meaning of the expression and the activities covered by it. For the moment, however, these recommendations will refer to "exploration and exploitation and other related activities". It may also be advisable to prepare a list of activities covered by that expression to be attached as an annex to whatever protocol is formulated pursuant to Article 7.

3) Continental shelf and the seabed and its subsoil

The Advisory Committee considers it to be beyond the scope or the mandate of this meeting to define the precise jurisdictional limits of the continental shelf. This is in view

of the continuing work of the Third Conference on the Law of the Sea and also because in a region like the Mediterranean, delimitation of this and other marine zones depends on bi- or multi-lateral agreements between States in the region. For the purpose of this meeting however, the following policy will be adopted:

- The recommendations herein apply to the prevention and control of pollution resulting from exploration and exploitation or related activities which are carried out within the limits of the Mediterranean Coastal States' national jurisdictions.
- It is emphasised, however, that this may be a much more extensive interpretation than may be envisaged under Article 7 of the Barcelona Convention, and that the final responsibility and decision as to what activity or what zone to include lie with the coastal States.

4) Installations

It is recognised that the advice of the technical experts on the various types of installations and facilities used in the offshore industry is required in order to formulate a precise definition. For this reason, no definition is proposed at this stage but it is suggested that the definition of installation in Article 1 of the Convention on Civil Liability for Oil Pollution Damage resulting from Exploration for, and Exploitation of, seabed Mineral Resources, London 1976 (the 1976 London Convention) could be used as a model. Transportation systems for the extracted product, such as submarine pipelines, should be included in whatever definition is adopted.

5) Operator

Each Mediterranean Coastal State should designate an operator of an installation for the purposes of these recommendations or, in the absence of such designation, the person who is in overall control of the activities carried out on the installation should be deemed to be the operator.

6) Loss or damage

It is submitted that in the Mediterranean sea area, with systems of law which vary considerably, a precise definition is needed to ensure reasonable consistency. Proposals on such a definition could be submitted for consideration only after a careful study of the relevant legislation and practice in the different jurisdisctions, therefore no definition is recommended at this stage.

PROPOSED RECOMMENDATIONS

1. GENERAL OBLIGATION

It is emphasised that in the marine environment most cases of contamination of the sea in a particular area have an impact on the body of water as a whole and become cases of transfrontier pollution. In a semi-enclosed sea such as the Mediterranean, this is even more so. Therefore in the Mediterranean, a need arises not only for regional regulatory action but for harmonisation of national legislative and regulatory processes which will ensure that uniform preventive and remedial environmental standards are met. These recommendations attempt to satisfy this need by proposing, in addition to a common regional policy, common national

standards for preventive, remedial and compensatory measures such as:-

- environmental impact assessment
- design and construction standards for installations
- monitoring environmental effects of offshore activities
- contingency planning
- civil liability and insurance for damage
- recognition and enforcement of judgments
- financial guarantees for damage

2. ENVIRONMENTAL IMPACT ASSESSMENT

2.1.1 The Mediterranean Coastal States should consider the environmental impact when authorising exploration and exploitation of the continental shelf and the seabed and its subsoil under their jurisdiction and, in accordance with Article 4 (1) and (3) of the Barcelona Convention, they should cooperate with each other in formulating a common policy for the protection of the Mediterranean Sea Area from pollution of the marine environment resulting from this type of activity.

2.1.2 In formulating this policy, States should take into account the objectives behind UNEP's proposed Protocol on Specially Protected Marine and Coastal Areas in order to ensure that such areas are protected when considering the initiation or authorisation of any exploration and exploitation project.

2.1.3 The function of implementing the requirements of the said policy should be performed by the existing Secretariat of the Barcelona Convention which could also serve as a medium for notifying and consulting with other Mediterranean States on the potential and actual transfrontier impact of proposed and on-going exploration and exploitation.

2.1.4 Mediterranean Coastal States should require that an environmental impact assessment be prepared by the operator of a proposed exploration and exploitation project to be carried out in an area under the jurisdiction of any such State. Such assessment should be submitted to the State concerned with a request for a permit to establish the project. The State should notify the Secretariat of such application.

2.1.5 The appropriate State should evaluate the said assessment, and if it is determined that pollution is likely to occur the permit should not be granted.

2.2.1 Applications for a permit should be accompanied by an impact statement covering at least the following details:

(a) the geographical boundaries of the area within which the activities are to be conducted;

(b) an analysis of the initial state of the site, describing in particular, the individual biological features of the surrounding marine environment;

(c) the nature and the aim of the proposed activities;

(d) the method and the means to be used;

(e) an evaluation of the effects of the installation and its operation on the environment;

(f) a description of any effects of the installation and its operation on any endangered species listed in the appendices to the Convention on International Trade in Endangered species of Wild Fauna and Flora, 1973; any species which shall be declared endangered by a Mediterranean Coastal State or which shall be included in any list to be prepared by the Mediterranean Coastal States when formulating the aforesaid common policy, and the measures proposed to protect such species;

(g) a description of the measures proposed to prevent, reduce or eliminate any damage or risks of damage that may be caused to the environment and in particular, to fauna, flora and ecological balance;

(h) possible alternative measures to the proposed ones to prevent, reduce or eliminate any damage or risks of damage that may be caused to the environment and in particular, to fauna, flora and ecological balance;

(i) the measures for rehabilitating or reinstituting the condition of the marine environment at the end of the operation and the removal of the installation.

2.2.2 As a prerequisite for obtaining a permit, assurance should be given by the operator that the installation

will be staffed with licensed personnel.

(a) such licences should be issued by appropriate state authorities upon a showing of personnel training and competence according to common standards of operator training to be established by the Mediterranean Coastal States;

(b) such licences should be renewed at three year intervals upon applications accompanied by proof of successful participation in approved operator training and refresher courses.

2.3 States or the Secretariat may request further details in addition to those specified in paragraph 2.2 above and applicants should be obliged to comply with such request.

2.4 Each State should designate an appropriate agency for issuing permits.

2.5.1 Before the permit granting agency makes its decision to issue a permit, provision should be made to publish such application in at least 2 newspapers having a circulation in the capital of the State and in the towns nearest to the proposed site of the installation. The application should also be transmitted to the Secretariat and the responsible agencies of other countries likely to be affected by the operations.

2.5.2 A public hearing allowing concerned persons to testify should be held before a permit is issued. Authorities and nationals of Mediterranean States likely to be affected by the proposed exploration

and exploitation project should also have the opportunity to participate in the hearing on the same basis as nationals of the State to which the application for a permit has been addressed.

2.6 Installations established prior to the adoption of these recommendations should also obtain a permit and should be obliged to comply with, and/or adjust to, the specified environment standards.

2.7 Any decision of the permit granting agency may be contested in a forum of competent jurisdiction.

2.8 States should submit to the Secretariat detailed information on permits issued by them and the specified measures to ensure protection of the marine environment during and after operations concerning the exploration for and exploitation of the Continental shelf and the seabed and its subsoil.

3. DESIGN, CONSTRUCTION SITING AND REGISTRATION OF INSTALLATIONS

In relation to the design, construction and siting of installations used for exploration and exploitation, it is recommended that:

3.1.1 Installations should be so designed, constructed and equipped in accordance with the best available technology so as to avoid any intentional or unintentional operational discharge.

3.1.2 All installations should be equipped so as to avoid any discharge or leakage or spillage into the sea

during pumping, piping or discharging of the extracted product at any time.

3.1.3 Any ship to or from which pumping, piping or discharge is carried out on or near an installation should be equipped so as to avoid any discharge into the sea during such operations.

3.1.4 All installations should have adequate equipment and storage room to safely retain the extracted product according to common standards of safety applicable in the Mediterranean Sea Area.

3.1.5 All installations should be equipped with devices for monitoring any operation and ascertaining if a discharge is made into the sea.

3.2.1 All installations should be so designed, constructed, staffed, equipped, and operated so as to minimise risks of unintentional harm to the marine environment.

3.2.2 Coastal States should designate around all installations, safety zones of a size so as to avoid interference by, or collisions with, ships. The Coastal States must clearly indicate the installations and zones on charts, to which due publicity must be given.

3.2.3 Coastal States should require that the location of installations are easily ascertainable by adopting uniform auditory and visual warning signals.

3.2.4 Coastal States should specify uniform maximum limits of size for all storage facilities thus reducing the extent of pollution of the marine environment in cases of accidental discharges.

3.2.5 In accordance with the best available technology, installations, and pipelines in particular, should be designed, constructed and equipped with protective devices such as safety valves, in order to minimize damage from ruptures.

3.3.1 Seabed pipelines should be located and buried under the seabed in accordance with common minimum depth requirements to be adopted by Mediterranean Coastal States in order to minimize risks of accidents from contacts with ships or other objects.

3.4 Coastal States should require all installations to be registered and should create and maintain public records of such registration.

3.5 Upon the termination of the operation of an installation, the installation should be removed and all necessary measures taken to rehabilitate the marine environment.

4. MONITORING, INJUNCTIONS AND SANCTIONS

4.1.1 All permit holders should be obliged to undertake at periodic intervals, at least once every two years, an assessment of the effects of the installation and its operation on the surrounding area, taking particular account of the special protection that

must be given to vital habitats and especially, important ecosystems. This report should be addressed to the national permit granting agency and the Secretariat, and made accessible to any interested persons.

4.1.2 For the purpose of enforcing this monitoring obligation States should conduct periodic surveys on the installations for the purpose of verifying that the conditions of the permit are being complied with.

4.2 Each Coastal State should designate an appropriate agency and qualified enforcement officers as well as all necessary technical and scientific personnel.

4.3.1 Injunctive relief, promulgated by the appropriate authorities, should be available to the concerned national authorities against violating operators, in order to enforce the provisions of the permit and/or to take corrective action to prevent damage to the environment.

4.3.2 Failure to comply with such injunctive orders within a time limit to be specified by the appropriate authority, or repeated violations of the conditions of the permit should result in a revocation of the permit.

5. CONTINGENCY PLANNING

The foregoing relate to measures aimed at regulating the operations on an installation in such a way as to prevent

any accident which results, or is likely to result, in an uncontrolled discharge of harmful substances into the marine environment. If for any reason these precautions fail and there is an accident, there should be a contingency plan which can be brought into effect immediately for cooperative action to minimize its effects.

The substance of the relevant provisions in the "Protocol Concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency" is considered to be adequate for this purpose. Where the aforesaid protocol is not binding on all Mediterranean States at the time that these recommendations shall be adopted, the relevant provisions therein should be incorporated as paragraph 5 of these recommendations.

6. EXCHANGE OF INFORMATION

In addition to the foregoing, it is desirable for Mediterranean Coastal States to exchange information among themselves with a view, not only to disseminate information on potentially harmful technology, but principally, to exchange information on new methods whose potential polluting effects are minimized and which, as a result, should be adopted as far as is practicable and economically feasible, by the States. For this purpose it is recommended that:

6.1 A common depository should be established within the Secretariat and should compile information on new legal, scientific or technological developments which might have any effect whatsoever on environmental protection policy.

6.2. Information acquired by the depository should be catalogued and made available to Coastal States by the best available archival methods, including electronic data storage and retrieval systems.

7. CIVIL LIABILITY AND COMPENSATION FOR DAMAGE (+)

It is realized that with regard to rights and obligations between States in cases of transfrontier environmental pollution the question of State responsibility might arise. This topic is considered to be beyond the scope and mandate of the present study and in any case, falls within the competence of other international bodies such as the International Law Commission and UNEP. The objective of the following recommendations is to develop a uniform and comprehensive system of compensation for damage suffered by victims, irrespective of nationality. As a result, no distinction is made between marine pollution damage having transfrontier effects and those which do not -- nationals of foreign countries who suffer damage are to be granted equal access, and equality of treatment with regard to the recommendations stated herein.

(+) The experts' meeting is reminded that one of the problems it has to consider in relation to this topic is the feasibility of having a separate protocol on civil liability and compensation for damage from all sources of marine pollution in the Mediterranean or of incorporating provisions on civil liability and compensation for damage arising from each source of pollution in respective legal instruments.

These recommendations have a 2-fold purpose: they represent a common regional policy for the Mediterranean as well as recommendations for provisions to be included in national legislation. With regard to the latter, the Mediterranean States are urged to harmonise their internal legislation to reflect the principles embodied in these recommendations.

7.1 Coastal States should, by their internal legal processes, provide that compensation be paid to parties injured by actions arising from exploration for, and exploitation of, the resources of the continental shelf and the seabed and its subsoil which cause environmental pollution or other damage.

