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Second Meeting of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea against pollution and its related protocols and Intergovernmental Review Meeting of Mediterranean Coastal States on the Action Plan

Cannes, 2 - 7 March 1981

REPORT OF THE UNEP WORKING GROUP OF EXPERTS ON ENVIRONMENTAL LAW ON ITS SEVENTH SESSION

GENEVA, 21 - 31 OCTOBER 1980

The Intergovernmental Review Meeting of the Mediterranean Coastal States and First Meeting of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea (Geneva, February 1979) requested UNEP to bring to the attention of the Mediterranean Governments and the European Economic Community the actions that have been taken and that should assist them to undertake steps for developing a protocol on the prevention of pollution arising from offshore mining and drilling carried out in the areas within national jurisdiction (UNEP/IG.14/9, Annex V, para. 34).

The report of the UNEP Working Group of Experts on Environmental Law on its seventh session is distributed herewith for the information of the participants.

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WORKING GROUP OF EXPERTS ON
ENVIRONMENTAL LAW
Seventh session
Geneva, 21-31 October 1980

REPORT OF THE WORKING GROUP OF EXPERTS ON ENVIRONMENTAL LAW ON ITS SEVENTH SESSION

Rapporteur: Mr. A. Makarewicz (Poland)

I. INTRODUCTION

1. By decision 91 (V) of 25 May 1977, the Governing Council of the United Nations Environment Programme (UNEP) requested the Executive Director, inter alia, to convene a small group of governmental experts on environmental law to examine and further pursue the work undertaken by UNEP in the field of environmental law in accordance with Governing Council decision 66 (IV). Accordingly a Working Group of Experts on Environmental Law was constituted.

2. At its first session, held in Geneva from 29 August to 2 September 1977, the Group decided that its first study should be on the legal aspects of off-shore mining and drilling carried out within the limits of national jurisdiction and proposed the terms of reference for the study. 1/

3. During the second session held in Geneva from 3 to 12 April 1978, the Group considered a background paper prepared by Professor A.L.C. de Mestral, UNEP Consultant. 2/ On the basis of the paper and recommendations prepared by the Secretariat 3/, the Group discussed policy, goals, objectives and methods of carrying out the study. It then drew up a comprehensive work programme for pursuing the topic of off-shore mining and drilling within the limits of national jurisdiction at its subsequent sessions. 4/

1/ UNEP/WG.12/3, Annex p.1.

2/ UNEP/WG.14/2.

3/ UNEP/WG.14/3.

4/ UNEP/WG.14/4, Annex II.

Na.80-1523

4. At its third (5-14 March 1979) and fourth (2-12 October 1979) sessions held in Geneva, the Group examined matters included in section II, part I, of its work programme 5/. Having discussed a background paper prepared by Professor A. Kiss, UNEP Consultant 6/, the Group drew up conclusions on matters under the following sections: A. General provisions; B. Authorization system; C. Assessment of the impact on the environment; D. Appropriate environmental monitoring systems; and E. Consideration of the transfrontier environmental impact when authorizing off-shore mining and drilling, in particular notification and consultation. 7/ During the fourth session the Group also undertook preliminary discussions on its long-term programme of work, including the priority list of topics for its future work.

5. The fifth session of the Group was held in Geneva from 19 to 29 February 1980. On the basis of a background paper: "Study of off-shore mining and drilling carried out within the limits of national jurisdiction - safety measures to prevent pollution" 8/ - prepared by the International Juridical Organization (IJO), UNEP Consultant, and draft recommendations 9/, the Group agreed to conclusions on Part 2 (Safety measures) 10/. At the request of the Governing Council, 11/ the Group also discussed its future work. After thorough discussions it was able to reach consensus only on a single subject for its immediate future work ("The improvement of remedies available on a national and international basis to the victims of pollution, taking into account the concept of non-discrimination"). For the purpose of preparing its long-term programme of work, the Group stressed the necessity of having before it the Secretariat's study concerning on-going work on environmental law in various international forums 12/.

6. At its sixth session held in Paris from 30 June to 11 July 1980, the Group, having discussed a background paper: "Study of off-shore mining and drilling carried out within the limits of national jurisdiction - contingency planning" 13/, prepared by the IJO, UNEP Consultant, and draft recommendations 14/, agreed to the conclusions on Part 3 (Contingency planning and implementation measures) 15/. The Group also engaged in a preliminary exchange of views on Part 4 (Liability and compensation).

5/ UNEP/WG.14/4, Annex II.

6/ UNEP/WG.24/2.

7/ UNEP/WG.34/1, Annex III.

8/ UNEP/WG.36/5.

9/ UNEP/WG.36/3.

10/ UNEP/WG.36/6, Annex II.

11/ UNEP/GC.7/11.

12/ UNEP/WG.36/6, para. 17.

13/ UNEP/WG.36/4.

14/ UNEP/WG.36/2.

15/ UNEP/WG.44/2, Annex II.

7. The seventh session of the Working Group was held in Geneva from 21 to 31 October 1980. Experts from the following states participated in the session: Argentina, Australia, Brazil, Canada, Colombia, Finland, France, Germany, Federal Republic of, Ghana, Greece, India, Jamaica, Morocco, Netherlands, Poland, Sweden, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela. Observers from the following States attended the session: Austria, Chile, Nigeria and Zaire. Observers from the following international organizations were also present: United Nations Office of Legal Affairs, Third United Nations Conference on the Law of the Sea, United Nations Economic Commission for Europe, World Health Organization, Organization for Economic Co-operation and Development, Inter-governmental Maritime Consultative Organization, The Baltic Marine Environment Protection Commission, The Commission for the Prevention of Marine Pollution by Dumping from Ships and Aircrafts (Oslo Commission), Commission for the Prevention of Marine Pollution from Land-based Sources (Paris Commission), International Juridical Organization and International Union for the Conservation of Nature and Natural Resources.

8. The session was opened by Mr. A. Manos, Acting Director of the UNEP Regional Office for Europe. The Group elected Mr. M.F. Surbiguet (France) as Chairman and Mr. A. Makarewicz (Poland) as Rapporteur. The provisional agenda of the session was adopted. 16/

16/ UNEP/WG.49/1.

II. ORGANIZATION OF WORK AND DISCUSSION ON THE CONCLUSIONS

9. In accordance with its work schedule the Group examined topics under Part 4 (Liability and compensation). A background paper "