7.2.1 Subject to exceptions hereinafter stated, civil liability hereby imposed should arise in any case where an operator engages in activities from which environmental pollution or other damage results whether or not such activity is intentional or unintentional (strict liability).

7.2.2 Such liability should attach and continue to attach to any act or omission at the instigation of, during, and after the operation of an installation. Abandonment of such installations should not insulate the operator of an installation form such liability.

7.3 Civil liability should be imposed as follows:

(a) Except as provided in (c) and (d), and subject to the provision in (e) below, the operator of the installation at the time of the incident should

be liable for any pollution damage resulting from the incident.

(b) Where an installation has more than one operator, they should be jointly and severally liable.

(c) No liability for pollution damage should attach to an operator if he proves that the damage resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of exceptional, inevitable and irresistible character.

(d) If both the operator and the wronged parties were responsible for the damage, the forum having jurisdiction should determine appropriate proportional liability, and the operator should pay compensation based only on his portion of the liability.

(e) If the operator proves that the pollution resulted wholly or partly from an act or omission of a third person done with intent to cause damage, or from the negligence of a third person, the operator should be liable for the damage, but should have a right to be indemnified by that third person, or have a right of contribution from him, to the extent to which that person contributed to the cause of the damage, as the case may be.

7.4 It is recognised that decisions on limitation of liability involve important policy considerations. For this reason no recommendations are proposed but the following proposal is submitted for consideration:

If it is decided to adopt a system of limited liability, then the wronged party or claimant should be able to obtain damages in excess of the limited amount in cases where it is established by a judgment of the competent forum that the damage occurred as a result of an act or omission by the operator or his servants or agents with actual knowledge that environmental damage would result.

7.5 An obligation should be imposed on the operator requiring him to have and maintain insurance or other financial security to cover his liability. It is recommended that for this purpose a provision which is similar to that in Article 8 of the 1976 London Convention should be adopted, in addition to the requirement that the State guarantee any part of the operator's liability which remains uncovered by such insurance or security.

7.6.1 Jurisdiction and recognition and enforcement of judgments

For the purpose of ascertaining the proper forum to determine claims for compensation for damage and for reciprocal enforcement of judgments, it is recommended that actions for compensation may be brought only in the courts of any Mediterranean State where pollution damage was suffered as a result of the incident, or in the courts of the Mediterranean Coastal State which exercises sovereign rights for the purpose of exploring and exploiting the resources of the seabed and its subsoil in the area in, or above which, the installation is situated.

For the purpose of determining where the damage was suffered, damage done in an area in which, in accordance with international law, a State has sovereign rights over natural resources should be deemed to have been suffered in that State.

7.6.2 Each State should ensure that its courts possess the necessary jurisdiction to entertain such actions for compensation.

7.7.1 Any judgment given by a court with jurisdiction in accordance with paragraph 7.6 which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, should be recognized in any Mediterranean Coastal State, except:

(a) where the judgment was obtained by fraud; or

(b) where the defendant was not given notice in accordance with principles to be accepted by the Mediterranean States and a fair opportunity to present his case.

7.7.2 A judgment recognized under paragraph 7.7.1 above should be enforceable in each Mediterranean Coastal State as soon as the formalities required in that State have been complied with. The formalities should not permit the merits of the case to be reopened, nor a reconsideration of the applicable law.

8. GUARANTEE FUNDS (+)

8.1 An International Guarantee Fund should be established. This Fund should finance activities related

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(+) In relation to this topic, experts are reminded that in formulating any final proposals to be presented

to the prevention of marine pollution in the Mediterranean at both the national and international levels, and should be used for the following specific purposes:

8.2 Environmental Protection. A portion of the Fund should be retained for environmental protection. It should be used for the preservation and improvement of the environment including, inter alia, financing scientific research, protection of the environment, training of personnel, establishing effective monitoring and enforcement methods, financing clean-up operations, rehabilitating the damaged environment and compensating victims who cannot be otherwise compensated.

8.3 International Compensation. The portion of the funds allocated for this purpose should be used for compensation of victims at the international level under the following circumstances:

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to UNEP, account should be taken of:

Resolution 4 of the Barcelona Conference of Plenipotentiaries which calls upon UNEP, as the Organization responsible for the Secretariat functions of the Convention, to:

> "a) propose that a study should be made of the possibility of establishing an Interstate Guarantee Fund for the Mediterranean Sea Area and that the study should be entrusted to a committee of experts from the Contracting Parties to the Convention;
>
> b) request the said committee of experts to report to the Contracting Parties concerning the implications of the establishment of the fund, in order that, at a later stage, appropriate legal instruments may be prepared."

(i) Where, by reason of a statutory exemption clause, the operator was deemed not to be liable for the pollution damage.

(ii) Where the liability of an operator fell short of the damage done, as a result of any statutory limitation to his liability imposed in accordance with these recommendations.

(iii) Where the operator for any reason was unable to meet in full his legal liabilities for the pollution damage, preventive and remedial measures, and any further damage resulting therefrom.

8.4 Restoration of the condition of sea waters and the seabed. Where damage cannot be directly attributed to a specific installation, the portion of the Fund retained for this purpose should be used at the discretion of the Administrators of the Fund, for the purpose of restoring, insofar as is reasonably possible, the part of the environment which has been detrimentally affected.

8.5 International research and monitoring. Bearing in mind the special circumstances of the Mediterranean, it is recommended that a portion of the Fund should be used to finance continuing research and monitoring directed toward establishing an early warning system to deal with long-term environmental damage.

No recommendations are proposed at this stage for the management and administration of this Fund since these are policy questions. With regard to the

source of these funds, it is realised that this is also a policy consideration, but it is recommended that licensing fees and a portion of the profits from exploration and exploitation should be retained for certain uses of the Fund at least, in particular, for use at the national level referred to in paragraph 8.2 above.

UNEP/IG.14/INF.17/[redacted]

INTERNATIONAL JURIDICAL ORGANIZATION

NON-GOVERNMENTAL

IJO/UNEP JOINT PROJECT
No. FP/1400-77-02 (1352)

FINAL REPORT

December 15, 1978

Original: English

Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil in the Mediterranean.

REPORT OF THE IJO/UNEP MEETING OF EXPERTS ON THE LEGAL ASPECTS OF POLLUTION RESULTING FROM EXPLORATION AND EXPLOITATION OF THE CONTINENTAL SHELF AND THE SEABED AND ITS SUBSOIL IN THE MEDITERRANEAN

1. The Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil in the Mediterranean, was convened as a contribution to the efforts of both the UNEP Working Group of Experts on Environmental Law and the Mediterranean Action Plan. The objective of the meeting is "to define the problems which may arise in this context and to propose legal actions - both national and regional - to prevent and remedy these problems". At the Intergovernmental Review meeting of the Mediterranean Coastal States of the Mediterranean Coastal States on the Mediterranean Action Plan, the Executive Director stated in his report (UNEP/IG 11/3 Annex III, Para. 34) that

> "If the meeting produces concrete results and recommendations, the Mediterranean coastal States may wish to request UNEP to begin, on basis of the information resulting from the IJO expert meeting, preparing guidelines for a Protocol concerning exploration and exploitation of the continental shelf and the seabed and its subsoil in connexion with Article 7 of the Barcelona Convention. These guidelines could then be considered at an intergovernmental consultation of legal and technical experts".

2. This non-governmental meeting, called in accordance with IJO/UNEP JOINT PROGRAM No. FP/1400-77-02 (1352), met in Rome from 11 to 15 December 1978. The list of participants and observers is attached as Annex A to this report.

At the opening of the meeting, Mr. Clelio Darida, Italian Under-Secretary of the Interior, gave a welcoming address on behalf of the Italian Government. Mr. Guttieres on behalf of the IJO presented a report regarding the preparatory work done by the Advisory Committee and the IJO Secretariat for the meeting. This report is attached as Annex B.

3. Mr. M. Guttieres (President of IJO - Italy) was elected Chairman of the Meeting and Mr. Gr. Timagenis (Member of the Advisory Committee - Greece) was elected Rapporteur. The Chairman was assisted during the meeting successively by Mr. J.A. Yturriaga (Spain) and Prof. B. Vukas (Yugoslavia) as Co-Chairmen.

4. The Meeting adopted its agenda and conducted its business as appears in the Informal Summary of Proceedings (IJO doc. ISP/1-4, and 3/Add 1 which are annexed to this Report (Annexes E-H).

5. On 14 December 1978 an open-ended Working Group was established under the Chairmanship of Mr. M. Guttieres to study more closely the questions of civil liability from the exploration and exploitation of the seabed in the Mediterranean Sea.

6. The report of the Working Group on Civil Liability was presented to the meeting which took note of it, recognised that it was the first step in the process of establishing the principles of civil liability in this context and agreed to include it in the final report of the meeting (Annex D).

7. The results of the work of the Meeting on Preventive Measures for the Protection of the Marine Environment in the Mediterranean from Pollution Resulting from Exploration and Exploitation of the Seabed are included in Annex C of this Report.

8. Background Paper No. 5, entitled "Study of requisite legal measures and controls for the prevention and control of pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil in the Mediterranean", which contains the recommendations prepared for discussion at the meeting by the IJO Advisory Committee, is attached to this report as Annex H.

9. The meeting adopted a resolution to thank UNEP, the IJO and the President of IJO in particular, and all the staff and colleagues of the IJO for all their hard work for the organisation and the preparation of this meeting, the FAO for their hospitality and the Italian Government for the support they gave to the work of this meeting and to its successful conclusion.

10. The meeting concluded at 18.40 hrs on December 15.

INTERNATIONAL JURIDICAL

ORGANIZATION

NON-GOVERNMENTAL

IJO/UNEP JOINT PROJECT
No. FP/1400-77-02 (1352)

ANNEX A

LIST OF PARTICIPANTS

AND OBSERVERS

Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil in the Mediterranean.

Rome, December 11-15, 1978

ANNEX A

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INTERNATIONAL JURIDICAL

ORGANIZATION

NON-GOVERNMENTAL

IJO/UNEP JOINT PROJECT
No. FP/1400-77-02 (1352)

ANNEX B
INTRODUCTORY

December 11, 1978

Original: English

Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shelf, the Seabed and its Subsoil in the Mediterranean.

Rome, December 11-15, 1978

ANNEX B

INTRODUCTORY ADDRESS AND

REPORT OF PREPARATORY WORK FOR THE MEETING

by

MARIO GUTTIERES
President IJO

INTRODUCTION

It is my greatest pleasure to welcome you, on behalf of UNEP and the IJO, to Rome and to this experts' meeting.

As we all know, the alarming state of pollution in the Mediterranean has led to the concerted effort on the part of all states in the Mediterranean Coastal region to assist in programs to clean up the sea and to prevent further pollution and its damaging effects. The primary instruments in this regard are UNEP's Mediterranean Action Plan and the component Barcelona Convention.

The Action Plan adopted by 16 Coastal states at a February 1975 inter-governmental meeting has provided the basis for development of a comprehensive environmental program for the protection and development of the Mediterranean Basin.

The legal framework for the program was established at an inter-governmental conference convened by UNEP in Barcelona in February of 1976. At that time the Mediterranean Coastal States approved the texts of the Convention for the Protection of the Mediterranean Sea Against Pollution (what I have refered to as the Barcelona Convention) and two protocols thereunder - one related to dumping from ships and aircraft and the other concerning cooperation to combat pollution in cases of emergency. The two protocols, which enterred into force along with the Convention on 12 February 1978, obviously do not provide for all the specific concerns expressed in the Barcelona Convention. Pollution risks in the Mediterranean originate from many sources and it is the source mentioned in Article 7 of the convention - offshore exploration and exploitation activities - that

concerns us. Specifically, Article 7 states:

> "The contracting parties shall take all appropriate measures to prevent, abate and combat pollution of the Mediterranean Sea area resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil".

Admittedly, this source does not create as grave a pollution risk at present, in comparison with others, but it is necessary to consider the rising potential risk due to increasing offshore activities particularly drillings for hydrocarbons and the recent discoveries of crude oil in the Mediterranean. Particular attention must be given in any case to the risk of accidents.

BRIEF BACKGROUND

One major factor which was given special attention at the formative stage of the project, and which has been a constant guideline throughout, is that of avoiding duplication of work already being done by other bodies, namely the Third Conference on the Law of the Sea, and particularly, UNEP's Working Group of Experts on Environmental Law. With regard to the former, it was decided that there was very little prudence in awaiting its outcome, which was very uncertain, and especially since Article 3 (2) of the Barcelona Convention states that nothing in that Convention shall prejudice the codification or development of the Law of the Sea by the Third Conference. With regard to the latter, it was recognized that since this project was limited to the Mediterranean, and had a specific problem with well-defined limits

of application, it could not be, nor amount to, a duplication of the Working Group's mandate, which was to develop new legal principles at the global level.

The mandate and terms of reference of this project are therefor narrower than those of the two international bodies and the objective of this meeting, stated in very general terms, is to provide the necessary background information on the legal aspects of national and regional action to protect the marine environment from pollution resulting from this offshore activity, by examining the problems involved in the establishment of legal regimes for environmental protection in this region. I would like to note that in this context particular attention will be given to issues - on both national and international levels - of civil liability and compensation for damage deriving from this pollution source. In this regard we must also consider the possibility of establishing an interstate guarantee fund and consider questions of jurisdiction and recognition of foreign judgements.

Our task at this meeting is therefore to identify and analyse all the problems involved and should be regarded as a preliminary foray into the issues and complexities raised by this topic. We are gathered here in our capacities as legal and technical experts, with our varied backgrounds and expertise, in order to achieve the necessary interdisciplinary cooperation that is required (and in this particular field, actually essential) for an intelligent and worthwhile contribution to environmental protection. This approach should facilitate free discussion and lead to an open, productive meeting where legal experts from Mediterranean countries will be able to take account of the technical

realities of offshore activities when considering the legal aspects of pollution from this source.

The results of this exercise are to be presented to the Executive-Director of UNEP and, as was reported at the last Intergovernmental Review meeting of the Mediterranean Coastal States on the Mediterranean Action Plan, may form the basis for the preparation of guidelines for a protocol concerning exploration and exploitation of the continental shelf and the seabed and its subsoil.

It is therefore incumbent upon us to study the information available in the backround papers and to supplement this with information from our individual experiences and expertise, in order to be able to arrive at sound conclusions and to make well-informed decisions.

PREPARATORY WORK

The objectives of this project demand very thorough preparatory work and I will take a few minutes to inform you about what preparation has taken place to date.

With the collaboration of UNEP, the project has been coordinated by the IJO, its staff of experts and the IJO Advisory Committee. Perhaps the most important preparatory work that had to be done by the Advisory Committee following its identification of problems and issues presented by the project was the formulation of outlines for the background papers. I say this because the contents of these documents will determine to an extent, the course which this meeting will take, the issues which it will highlight and eventually, the decision it will arrive at.

We drafted these outlines with one principle in mind - the need to treat the specific topic under consideration with the precision required to ensure that the most salient points in relation to the subject matter of the meeting as a whole became immediately obvious. We also had to decide the type of study that should be conducted for each paper - factual, analytical, discussion-provoking, etc.

For example, it was decided that for our specific purpose, scientific and technical background information should cover all the essential technical realities of offshore resource exploration and exploitation and, at the same time, be presented in a manner comprehensible by all; that is, information providing a factual basis from which legal experts could make reasoned judgements and recommend appropriate action.

As a result, and to give you an example of how this worked in practice, it was decided that the first background paper (the technical paper) should provide information such as:

- Characteristics of the Mediterranean and the types of resources available in the Mediterranean;
- the methods for extracting these;
- how accidents may occur;
- how the technical experts rate the pollution risk from such accidents in the light of existing experience;
- technical methods for reducing pollution, safety measures in accident situations, and prospects for

the future development of environmentally sound technology.

After this initial study of the main outline, the next step (and the stage at which we encountered numerous obstacles) was the stock-taking exercise. As you well know, offshore activities in the Mediterranean are not as prolific as they are, say, in the North Sea and there is a dearth of information due to the relatively recent nature of this activity in this region and the sensitive nature of the information regarding oil finds, production capacities, etc. This lack of information was a recurrent obstacle throughout the preparatory stage of the project. I will give you some examples of how we conducted this fact-finding exercise in our attempt to find a solution to this problem.

The examples I have chosen represent an attempt to collect technological and scientific information, legal information of a general nature and thirdly, information on specific legal problems such as civil liability and insurance.

In order to facilitate the survey, we prepared two questionnaires, one addressed to governments and the other to industries - the intention being that the replies, to the questionnaire to industries would provide some of the technological information required. We decided that rather than solicit information from individual industries - which had the possible disadvantage of duplication of efforts and information - it would be advisable to obtain the overall picture from an Industry Association. We therefore requested the

to complete the questionnaire. The reply, and
ary information received from Petroconsultants,
ed to the E & P Forum policy paper. It obviously
ead in conjunction with Background Paper No. 1
o arrive at a complete picture of the technological
offshore exploration and exploitation.

d that the information therein will stimulate our
s and I hope that the technical experts and obser-
nt rom industries and industry associations will
wi what supplementary information or clarifica-
y require.

onnaire to governments, as you can see, dealt mainly
pollution regulations and controls. At the begin-
say the responses were rather unsatisfactory and
to be desired - the novelty of the subject and
licity of competent departments dealing with various
the subject tended to delays.

fter repeated requests and several communications
le to compile summaries for a majority of the coun-
se are provided as part B of Background Paper

d to the compilation of information concerning spe-
gal topics, we decided that the best method was to
the expertise of the Advisory Committee members.
e members were entrusted with the duty of conducting
r topics such as environmental impact assessment
t, all the topics treated in Background Paper No. 5.
m documentary research work, this research involved

one visit to an oil rig in order to get first hand knowledge or experience of operating techniques and other relevant information, and meetings and discussions with experts from specialised fields such as insurance. Particular attention has been given to the work done by the Third Law of the Sea Conference and UNEP's Working Group of Experts on Environmental Law.

CONCLUSION

In conclusion and noting the number of topics included in our agenda, I recognise that this is a vast subject to be treated in only 5 days and that many of the topics will require extensive discussions. But I am sure that with the expertise we have gathered here, these objectives will be achieved.

Before closing, I would like to thank UNEP for its collaboration and support throughout this joint project.

Particular gratitude is extended as well to the specialist consultants, the international organizations, the industrial associations, the IJO Advisory Committee and the Countries themselves who contributed to the background research and study for this meeting.

I would like finally to thank the Consiglio Nazionale delle Ricerche for its contribution of support to this project.

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ANNEX C

Results of the Meeting of Experts
December 15, 1978

Original: English

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ANNEX C

RESULTS OF THE WORK OF THE MEETING OF EXPERTS

The comments, observations and formulations contained herein are based upon discussions concerning paragraphs 2 thru 6 of Annex I (Background Paper No. 5) and should be read in conjunction with that document.

A. ENVIRONMENTAL IMPACT ASSESSMENT

1) Para. 2.1.1 The following text resulted from the discussion:

"The Mediterranean Coastal States should consider the environmental impact when authorising exploration or exploitation of the continental shelf and the seabed and its subsoil under their jurisdiction".

Note It was clearly undresood that the precise application of this recommendation should be determined at a later stage in the light of the developments in the Law of the Sea, and in accordance with the policy of Mediterranean States.

2) Para. 2.1.2 The following text resulted from the discussion:

"In formulating this policy, States should take into account the Specially Protected Marine and Coastal Areas in order to ensure that such areas are protected when considering the initiation or authorization of any exploration of exploitation project".

3) Para. 2.1.3 The following text resulted from the discussion:

"The Secretariat of the Barcelona Convention could, in accordance with this Convention, serve as a medium for notifying and consulting with other Mediterranean States on the potential and actual transfrontier impact of exploration or exploitation activities".

4) Para. 2.1.4 The following text resulted from the discussion:

"Prior to granting a permit for the exploration or exploitation of the seabed an environmental impact assessment should be prepared and form the basis for granting or refusing the permit.

5) Para. 2.1.5 It was the general view of the national experts that the recommendation should not dictate to States the consequences to be drawn from the Environmental Impact Assessment in such an absolute manner. In this context it was suggested to replace the word "pollution" by the phrase "significant pollution of the waters of the Mediterranean Sea Area". On the other hand, the uncertainties of the term "significant" were noted but also that it is a term used in other instances. In the same connection, it was suggested to qualify pollution as "unacceptable" or "long-term".

It was also suggested that the permit should be denied if pollution is likely to occur "adding to the already existing total pollution

load of the ecosystem" at least "until the applicant proposes an alternative remedial action of the same site or another in the same ecosystem, ensuring that no further deterioration of the ecosystem would occur". An Observer requested the deletion of this sub-paragraph as being unrealistic and too far reaching.

The following text resulted from the discussion:

> "The Coastal State shall grant the permit in accordance with the requirements of this protocol and other additional requirements established in its national legislation or internationally agreed".

6) Para. 2.2.1 It was the general view of the experts that this paragraph requires further study. The view was expressed that the protocol should only lay down certain general principles on the environmental impact assessment and should not enter into details as to its exact contents. In this connection the suggestion was made to replace para. 2.2.2 by the following sentence: "The impact assessment must be adequate to make the evaluation". On the other hand, it was pointed out that even if details of the assessment were to be left to be determined at the national level, it would still be useful to include them in an international instrument as an example or guideline. It was further suggested that if details are agreed, these should be included in an Annex to the Protocol. A distinction was drawn between exploration and exploitation and it was suggested that the contents of the assessment might be different in either case. Similarly, a distinction was drawn between small and major projects and a suggestion was made to avoid overburdening minor projects with unnecessarily complicated and expensive impact assessments.

On a more detailed basis, there was an enquiry as to the meaning of the term "impact statement" and it was suggested to amend the chapeau of the paragraph as follows: "The environmental impact assessment should cover at least the following points". It was suggested to add at the end of sub-para. (d) the phrase "and the qualities of personnel". In sub-para. (f) it was noted that it would be difficult for the operator to specify the effects on endangered species. It was also suggested to avoid the cross-reference to other instruments. In sub-paras. (g) and (h) it was suggested to delete the words "or risk of damage" and to replace the words "and in particular" by the word "including". As for sub-para (i) it was suggested that this is a matter which should be left to the State and not to the operator.

Finally, in connection with this paragraph, it was pointed out that there should always be borne in mind the various stages of the projected activity which are the following: (a) application for permit (b) environmental impact assessment (c) minimum contents (which may be agreed at a regional level) (d) submission of the statement to the State authority (e) minimum common evaluation standards (f) rejection of the application or acceptance, plus monitoring and rehabilitation requirements in the latter case.

7) Para 2.2.2 The following text resulted from the discussion:

"The installations for the exploration or exploitation of the seabed should be staffed by trained and qualified personnel in accordance with acceptable professional standards".

8) Para. 2.3 The following text resulted from the discussion:

"The coastal State may request the applicant operator to provide further details in addition to the minimum required for the environmental impact assessment".

Para 2.4 The following text resulted from the discussion:

"Each State should designate an appropriate authority for issuing permits for the exploration or exploitation of the seabed under its national jurisdiction".

10) Paras 2.5.1 and 2.5.2 Both paragraphs were criticized as being too detailed and as placing too heavy a burden upon States. However, some of the prinicples included in them were acceptable. Thus there was agreement that some public participation is advisable, but the extent of such participation should be determined by each State in accordance with its political and legal system. In this context it was believed that some kind of public information on projects should be given, the extent being left up to States. Similarly, interested parties should be given an opportunity to express their views in accordance with the laws of each State. Public participation was more acceptable for nationals of the licensing State, while there were serious doubts as to the participation of nationals of third States and for foreign States, but it was agreed that this should be ultimately determined by the law of the licensing State. Finally, it was suggested that a distinction should be drawn between exploration (even stages of exploration) and exploitation (or even major exploitation projects) and public participation or its extent to differ in various stages of the entire procedure. A distinction was also suggested between minor and major projects. It was agreed that no recommendations should be drafted, but that these points be included in the report as suggested principles.

11) Para. 2.7 Comments were made to the effect that this paragraph is too vague. It does not specify who may contest (nationals or also non-nationals), on what grounds, etc. It was noted that, as in the previous paragraphs, participation of foreign nationals might be difficult, particularly if the exploration or exploitation is within internal waters or territorial seas.

A suggestion which could lead to agreement reads as follows: "Any

decision of the permit-granting authority may be contested in a national forum of competent jurisdiction in accordance with the national legislation of the Coastal State". The comment was made that perhaps the decisions of other authorities relating to the exploration or exploitation of the seabed should be subject to contest.

12) Para. 2.6 The following text resulted from the discussion:

"Coastal States should require installations established prior to the entry into force of these rules to comply with and/or adjust to the requirements of these rules as far as practicable and reasonable".

13) Para. 2.8 The following text resulted from the discussion:

"States will submit to the secretariat information on permits issued by them and the specified measures to ensure protection of the marine environment during and after operations concerning the exploration for and exploitation of the continental shelf and the seabed and its subsoil".

B. DESIGN, CONSTRUCTION, SITING AND REGISTRATION OF INSTALLATIONS

14) Paragraphs 3.1.1, 3.1.2, 3.1.5, 3.2.1 and 3.2.5 were discussed together the text which resulted from the discussion is as follows:

"Installations, including pipelines, should be so designed, constructed, placed, equipped and maintained, in accordance with technically accepted standards, and operated so as:

(a) to avoid any operational discharges which exceed prescribed national limits;

(b) to prevent discharge, leakage or spillage during handling of the produced product at any time;

(c) to monitor any discharge into the sea;

(d) to minimize risk of any accident that could cause pollution; and

(e) to minimize risks of unintentional harm to the marine environment.

15) A new sub-paragraph was agreed to be added to para. 3 to be as following:

"States shall endeavour to develop common minimum standards for design, construction, equipment and discharges for the protection of the marine environment from pollution arising from the exploration and exploitation of the seabed".

16) Para. 3.1.3 The text which resulted from the discussion is as follows:

"Any ship to or from which pumping, piping or discharge is carried out from or to an installation should be equipped so as to avoid any discharge into the sea in connection with such operation".

17) Para. 3.1.4 The text which resulted from the discussion reads as follows:

"All installations should have adequate equipment and storage room to safely retain the extracted product".

In this connection it was noted that the agreed new sub-paragraph (see above under 15) has application to this situation, also.

18) Para. 3.2.2 The text which resulted from the discussion reads as follows:

"Coastal States may, where necessary, establish reasonable safety zones around such installations in which they may take appropriate measures to ensure the safety both of navigation and of the installation. Due notice shall be given of the exact position of the installation and the extent of the zones".

This language was taken from Article 60 (4) and (6) of the ICNT.

19) Para. 3.2.3 The text which resulted from the discussion reads as follows:

"Coastal States shall require that the location of installations is easily ascertainable by the use of uniform appropriate and effective warning signals".

20) Para. 3.2.4 The text which resulted from the discussion reads as follows:

"Coastal States should specify uniform maximum size for the compartments of the storage facilities, with due regard to the size and nature of the installation, thus reducing the extent of pollution of the marine environment in cases of accidental discharges".

21) Para. 3.3.1 The text which resulted from the discussion reads as follows:

"Submarine pipelines should be located and, where environ-

mentally appropriate, buried under the seabed in a manner minimizing risk of accidents from contacts with ships or other objects".

22) Para. 3.4 The following text resulted from the discussion:

"Coastal States should require all installations to be registered and should create and maintain public records of such registration".

23) Para. 3.5 The following text resulted from the discussion:

"Upon the termination of the operation of an installation, the installation should be removed to the extent that rehabilitation of the marine environment so requires, and all necessary reasonable measures should be taken to rehabilitate those aspects of the environment which are adversely affected".

C. MONITORING, INJUNCTIONS AND SANCTIONS

24) It was agreed that the title is to narrow and it was formulated as follows:

MONITORING AND ENFORCEMENT

25) All paragraphs of this part were discussed together and several comments were made. Finally it was agreed to avoid drafting any text but to express the principles agreed. Thus it was agreed that periodical inspections and surveys of the installations should be carried out. However, it was thought that the periods should not be specified in the recommendations because they depend on various factors and this should be decided by each Government concerned. The idea of having regular inspections was also pointed out. On the other hand, it was agreed that in addition to inspection and survey of the installation, periodical assessment of the environment should be carried out, and the criteria for such assessment should be specified at the later stage. The following suggestion was also made: A tridimensional network of monitoring stations should be established around the installation (point source of pollution) and the permissible concentration of the pollutant should be established. (The analytical procedures should be in accordance with the ones established during the UNEP MED POL Pilot projects at present in progress).
It was, also, agreed that an enforcement authority or authorities (not agency) should be designated. It was, also, pointed out that the operator should not have direct contact with the Secretariat, but the Secretariat to be contacted by the appropriate national

authorities. In connection with the periodic assessment, the role and the importance of independent scientific bodies was stressed.

It also resulted from the discussion that recommendations should be prepared on a monitoring methodology and techniques for pollution resulting from seabed exploitation activities.

D. CONTINGENCY PLANNING

26) The remarks in Paper 5 were noted and it was agreed that this matter should not be discussed. Notwithstanding, the importance of contingency planning was stressed and the need to coordinate and connect local plans with the national plans where they exist.

E. EXCHANGE OF INFORMATION

27) On exchange of information the text of Paper 5 was found unsatisfactory but the principle has merits. In this connection it was agreed that exchange of information in the field of environmental protection from exploration and exploitation of the seabed is essential. However, proliferation of new despositaries was opposed. It was agreed that exchange of information should be made in the context and in harmony with the existing UN exchange of information system. However, it was also noted that such-system should further develop to be not only a reference center of sources of information but a data center of actual scientific information. This could be accomplished gradually since some of the exploration and exploitation information could be considered confidential by Governments or Companies.

F. ADDITIONAL PARAGRAPHS

It resulted from the discussion that it should be added as an express rule that the operator should notify the authorities of the exact location of the installations, as well as of any accident or spillage which occurred. Similarly, express rules should be included on marker buoys over "suspended wellheads".

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ANNEX D

Report of the Working Group on Civil Liability

December 15, 1978.

Original: English

Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shlef, and the Seabed and its Subsoil in the Mediterranean.

ANNEX D

REPORT OF THE WORKING GROUP ON CIVIL LIABILITY, COMPENSATION FOR DAMAGE AND GUARANTEE FUNDS

The comments, observations and formulations contained herein are based upon discussions concerning the introduction to (terms and definitions) and paragraphs 7 and 8 of Annex I (Background Paper No. 5) and should be read in conjunction with that document.

Mr. Guttieres chaired the meeting and explained that the work procedure was to discuss the recommendations in Background Paper No. 5 on Civil Liability and compensation for damage (Para. 7) and guarantee funds (Para. 8).

The group agreed to define and clarify the various expressions used, and for this purpose discussed terms and definitions considered on Pages 2-6 in Background Paper 5, prior to discussing the specific provisions in Paras. 7 and 8.

A. DEFINITIONS

1) Pollution - P. 2

It was agreed that the comments made here adequately pointed out the difficulties raised by the definition of "pollution" in the Barcelona Convention.

2) Exploration and Exploitation - Pp. 3 and 4

Regarding the "ancillary activities" referred to on P. 4, the group recognised the need for more specificity with regard to ships and pipelines. It was suggested that the reference to transportation should specifically exclude transportation by ships, insofar as it is regulated by the 1969 Convention on Civil Liability for Oil Pollution Damage.

With reference to pipelines, it was pointed out that the text did not specify whether transnational pipelines (transporting products, not from an installation to shore but between two countries across the sea) were included. Since such activities involved a use of the continental shelf and posed a threat as a source of pollution, it was suggested that these could be considered either in these recommendations or, at a later stage, in another protocol.

3) Continental Shelf and the Seabed and its Subsoil - Pp. 4 and 5

It was generally accepted that the explanation on Page 5 was adequate.

4) Installations - P. 5

It was agreed that the last sentence under this heading should be modified to read:

> "Transportation systems such as submarine pipelines (but excluding transportation by ships insofar as it is regulated by the 1969 Convention on Civil Liability for Oil Pollution Damage, or any further agreement covering that form of liability) should be included in whatever definition is adopted".

5) Operator - P. 6

Some concern was expressed over whether the term "overall control" was sufficiently specific to facilitate designation of the effective operator. While acknowledging the complexities involved in this subject, it was agreed to retain this paragraph in the introduction and to insert a new paragraph (7.5.2) dealing with this in the civil liability context.

B. CIVIL LIABILITY AND COMPENSATION FOR DAMAGE

6) Para. 7 - Footnote- P. 16

The meeting considered two issues related to this footnote:

First: the feasibility of having a separate protocol on civil liability and compensation for damage from all sources of marine pollution in the Mediterranean (including, for example, land based sources, dumping, offshore exploration and exploitation) or of incorporating provisions on civil liability and compensation for damage arising from each source of pollution in respective/separate legal instruments.

The following three possibilities were discussed:

(i) rules should be included in the same protocol;

(ii) a separate protocol on liability should be adopted concerning all sources of pollution;

(iii) separate, independent protocols on liability should be adopted for each source of pollution.

Second: the feasibility of having separate liability and compensation provisions relating to pollution caused by hydrocarbons, as distinct from other substances (sand, gravel) because of the unique nature of such pollution and the activities of the oil industry.

The need for separate provisions applicable to the oil industry was widely accepted, but there was no agreement concerning the legal instrument within which these provisions should be incorporated.

7) Para. 7.1

Since the obvious intention was to compensate victims for POLLUTION arising from exploration and exploitation and not ACTIONS arising from such activities, the following formulation was accepted.

"Coastal States should, by their internal legal processes, provide that compensation be paid in accordance with the following provisions to persons suffering loss or injury

caused by pollution arising from exploration for, and exploitation of, the resources of the seabed and its subsoil within the limits of national jurisdiction".

8) Para. 7.2.1

It was agreed to amend the text in order to clarify that the concept of strict liability meant liability imposed irrespective of fault, and did not involve any considerations as to whether or not the activity was intentional, as the text implied. Consideration was given to the accuracy of the expression "environmental pollution or other damage" and it was agreed that in this context the adjective "environmental" was superfluous and should be omitted, as should the term "or other" because it implied inclusion of cases where no pollution results. The possibility of introducing, at a later stage, the notion of contamination into the definition of pollution damage was considered, but it was accepted that such an extension raised further difficulties, rather than offered clarifications.

The following formulation received general support.

"Subject to exceptions hereinafter stated, civil liability in accordance with the rules of strict liability (i.e. liability irrespective of the fault of the operator) should arise in any case where an operator engages in activities from which pollution damage results, provided that the operator should incur no liability for hindrance to fishing which results merely from the presence of an installation installed and operated in accordance with the terms of his licence".

9) Para. 7.2.2

It was agreed that liability should not attach after a reasonable period of time had elapsed after abandonment, particularly in cases where such abandonment had been done in accordance with certain specified standards. The following text was proposed:

"Such liability should attach and continue to attach to any act or omission at the instigation of, during, and after the operation of an installation. Abandonment of such installations should not insulate the operator of an installation from such liability unless a reasonable time has elapsed".

10) Para. 7.2.3

This additional sub-paragraph was proposed in response to the need to resolve questions involving the concept of damage dealt with in these recommendations. Such questions included the nature, extent of liability and on whom it should be imposed, particularly in

cases where the damage was a necessary consequence of the licensed activity. The text agreed reads as follows:

> "Liability and relief (injunctions, indemnification, etc.) should be for the protection against socio-economic as well as individual damages, and should cover damage to persons, to things and to the environment. Due consideration should be given as to who should have the right to bring actions for compensation or for other relief in different cases, as well as against whom such actions should be brought, including a public authority, where a permit has been issued by such authority in violation of applicable rules or without reasonable protection for others".

11) Para. 7.2.4

It was agreed to add this new sub-paragraph in order to resolve questions regarding persons who should be entitled to sue. The following text received general support:

> "At the national level, consideration should be given to the incorporation of clear and uniform rules on compensation for damage to collective interests and on the right of "intermediate bodies" especially local governmental bodies (municipalities, regions, etc.) to bring actions in civil courts".

12) Para. 7.3.

Paragraph 7.3 (e) was criticised by some observers representing industry interests as imposing too heavy a burden on the operator for acts which could rightly be termed "terrorist acts" and which should be, therefore, included in the list of exonerating circumstances under Para. 7.3 (c). It was generally agreed however, that damage in the event of acts of terrorism should not have to be borne by the person suffering injury or damage. It was suggested that unless such damage is covered by a guarantee fund, it was reasonable for this loss to fall on the operator, who was responsible for the existence of the installation or activity and who was generally in a better position to anticipate, provide for, and bear this loss. The original text was retained.

13) Para. 7.4

The group considered the negative and positive aspects of imposing a limitation on liability. Some were in favor of imposing a limitation on liability, while others stressed the danger of allowing injury or loss surrered by individuals to go uncompensated where a system of limited liability was adopted. It was suggested that the imposition of limited liability should be considered only if a system of guarantee (e.g. a guarantee fund) existed. In the absence of agreement, the original text was retained.

14) Para. 7.5.1

No consensus was reached on a suggestion that it would be preferable to have a limit on insurance liability in order to facilitate a clearer quantification of the Insurance Industry's maximum exposure to risks. The following text resulted from the discussion:

> "An obligation should be imposed on the operator requiring him to have and maintain insurance or other financial security to cover his liability. The obligation of the insurer could be limited to a certain amount, even if the operator will be liable without limitation. It is recommended that for this purpose a provision which is similar to that in Article 8 of the 1976 London Convention should be adopted, in addition to the requirement that the State or an international fund guarantee any part of the operator's liability which remains uncovered by such insurance or security".

15) Para. 7.5.2

This additional sub-paragraph was proposed following a discussion of the need to impose liability on the effective operator in cases where for example, only a part of a large group of companies was actively engaged in the operation of an installation. The text agreed to reads as follows:

> "Consideration should be given to the attribution of liability to the effective operator, even if not coincident with the operator who appears legally as such (but is only "longa manus" of the former) with adequate provisions for lifting the corporate veil in order to impose liability on any company or companies which, solely or in conjunction with others, exercise ultimate control over the venture. Such provisions could be limited to cases of non-fulfilment of the compulsory insurance or guarantee requirements".

16) Para. 7.6.1

The original text was retained.
A suggestion was made that the arbitration system could be utilised for the settlement of disputes between operators and States, where the particular legal system permits.

17) Para. 7.6.2

The following text was approved:

> "Each State should ensure that its courts possess the necessary jurisdiction to entertain such actions for compensation, and that its courts entertain on a fair and non-discriminatory basis, actions by other member States or their residents and accept witnesses brought by such parties, and evidence gathered by responsible authorities in other member States".

18) Para. 7.6.3

This additional sub-paragraph was thought to be necessary in order to avoid any conflict relating to the choice of the applicable law. The following text was proposed:

> "Each State should ensure the harmonization and adjustment of private international law of each system, so as to render uniform the regimes of competence, jurisdiction and choice of national law applicable to the matter under review".

19) Para. 7.7.1 and 7.7.3

The original texts of Paras. 7.7.1 and 7.7.2 regarding recognition and enforcement of foreign judgment were retained.

C. GUARANTEE FUNDS

19) All subsections of Paragraph 8 were discussed together and several comments were made. Differing views regarding the Fund's objectives and obligations were expressed. Some suggested that the primary objective should be to guarantee compensation to victims of pollution damage, while others thought that the prevention of pollution should be an additional objective.

No agreement was reached with regard to the sources of contribution to the Fund. Some thought that States might wish to contribute the Fund's resources themselves, in recognition of the value of exploration and exploitation activities to the State and its citizens. Others thought that, as an application of the "Polluter-pays-principle" the operators should be obliged to contribute to the Fund in the form of licence fees and production royalties (with the ultimate effect that the expenses would be borne by the consumers of oil). It was pointed out that if the Fund was financed by the oil industry, the latter would have to pay indirectly through the fund what it was not obliged to pay directly under the liability provisions. If so, the exceptions and limitations under the liability provisions were meaningless. In this context, consideration was given to adopting a provision similar to the exceptions to Fund liability under Art. 4 (3) of the 1971 Convention for the establishment of an International Fund for Compensation for Oil Pollution Damage as well as to Article 5 (3) under which non-compliance with the requirements on taking preventive measures would result in the loss of the operator's right to limit his liability.

It was pointed out however, that since the exceptions under Para. 7.3 (c) were narrower than the exceptions to Shipowner liability under the 1969 Civil Liability Convention, each of the exceptions should be considered separately in order to justify their being financed by the industry.

20) At the conclusion of the discussion, the following communication was received from Mr. J.R. Keates, Managing Director of the OPOL Association. It was asked that it be included in the recorde, but did not form the basis of any further discussion by the working group:

> "OPOL is structured so that it can be extended to any country with the approval of the parties to it. Accordingly, if this conference were to take the view that OPOL may have a purpose to serve, on an interim basis, in the Mediterranean Area, any request that OPOL should be extended either to the Mediterranean as a whole or to specific Mediterranean States can be placed before the parties to OPOL. This can be for advice in principle or for actual extension. It would be useful, if this is to be done, for a specific request to be made, possibly either as a resolution of the Conference separate from its recommendations, or as a request from I.J.O.".

21) Title para. 8

It was decided that a proper title for this paragraph would be:

INTERSTATE FUND FOR THE MEDITERRANEAN SEA AREA

22) Para. 8.1

"An Interstate Fund for the Mediterranean Sea Area concerning pollution from offshore activities should be established. This Fund should finance activities relating to preventive and remedial measures for marine pollution in the Mediterranean at both the national and international levels, and should be used for the following specific purposes:".

23) It was decided to re-number Paras. 8.2 - 8.5 as 8.1 (A) - 8.1 (D), since they related to the various purposes of the Fund.

24) Para. 8.1 (A) (formerly 8.2)

It was agreed that because of the lack of consensus on this particular use of the fund the original text be re-formulated as follows:

ENVIRONMENTAL PROTECTION

> "States may wish to constitute a separate Fund or a separate part of the Fund for purposes of environmental protection. It should be used for the preservation and improvement of the environment including, inter alia, financing scientific research, protection of the environment, training of personnel, establishing effective monitoring and enforcement methods, financing clean-up operations and rehabilitating the damaged environment".

25) Para. 8.1 (B) (formerly 8.3)

The title of this paragraph was eliminated, and an additional subsection (IV) was included in order to take account of the "collective interests" considered in Para. 7.2. The following text received general support:

"The portion of the fund allocated for compensation purposes should be used for compensation of victims at the international level under the following circumstances:

(i) Where, by reason of a statutory exemption clause, the operator was deemed not to be liable for the pollution damage.

(ii) Where the liability of an operator fell short of the damage done, as a result of any statutory limitation to his liability imposed in accordance with these recommendations.

(iii) Where the operator for any reason was unable to meet in full his legal liabilities for the pollution damage, preventive and remedial measures, and any further damage resulting therefrom.

(iv) Where damage has been caused to identifiable collective interests, of particular social imprtance, to the extent that the operator is not liable for such damage."

26) Para. 8.1 (C) (formerly 8.4)

This paragraph was left as it stood.

27) Para. 8.1 (D) (formerly 8.5)

It was emphasized that in establishing research, monitoring and early warning systems, account should be taken of institutions and centers already operating in this area. The original text was retained.

28) The paragraph beginning "No recommendations are ...." was retained but re-numbered Para. 8.2.

INTERNATIONAL JURIDICAL ORGANIZATION

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IJO/UNEP JOINT PROJECT
No. FP/1400-77-02 (1352)

ANNEX E

ISP/1
11 Dec 1978

Original: English

Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil in the Mediterranean.

ANNEX E

Informal Summary of Proceedings

11 December 1978

The meeting started at 10:30 hours.

Mr. M. Guttieres, President of IJO, welcomed the experts and observers and asked Mr. Clelio Darida, Under-Secretary of the Interior, to open the meeting. Mr. Darida welcomed the Mediterranean Experts on behalf of the Government of Italy and expressed the great interest of the Government in the protection of marine environment from the exploration and exploitation of the seabed, and in the results of this meeting. Experts were also greeted by Mr. Battaglini, Head of the Official Italian Delegation, who attended the meeting as observers. Finally, Mr. Guttieres described the preparatory work done by the Advisory Committee and the IJO Secretariat to the meeting.

There was an intermission at 11.15 hours.

The meeting was resumed at 12.00 hours.

A. Election of Officers

Mr. Guttieres invited nominations from the floor for the offices of Chairman and Rapporteur for the meeting. Mr. Yturriaga (Spain) proposed that Mr. Guttieres be elected Chairman of the meeting, and that Mr. Timagenis, member of the Advisory Committee of IJO, be Rapporteur. This proposal was seconded by Mr. Vukas (Yugoslavia), Mr. Nicolazo (France) and Mr. El Shinawi (Egypt).

Mr. Guttieres accepted the nomination as Chairman of the session on condition that he was to be helped in directing the debates by various experts. Mr. Timagenis accepted the post of Rapporteur. Mr. Guttieres then requested that Mr. Yturriaga act as Co-Chairman on the first day and proposed having different chairmen on various subjects.

B. Organization of the work of the meeting

Mr. Yturriaga, as Co-Chairman of the meeting, pointed out the need for amending the provisional agenda in order that more time be allocated to the discussions of paper 5 which was the basic paper, including the draft recommendation to be elaborated and submitted to UNEP. Mr. Yturriaga suggested, in this context, that the agenda start with presentation of the various background papers, without discussion on their substance except for questions of clarification. A general debate was proposed to follow for identifying the basic issues and views and defining the exact objectives of the meeting. Finally, discussion should be concentrated on paper 5. Further discussion might be carried on on the background papers if time allowed. He also suggested that there should be flexibility both on the exact allocation of various items and on the procedures. There being no objection, the agenda was adopted as presented by Mr. Yturriaga:

1. Presentation of background papers 1-4 and additional papers
2. General Debate on main purpose of the meeting

3. Discussion on paper 5 and adoption of recommendations

4. Further discussion on background papers 1-4.

C. Presentation of background papers 1 - 4

Mr. V. Pravdic of the Centre for Marine Research "Rudjev Baskovic" Institute, Zagreb, was asked by the Co-Chairman to present his paper. Mr. Pravdic presented a brief summary of Paper 1 (Part A) on the "Implications of Potential Exploration and Exploitation of the Resources of the Seabed and its Subsoil".

Following this presentation, technical questions were asked and comments made by Mr. Lymberides (Greece), Mr. Tsompanopoulos (Greece) and Mr. Oren (Israel).

The meeting was raised at 13.00 hours

The meeting was resumed at 14.45 hours

The Co-Chairman invited Mr. David A. Ross of the Woods Hole Oceanographic Institution, to present his paper. Mr. Ross presented a brief summary of paper No. 1 (Part C) on "General Oceanographic Setting of, and Recent Offshore Hydrocarbon Activity in, the Mediterranean". The presentation was accompanied by projection of illustrative slides.

In order to expedite proceedings, the Co-Chairman suggested that extensive discussion of the papers be avoided at this stage; unless there were any questions for clarification. That not being the case, the Chairman invited Mr. C.V.A. Testoni, Director of the Naval Hydrographic Institute (Italy) to present his paper, which was an additional paper and was closely connected to the one presented by Mr. Ross. Mr. Testoni presented his paper on "Facts about Circulation in the Mediterranean". The presentation was accompanied by projection of slides.

Subsequently, the Co-Chairman invited Mr. C.P. Garner-Richards to present his paper. Mr. Garner-Richards presented a summary of paper No. 1 (Part B) on "Scientific and Technological Aspects of the Exploration and Exploitation of Petroleum Resources of the Continental Shelf with Particular Reference to any Possibilities of Associated Marine Pollution". Following this presentation the meeting was raised at 16.30 hours and the participants moved to another room to attend a projection of a film connected with this paper.

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ANNEX F

ISP/2
12 Dec 1978

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Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil in the Mediterranean.

ANNEX F

Informal Summary of Proceedings

12 December 1978

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12 December 1978

C. Presentation of background papers (cont'd)

1) The Chairman asked Mr. Yturriaga to continue assisting him as Co-Chairman. Subsequently Mr. E. Du Pontavice, Professor at the "Université de droit, d'économie et de sciences sociales de Paris" was invited to present his paper.
Mr. Du Pontavice presented Paper No. 2 (Part A) on "Comparative Analysis of Legislation in Mediterranean Countries Regarding the Protection of the Marine Environment Against Pollution Caused by Exploration on and Exploitation of the Continental Shelf".

2) Comments were made and questions were asked by Mr. Lahlou (Morocco), Mr. Vukas (Yugoslavia), Mr. Hellman (Israel), Mr. Fleischer (Norway), Mr. Oren (Israel), Mr. Barnard (E & P Forum), Mr. Patrono (Italian Delegation), Mr. Ural (Turkey), Mr. Poley (E & P Forum), Mr. McLoughlin (U.K.) and Mr. Yturriaga (Spain).

3) The experts from Mediterranean Countries made additions and clarifications on the legislation of their countries. The Co-Chairman suggested that written comments be handed to Prof. Du Pontavice for completion and revision of the paper where appropriate.

4) Subsequently the Co-Chairman invited questions (if any) on the paper of Mr. Garner-Richards as well as the relevant film, which was a matter pending from the meeting of 11 December 1978. Comments were made and questions were asked by Mr. Hellman (Israel), Mr. Lymberides (Greece), Mr. Bouayad (Morocco) and Mr. Pravdic (Yugoslavia).

5) The Co-Chairman invited Mr. T. Treves, Professor of Public International Law, University of Turin, to present his paper. Mr. Treves presente Paper No. 3 on "Survey of International and Regional Agreements Relevant to the Protection of the Mediterranean Sea from Pollution Resulting from Exploration and Exploitation of the Continental Shelf, the Seabed and its Subsoil and a Study of the Participation of the Mediterranean States in These".

6) Comments were made and questions asked by Mr. Vukas (Yugoslavia), Mr. Nicolazo (France), Mr. Lymberides (Greece), Mr. Oren (Israel), Mr. Yturriaga (Spain), Mr. Du Pontavice (France) and Mr. Fleischer (Norway).

7) In view of the limited time available before the lunch break, Mr. J.L. Nicolazo Crach, Director of the Section of the Ministry of Environment and the Quality of Life (France) was invited to present his paper which was a short one. Mr. Nicolazo presented an additional report on "Contingency Plans in the case of Accidental Pollution - French Measures".

The Meeting was adjourned at 13.00 hours

The meeting was resumed at 14.30 hours

8) The Chairman invited Mr. McLoughlin, of the University of Manchester, to present his paper. Mr. McLoughlin presented paper No. 4 on "Civil Liabilities and Guarantee Fund".

9) Immediately after this presentation, Mr. J. Mayda, Professor of the University of Puerto Rico, was asked to present his study. Mr. Mayda presented his study on "Environmental Impact Assessment".

10) Subsequently the Chairman gave the floor to Mr. A.R. Selli, Professor of Geology at the University of Bologna, for a brief description of "Mineral Resources of the Mediterranean".

11) By this description, the presentation of background papers and other background information was concluded.

12) The Chairman invited comments on the preceding papers. Comments were made and questions asked by Mr. Pravdic (Yugoslavia), Mr. Mendia (IJO), Mr. Ross, Mr. Tsompanopoulos (Greece), Mr. Hellman (Israel), Mr. Lymberides (Greece).

The meeting was adjourned at 17.00 hours

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IJO/UNEP JOINT PROJECT
No. FP/1400-77-02 (1352)

ANNEX G

ISP/3
13 Dec 1978

Original: English

Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil in hte Mediterranean

ANNEX G

Informal Summary of Proceedings

13 December 1978

The meeting opened at 09.45 hours

D. General Debate

1) The Chairman invited Mr. Yturriaga to co-chair the meeting.

2) Mr. Yturriaga took the Chair and described the work schedule planned for the day. He suggested that the meeting would be open for a general debate before the detailed discussion of Paper 5. He called upon Mr. Timagenis (Rapporteur) to introduce the objective of this debate.

3) Mr. Timagenis explained that the purpose of Paper 5 was to introduce the three major topics, namely: environmental impact assessment, preventive measures, civil liability, for discussion; and to request the experts to advise, firstly, on the areas of concentration and, secondly, to answer these questions:

(1) the technical feasibility of the recommendations in Paper 5;
(2) the level of specificity of these recommendations;
(3) whether these recommendations may be adjusted to the national legal systems of their countries; and
(4) whether, in their personal opinion, the recommendations could meet the needs and gain the acceptance of the Mediterranean Governments.

4) The Co-Chairman invited general comments and asked for the views of the participants on the question raised in the footnote appearing on page 16 of Paper 5, in particular whether liability rules should be included in the same or in a separate protocol.

5) Mr. Nicolazo (France) in answering the question of the Chairman said that priority should be given to preventive measures. Liability could be discussed at a later stage and perhaps it would be advisable to deal with it separately, either in one protocol for all the sources of pollution distinguishing among various types of pollution or, preferably, in separate protocols for the liability for each type of pollution.

6) Mr. Hellman (Israel) agreed that the work should concentrate on preventive measures which, by itself, is an ambitious project and could be the pattern for other regional conventions or even a global one. He pointed out that emphasis should be placed on acquisition, analysis and sharing of data. However, he thought it would be useful to discuss liability and place the conclusions of the meeting before the politicians for action.

7) Mr. Ural (Turkey) suggested a focus on preventive measures and dealing with liability in a separate protocol.

8) Mr. Deeb (Lebanon) agreed that efforts should be concentrated on preventive measures.

9) Mr. Buttigieg (Malta) agreed that priority should be given to preventive measures. He emphasized the need for sharing data, fixing minimum standards and finding the "golden rule" on the level of strictness of the suggested measures.

10) Mr. Lahlou (Morocco) agreed that emphasis must be placed on preventive measures. Liability could be left aside for the moment. Neither the Barcelona Convention nor the existing protocols were adequately specific on the matter. He further called attention to Recommendation 37 of the report of the meeting of Monaco adopted by the Parties, and to Resolution 4 of the Barcelona Conference which suggested discussion of liability by governmental experts which might render the discussion at the present meeting redundant.

11) Mr. Pravdic (Yugoslavia) pointed out that during the work of the meeting, attention should be paid to the changes which are brought to the seabed by the exploration and exploitation, and then he made some comments on specific parts of Paper 5. He concluded that requirements for remedies of damages caused to the environment did not mean that prevention of damage should not be taken care of.

12) Mr. Belgacem (Tunisia) said that all seemed to be interested in liability but there was a divergence of views as to the type of liability: fault liability or strict liability, etc. He agreed that preventive measures should be emphasized but said that attention must also be paid to compensation.

13) Mr. Yturriaga (Spain) noted that the meeting should take into account the precedent of the Convention on Civil Liability for damage caused by the exploration and exploitation of the North Sea. The experts should also bear in mind the differences between the Mediterranean and the North Sea. Account should also be taken of the existing Convention of Barcelona and the existing protocols and the protocol on land-based sources which is under preparation. The starting point for the meeting should be Article 12 of the Barcelona Convention which implied that, first, preventive rules should be adopted for all sources of pollution, and then liability rules. However, liability should not be ignored. His preference was to have a protocol on liability for all sources of pollution. As to the territorial limits of the protocol, he suggested the widest possible scope in order to cover the entire Mediterranean seabed.

14) Mr. Imperti (Monaco) said that all forms of pollution should be tackled in due course and stressed the importance of the meeting because of the participation of both legal and technical experts.

15) Mr. Selli (Italy) said that during the discussions in the meeting, the limit of tolerance of pollution should be discussed and also regular pollution from exploitation of the seabed which is not so impressive as the blow-out, but still harmful to the environment.

16) Mr. Lymberidies(Greece) suggested that the order of Paper 5 be followed. He said a distinction should be drawn between technical and legal matters and suggested the setting up of two groups of experts: one for legal matters and one for technical matters, with the purpose of examining in particular what is missing at the moment from the existing conventions and regulations concerning the Mediterranean Sea. In his opinion, the work of the Meeting was to supplement existing rules and not to take overlapping action.

17) Mr. El Shinnawi (Egypt) said that the term "offshore activities" seemed a better illustration of the scope of the work of the meeting. He agreed that liability was a complicated matter of international law but believed, nevertheless, that it would be useful to include at least the general principles on liability in the same protocol.

18) Mr. Guttieres (Chairman) made a summary of the debate and explained the mandate given to the IJO from UNEP for the Meeting.

19) Miss Kuwabara (UNEP) informed the meeting that views of the Mediterranean Coastal States would be sought at the first meeting of the Contracting Parties to the Barcelona Convention scheduled to be convened early 1979, to exaimine the possibilities of adopting additional protocols. Suggested topics for such protocols included a) exploration and exploitation of the seabed non-living resources and b) liability and compensation.

20) Mr. Yturriaga (Co-Chairman) summed up the debate as follows:
(a) Attention should be concentrated on preventive measures;

(b) on liability, three views had been expressed:
  (i) rules should be included in the same protocol;
  (ii) a separate protocol on liability should be adopted concerning all sources of pollution;
  (iii) separate, independent protocols on liability should be adopted for each source of pollution. The proposal on establishing groups could be better examined at a later stage.

The meeting adjourned at 11.45 and reconvened at 12.30 hours

E. Consideration of Paper 5

21) The Co-Chairman opened the discussion on Paper 5.

22) Paragraphs 2.1.1 and 2.1.2 were discussed together and comment were made by Prof. Mayda (USA), Mr. Oren (Israel), Prof. Fleischer (Norway), Prof. Treves (Italy), Mr. Lymberides (Greece), Prof. Vukas (Yugoslavia), Mr. El Shinnawi (Egypt), Mr. Nicolazo (France), Mr. Yturriaga (Spain), Mr. Hellman (Israel) and Prof. Piquemal (France).

23) Discussion started on para. 2.1.3 of Paper 5 and comments were made by Mr. Yturriaga (Spain).

The meeting adjourned at 13.30 and reconvened at 15.00 hours

24) The Chairman invited Prof. Vukas (Yugoslavia) to assist him as Co-Chairman and, there being no objection by the participants, Mr. Vukas acted as Co-Chairman.

25) Consideration of para. 2.1.3 of Paper 5 was continued and comments were made by Mr. Lymberides (Greece), Mr. Nicolazo (France), Prof. Vukas (Yugoslavia) and Mr. Konaris (Greece).

26) The discussion was continued on paragraphs 2.1.4 and 2.1.5. Comments were made by Prof. Mayda (USA), Mr. Hellman (Israel), Mr. McLoughlin (U.K.), Prof. Pravdic (Yugoslavia), Mr. Lymberides (Greece), Mr. Ross (USA), Prof. Mendia (Italy), Mr. El Shinnawi (Egypt), Mr. Nicolazo (France), Prof. Vukas (Yugoslavia) and Mr. Van de Vijver (ICC).

27) During the discussion on Para. 2.2.1 comments were made by Mr. Konaris (Greece), Prof. Mayda (USA), Mr. Lymberides (Greece), Prof. Treves (Italy), Mr. Hellman (Israel), Ms. Mariani (France), Prof. Vukas (Yugoslavia), Prof. Mendia (Italy), Mr. Nicolazo (France), Mr. Tsobanopoulos (Greece), Mr. McLoughlin (U.K.), Mr. Bouayad (Morocco) and observers from the E & P Forum and ICC.

28) During the discussion on Para. 2.2.2 comments were made by Prof. Mendia (Italy), Mr. Lymberides (Greece), Mr. Konaris (Greece), Mr. McLoughlin (U.K.), Prof. Vukas (Yugoslavia), Mr. Hellman (Israel), Mr. Nicolazo (France) and Mr. El Shinnawi (Egypt).

29) During the discussion on Para. 2.3 comments were mady by Mr. Lymberides (Greece), Prof. Vukas (Yugoslavia), Prof. Treves (Italy), Mr. Ural (Turkey) and Prof. Mayda (USA).

30) During the discussion on Para. 2.4 comments were made by Mr. Lymberidis (Greece), Mr. Ural (Turkey), Mr. Nicolazo (France), Ms. Mariani (France), Mr. Guttieres (IJO) and Prof. Mayda (USA).

The meeting was adjourned at 17.30 hours

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Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil in the Mediterranean.

ANNEX G

Add after paragraph 10 the following text:

10a) Mr. Vukas (Yugoslavia) said that Paper 5 provided a useful basis for discussion. However, not all problems connected with pollution from the exploration or exploitation of the seabed should be dealt with on a regional basis; some should be decided on a global basis.
An example of this is the difference of the definition of pollution in the Barcelona Convention and in the ICNT drafted by the UN Conference on the Law of the Sea. Some of the concepts to be dealt on a global level were the concept of loss or damage and the basic principles on Civil Liability.
Further, he pointed out that the territorial scope of the suggested recommendation, should be clarified that is whether they refer to the Continental Shelf, only or also to the territorial sea or even the seabed of the high seas.
In this connection, he noted, even the Barcelona Convention is not adequately clear.
Summing up, he pointed out that (a) it should be borne in mind that environmental action should be taken at three levels (international, regional and national); (b) that the territorial scope should be clarified (c) that efforts should be concentrated to preventive measures, and he concluded by reminding that these views are entirely personal.

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ANNEX H

ISP/4
14 Dec 1978

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Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil in the Mediterranean.

ANNEX H

Informal Summary of Proceedings

14 December 1978

1) The meeting was opened at 09.45 hours

2) Prof. Vukas (Yugoslavia) was asked by the Chairman to continue acting as Co-Chairman.

3) At the beginning of the meeting Prof. C.A. Fleischer (Norway) presented a paper on "Civil Liability in the North Sea Area" and Mr. M. Guttieres presented Paper No. 4 (Part B) on Guidelines for a Uniform and Harmonized Régime for Civil Liability and Related Problems of Coordination of Individual National Laws (in Mediterranean Coastal States).

4) The Meeting established an open-ended Working Group for the purpose of studying more closely the problems of civil liability connected with damage caused by pollution arising from the exploration and exploitation of the seabed, and presenting its report to the Plenary Meeting on 15 December 1978.

The meeting was adjourned at 11.30 hours and resumed at 12.00 hours

E. Consideration of Paper 5 (cont'd)

5) During discussion of paragraphs 2.5.1, 2.5.2 and 2.7 comments were made by Mr. Nicolazo (France), Mr. Lymberides (Greece), Prof. Treves (Italy), Prof. Mayda (USA), Mr. Garner-Richards (Consultant to IJO), Prof. Vukas (Yugoslavia) and Mr. Bouayad (Morocco).

6) During discussion of paragraph 2.6 comments were made by Mr. Lymberides (Greece), Prof. Piquemal (France), Prof. Vukas (Yugoslavia), Mr. Nicolazo (France), Prof. Lee (USA), Prof. Treves (Italy) and Prof. Mendia (Italy).

The meeting was adjourned at 13.15 hours and resumed at 14.45 hours

7) Paragraphs 3.1.1, 3.1.2, 3.1.5, 3.2.1, 3.2.5 were discussed together. In the discussion of these paragraphs comments were made by Observers of E & P Forum, Mr. Lymberides (Greece), Mr. Nicolazo (France), Mr. Tsompanopoulos (Greece), Mr. Deeb (Lebanon), Prof. Mayda (USA) and Ms. Kuwabara (UNEP).

8) Paragraph 3.1.3 was discussed and comments were made on it by Prof. Lee (USA), Mr. Tsompanopoulos (Greece), Ms. Kuwabara (UNEP) and Observers from E & P Forum.

9) Paragraph 3.1.4 was discussed and comments were made by Mr. Tsompanopoulos (Greece).

10) Paragraph 3.2.3 was discussed and comments were made theron by Prof. Mayda (USA), Mr. Lymberides (Greece) and Observers from E & P Forum.

11) Paragraph 3.2.4 was discussed and comments were made by Observers for E & P Forum and Mr. Ross (USA).

12) Paragraph 3.3.1 was discussed and comments were mady by Mr. Tsompanopoulos (Greece), Prof. Mendia (Italy) and Observers from E & P Forum.

13) Paragraph 3.4 was discussed and comments were made by Prof. Mayda (USA), Mr. Nagelmachers (EEC), Prof. Vukas (Yugoslavia) and Mr. Tsompanopoulos (Greece).

14) Paragraph 3.5 was discussed and comments were made by Prof. Mendia (Italy), Prof. Vukas (Yugoslavia), Mr. Nicolazo (France), Prof. Mayda (USA), Prof. Pravdic (Yugoslavia), Mr. Deeb (Lebanon), Prof. Treves (Italy) and Mr. Lymberides (Greece) and Mr. Tsompanopoulos (Greece).

The meeting was adjourned at 17.30 hours

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ANNEX I

BACKGROUND PAPER NO. 5

Original: English

Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil in the Mediterranean.

Rome, 11-15 December 1978

STUDY OF REQUISITE LEGAL MEASURES AND CONTROLS FOR THE PREVENTION AND CONTROL OF POLLUTION RESULTING FROM EXPLORATION AND EXPLOITATION OF THE CONTINENTAL SHELF AND THE SEABED AND ITS SUBSOIL IN THE MEDITERRANEAN

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Meeting of Experts on the Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil in the Mediterranean.

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STUDY OF REQUISITE LEGAL MEASURES AND CONTROLS FOR THE PREVENTION AND CONTROL OF POLLUTION RESULTING FROM EXPLORATION AND EXPLOITATION OF THE CONTINENTAL SHELF AND THE SEABED AND ITS SUBSOIL IN THE MEDITERRANEAN

Recommendations prepared by

the working group of the IJO Advisory Committee

The recommendations herein represent the conclusions arrived at at the last IJO Advisory Committee meeting in June, 1978 and not the final recommendations to be submitted to UNEP. They are presented to the experts'meeting as a useful point of departure for its discussions on requisite legal measures and controls and it is hoped that it will assist the meeting in formulating final recommendations to be submitted to UNEP.

INTRODUCTION

The Convention for the Protection of the Mediterranean Sea Against Pollution, 1976, provides in Art. 7, which relates to "pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil" that

> "The Contracting Parties shall take all appropriate measures to prevent, abate and combat pollution of the Mediterranean Sea Area resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil".

Thus, the geographical scope of the present study will be limited to the Mediterranean Sea Area as defined in Art. 1 para. 1 of the Barcelona Convention. The general obligation mentioned above raises questions involving the definitions of the key words contained therein. Since any definitions adopted would determine the scope and content of the discussions and study, it is proposed to examine carefully the definitions and meanings of the following key words:

1) Pollution

Art. 2 para. (a) of the Barcelona Convention gives the following definition.

> "Pollution means the introduction by man, directly or indirectly, of substances or energy into the marine environment resulting in such deleterious effects as harm to living resources, hazards to human health, hindrance to marine activities including fishing, impairment of quality for use of sea water and reduction of amenities".

One may wonder whether this definition is wide enough to

include all kinds of deterioration of the marine environment. In particular, this definition does not include certain activities which are recognised as sources of pollution. It may be recalled that the term exploration and exploitation of the seabed and its subsoil is used to cover both offshore mining and offshore drilling. Offshore mining may consist of excavating or scraping the seabed, and may have deleterious effects which would harm living resources, but which is not included in the above definition of pollution. As a consequence, it would be preferable for these recommendations to consider not only "pollution" stricto sensu, but any damage to the marine environment which causes ecological imbalance in that environment. And indeed, the Third Conference on the Law of the Sea has already modified the above definition to cover marine life and other marine activities. It is however advisable to await its establishment of a new definition in international law before proposing a corresponding amendment to the Barcelona Convention. The objective of this introduction is to point out the need for future improvement of this definition.

2) Exploration and exploitation

This expression encompasses all the various methods used in the exploration and exploitation process, whether they are offshore mining, drilling or any other means of exploration and exploitation. These recommendations are intended to cover all these activities but it is pointed out that in certain instances, by virtue of the very nature of the method used, a need to modify these recommendations or to develop new ones might arise. If these recommendations concentrate in certain areas on offshore drilling for hydrocarbons, this is because at the present stage that is the most important and widespread exploration and exploita-

tion activity in the Mediterranean.

A further clarification of this expression is necessary because there are three classes of activities involved:

- exploration for, and exploitation of, the resources of the seabed;
- ancillary activities, e.g., submarine pipelines and transportation of the extracted product from the installation to shore, which can hardly be separated from offshore mining and drilling;
- other uses of the seabed, such as the laying down of underwater cables, which in themselves could not be termed "exploration and exploitation" in the conventional meaning of that expression.

The activities in the third category could nevertheless have harmful effects on the marine environment and it is felt that a substantial gap will be created if such activities are not considered in these recommendations. As a result, and in order to give the subject the detailed treatment that it deserves, the experts are requested to discuss and clarify the meaning of the expression and the activities covered by it. For the moment, however, these recommendations will refer to "exploration and exploitation and other related activities". It may also be advisable to prepare a list of activities covered by that expression to be attached as an annex to whatever protocol is formulated pursuant to Article 7.

3) Continental shelf and the seabed and its subsoil

The Advisory Committee considers it to be beyond the scope or the mandate of this meeting to define the precise jurisdictional limits of the continental shelf. This is in view

of the continuing work of the Third Conference on the Law of the Sea and also because in a region like the Mediterranean, delimitation of this and other marine zones depends on bi- or multi-lateral agreements between States in the region. For the purpose of this meeting however, the following policy will be adopted:

- The recommendations herein apply to the prevention and control of pollution resulting from exploration and exploitation or related activities which are carried out within the limits of the Mediterranean Coastal States' national jurisdictions.
- It is emphasised, however, that this may be a much more extensive interpretation than may be envisaged under Article 7 of the Barcelona Convention, and that the final responsibility and decision as to what activity or what zone to include lie with the coastal States.

4) Installations

It is recognised that the advice of the technical experts on the various types of installations and facilities used in the offshore industry is required in order to formulate a precise definition. For this reason, no definition is proposed at this stage but it is suggested that the definition of installation in Article 1 of the Convention on Civil Liability for Oil Pollution Damage resulting from Exploration for, and Exploitation of, seabed Mineral Resources, London 1976 (the 1976 London Convention) could be used as a model. Transportation systems for the extracted product, such as submarine pipelines, should be included in whatever definition is adopted.

5) Operator

Each Mediterranean Coastal State should designate an operator of an installation for the purposes of these recommendations or, in the absence of such designation, the person who is in overall control of the activities carried out on the installation should be deemed to be the operator.

6) Loss or damage

It is submitted that in the Mediterranean sea area, with systems of law which vary considerably, a precise definition is needed to ensure reasonable consistency. Proposals on such a definition could be submitted for consideration only after a careful study of the relevant legislation and practice in the different jurisdisctions, therefore no definition is recommended at this stage.

PROPOSED RECOMMENDATIONS

1. GENERAL OBLIGATION

It is emphasised that in the marine environment most cases of contamination of the sea in a particular area have an impact on the body of water as a whole and become cases of transfrontier pollution. In a semi-enclosed sea such as the Mediterranean, this is even more so. Therefore in the Mediterranean, a need arises not only for regional regulatory action but for harmonisation of national legislative and regulatory processes which will ensure that uniform preventive and remedial environmental standards are met. These recommendations attempt to satisfy this need by proposing, in addition to a common regional policy, common national

standards for preventive, remedial and compensatory measures such as:-

- environmental impact assessment
- design and construction standards for installations
- monitoring environmental effects of offshore activities
- contingency planning
- civil liability and insurance for damage
- recognition and enforcement of judgments
- financial guarantees for damage

2. ENVIRONMENTAL IMPACT ASSESSMENT

2.1.1 The Mediterranean Coastal States should consider the environmental impact when authorising exploration and exploitation of the continental shelf and the seabed and its subsoil under their jurisdiction and, in accordance with Article 4 (1) and (3) of the Barcelona Convention, they should cooperate with each other in formulating a common policy for the protection of the Mediterranean Sea Area from pollution of the marine environment resulting from this type of activity.

2.1.2 In formulating this policy, States should take into account the objectives behind UNEP's proposed Protocol on Specially Protected Marine and Coastal Areas in order to ensure that such areas are protected when considering the initiation or authorisation of any exploration and exploitation project.

2.1.3 The function of implementing the requirements of the said policy should be performed by the existing Secretariat of the Barcelona Convention which could also serve as a medium for notifying and consulting with other Mediterranean States on the potential and actual transfrontier impact of proposed and on-going exploration and exploitation.

2.1.4 Mediterranean Coastal States should require that an environmental impact assessment be prepared by the operator of a proposed exploration and exploitation project to be carried out in an area under the jurisdiction of any such State. Such assessment should be submitted to the State concerned with a request for a permit to establish the project. The State should notify the Secretariat of such application.

2.1.5 The appropriate State should evaluate the said assessment, and if it is determined that pollution is likely to occur the permit should not be granted.

2.2.1 Applications for a permit should be accompanied by an impact statement covering at least the following details:

(a) the geographical boundaries of the area within which the activities are to be conducted;

(b) an analysis of the initial state of the site, describing in particular, the individual biological features of the surrounding marine environment;

(c) the nature and the aim of the proposed activities;

(d) the method and the means to be used;

(e) an evaluation of the effects of the installation and its operation on the environment;

(f) a description of any effects of the installation and its operation on any endangered species listed in the appendices to the Convention on International Trade in Endangered species of Wild Fauna and Flora, 1973; any species which shall be declared endangered by a Mediterranean Coastal State or which shall be included in any list to be prepared by the Mediterranean Coastal States when formulating the aforesaid common policy, and the measures proposed to protect such species;

(g) a description of the measures proposed to prevent, reduce or eliminate any damage or risks of damage that may be caused to the environment and in particular, to fauna, flora and ecological balance;

(h) possible alternative measures to the proposed ones to prevent, reduce or eliminate any damage or risks of damage that may be caused to the environment and in particular, to fauna, flora and ecological balance;

(i) the measures for rehabilitating or reinstituting the condition of the marine environment at the end of the operation and the removal of the installation.

2.2.2 As a prerequisite for obtaining a permit, assurance should be given by the operator that the installation

will be staffed with licensed personnel.

(a) such licences should be issued by appropriate state authorities upon a showing of personnel training and competence according to common standards of operator training to be established by the Mediterranean Coastal States;

(b) such licences should be renewed at three year intervals upon applications accompanied by proof of successful participation in approved operator training and refresher courses.

2.3 States or the Secretariat may request further details in addition to those specified in paragraph 2.2 above and applicants should be obliged to comply with such request.

2.4 Each State should designate an appropriate agency for issuing permits.

2.5.1 Before the permit granting agency makes its decision to issue a permit, provision should be made to publish such application in at least 2 newspapers having a circulation in the capital of the State and in the towns nearest to the proposed site of the installation. The application should also be transmitted to the Secretariat and the responsible agencies of other countries likely to be affected by the operations.

2.5.2 A public hearing allowing concerned persons to testify should be held before a permit is issued. Authorities and nationals of Mediterranean States likely to be affected by the proposed exploration

and exploitation project should also have the opportunity to participate in the hearing on the same basis as nationals of the State to which the application for a permit has been addressed.

2.6 Installations established prior to the adoption of these recommendations should also obtain a permit and should be obliged to comply with, and/or adjust to, the specified environment standards.

2.7 Any decision of the permit granting agency may be contested in a forum of competent jurisdiction.

2.8 States should submit to the Secretariat detailed information on permits issued by them and the specified measures to ensure protection of the marine environment during and after operations concerning the exploration for and exploitation of the continental shelf and the seabed and its subsoil.

3. DESIGN, CONSTRUCTION SITING AND REGISTRATION OF INSTALLATIONS

In relation to the design, construction and siting of installations used for exploration and exploitation, it is recommended that:

3.1.1 Installations should be so designed, constructed and equipped in accordance with the best available technology so as to avoid any intentional or unintentional operational discharge.

3.1.2 All installations should be equipped so as to avoid any discharge or leakage or spillage into the sea

during pumping, piping or discharging of the extracted product at any time.

3.1.3 Any ship to or from which pumping, piping or discharge is carried out on or near an installation should be equipped so as to avoid any discharge into the sea during such operations.

3.1.4 All installations should have adequate equipment and storage room to safely retain the extracted product according to common standards of safety applicable in the Mediterranean Sea Area.

3.1.5 All installations should be equipped with devices for monitoring any operation and ascertaining if a discharge is made into the sea.

3.2.1 All installations should be so designed, constructed, staffed, equipped, and operated so as to minimise risks of unintentional harm to the marine environment.

3.2.2 Coastal States should designate around all installations, safety zones of a size so as to avoid interference by, or collisions with, ships. The Coastal States must clearly indicate the installations and zones on charts, to which due publicity must be given.

3.2.3 Coastal States should require that the location of installations are easily ascertainable by adopting uniform auditory and visual warning signals.

3.2.4 Coastal States should specify uniform maximum limits of size for all storage facilities thus reducing the extent of pollution of the marine environment in cases of accidental discharges.

3.2.5 In accordance with the best available technology, installations, and pipelines in particular, should be designed, constructed and equipped with protective devices such as safety valves, in order to minimize damage from ruptures.

3.3.1 Seabed pipelines should be located and buried under the seabed in accordance with common minimum depth requirements to be adopted by Mediterranean Coastal States in order to minimize risks of accidents from contacts with ships or other objects.

3.4 Coastal States should require all installations to be registered and should create and maintain public records of such registration.

3.5 Upon the termination of the operation of an installation, the installation should be removed and all necessary measures taken to rehabilitate the marine environment.

4. MONITORING, INJUNCTIONS AND SANCTIONS

4.1.1 All permit holders should be obliged to undertake at periodic intervals, at least once every two years, an assessment of the effects of the installation and its operation on the surrounding area, taking particular account of the special protection that

must be given to vital habitats and especially, important ecosystems. This report should be addressed to the national permit granting agency and the Secretariat, and made accessible to any interested persons.

4.1.2 For the purpose of enforcing this monitoring obligation States should conduct periodic surveys on the installations for the purpose of verifying that the conditions of the permit are being complied with.

4.2 Each Coastal State should designate an appropriate agency and qualified enforcement officers as well as all necessary technical and scientific personnel.

4.3.1 Injunctive relief, promulgated by the appropriate authorities, should be available to the concerned national authorities against violating operators, in order to enforce the provisions of the permit and/or to take corrective action to prevent damage to the environment.

4.3.2 Failure to comply with such injunctive orders within a time limit to be specified by the appropriate authority, or repeated violations of the conditions of the permit should result in a revocation of the permit.

5. CONTINGENCY PLANNING

The foregoing relate to measures aimed at regulating the operations on an installation in such a way as to prevent

any accident which results, or is likely to result, in an uncontrolled discharge of harmful substances into the marine environment. If for any reason these precautions fail and there is an accident, there should be a contingency plan which can be brought into effect immediately for cooperative action to minimize its effects.
The substance of the relevant provisions in the "Protocol Concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency" is considered to be adequate for this purpose. Where the aforesaid protocol is not binding on all Mediterranean States at the time that these recommendations shall be adopted, the relevant provisions therein should be incorporated as paragraph 5 of these recommendations.

6. EXCHANGE OF INFORMATION

In addition to the foregoing, it is desirable for Mediterranean Coastal States to exchange information among themselves with a view, not only to disseminate information on potentially harmful technology, but principally, to exchange information on new methods whose potential polluting effects are minimized and which, as a result, should be adopted as far as is practicable and economically feasible, by the States. For this purpose it is recommended that:

6.1 A common depository should be established within the Secretariat and should compile information on new legal, scientific or technological developments which might have any effect whatsoever on environmental protection policy.

6.2. Information acquired by the depository should be catalogued and made available to Coastal States by the best available archival methods, including electronic data storage and retrieval systems.

7. CIVIL LIABILITY AND COMPENSATION FOR DAMAGE (+)

It is realized that with regard to rights and obligations between States in cases of transfrontier environmental pollution the question of State responsibility might arise. This topic is considered to be beyond the scope and mandate of the present study and in any case, falls within the competence of other international bodies such as the International Law Commission and UNEP. The objective of the following recommendations is to develop a uniform and comprehensive system of compensation for damage suffered by victims, irrespective of nationality. As a result, no distinction is made between marine pollution damage having transfrontier effects and those which do not -- nationals of foreign countries who suffer damage are to be granted equal access, and equality of treatment with regard to the recommendations stated herein.

(+) The experts' meeting is reminded that one of the problems it has to consider in relation to this topic is the feasibility of having a separate protocol on civil liability and compensation for damage from all sources of marine pollution in the Mediterranean or of incorporating provisions on civil liability and compensation for damage arising from each source of pollution in respective legal instruments.

These recommendations have a 2-fold purpose: they represent a common regional policy for the Mediterranean as well as recommendations for provisions to be included in national legislation. With regard to the latter, the Mediterranean States are urged to harmonise their internal legislation to reflect the principles embodied in these recommendations.

7.1 Coastal States should, by their internal legal processes, provide that compensation be paid to parties injured by actions arising from exploration for, and exploitation of, the resources of the continental shelf and the seabed and its subsoil which cause environmental pollution or other damage.

7.2.1 Subject to exceptions hereinafter stated, civil liability hereby imposed should arise in any case where an operator engages in activities from which environmental pollution or other damage results whether or not such activity is intentional or unintentional (strict liability).

7.2.2 Such liability should attach and continue to attach to any act or omission at the instigation of, during, and after the operation of an installation. Abandonment of such installations should not insulate the operator of an installation form such liability.

7.3 Civil liability should be imposed as follows:

(a) Except as provided in (c) and (d), and subject to the provision in (e) below, the operator of the installation at the time of the incident should

be liable for any pollution damage resulting from the incident.

(b) Where an installation has more than one operator, they should be jointly and severally liable.

(c) No liability for pollution damage should attach to an operator if he proves that the damage resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of exceptional, inevitable and irresistible character.

(d) If both the operator and the wronged parties were responsible for the damage, the forum having jurisdiction should determine appropriate proportional liability, and the operator should pay compensation based only on his portion of the liability.

(e) If the operator proves that the pollution resulted wholly or partly from an act or omission of a third person done with intent to cause damage, or from the negligence of a third person, the operator should be liable for the damage, but should have a right to be indemnified by that third person, or have a right of contribution from him, to the extent to which that person contributed to the cause of the damage, as the case may be.

7.4. It is recognised that decisions on limitation of liability involve important policy considerations. For this reason no recommendations are proposed but the following proposal is submitted for consideration:

For the purpose of determining where the damage was suffered, damage done in an area in which, in accordance with international law, a State has sovereign rights over natural resources should be deemed to have been suffered in that State.

7.6.2 Each State should ensure that its courts possess the necessary jurisdiction to entertain such actions for compensation.

7.7.1 Any judgment given by a court with jurisdiction in accordance with paragraph 7.6 which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, should be recognized in any Mediterranean Coastal State, except:

(a) where the judgment was obtained by fraud; or

(b) where the defendant was not given notice in accordance with principles to be accepted by the Mediterranean States and a fair opportunity to present his case.

7.7.2 A judgment recognized under paragraph 7.7.1 above should be enforceable in each Mediterranean Coastal State as soon as the formalities required in that State have been complied with. The formalities should not permit the merits of the case to be reopened, nor a reconsideration of the applicable law.

8. GUARANTEE FUNDS (+)

8.1 An International Guarantee Fund should be established. This Fund should finance activities related

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(+) In relation to this topic, experts are reminded that in formulating any final proposals to be presented

to the prevention of marine pollution in the Mediterranean at both the national and international levels, and should be used for the following specific purposes:

8.2 Environmental Protection. A portion of the Fund should be retained for environmental protection. It should be used for the preservation and improvement of the environment including, inter alia, financing scientific research, protection of the environment, training of personnel, establishing effective monitoring and enforcement methods, financing clean-up operations, rehabilitating the damaged environment and compensating victims who cannot be otherwise compensated.

8.3 International Compensation. The portion of the funds allocated for this purpose should be used for compensation of victims at the international level under the following circumstances:

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to UNEP, account should be taken of:

Resolution 4 of the Barcelona Conference of Plenipotentiaries which calls upon UNEP, as the Organization responsible for the Secretariat functions of the Convention, to:

> "a) propose that a study should be made of the possibility of establishing an Interstate Guarantee Fund for the Mediterranean Sea Area and that the study should be entrusted to a committee of experts from the Contracting Parties to the Convention;
>
> b) request the said committee of experts to report to the Contracting Parties concerning the implications of the establishment of the fund, in order that, at a later stage, appropriate legal instruments may be prepared."

(i) Where, by reason of a statutory exemption clause, the operator was deemed not to be liable for the pollution damage.

(ii) Where the liability of an operator fell short of the damage done, as a result of any statutory limitation to his liability imposed in accordance with these recommendations.

(iii) Where the operator for any reason was unable to meet in full his legal liabilities for the pollution damage, preventive and remedial measures, and any further damage resulting therefrom.

8.4 Restoration of the condition of sea waters and the seabed. Where damage cannot be directly attributed to a specific installation, the portion of the Fund retained for this purpose should be used at the discretion of the Administrators of the Fund, for the purpose of restoring, insofar as is reasonably possible, the part of the environment which has been detrimentally affected.

8.5 International research and monitoring. Bearing in mind the special circumstances of the Mediterranean, it is recommended that a portion of the Fund should be used to finance continuing research and monitoring directed toward establishing an early warning system to deal with long-term environmental damage.

No recommendations are proposed at this stage for the management and administration of this Fund since these are policy questions. With regard to the

source of these funds, it is realised that this is also a policy consideration, but it is recommended that licensing fees and a portion of the profits from exploration and exploitation should be retained for certain uses of the Fund at least, in particular, for use at the national level referred to in paragraph 8.2 above.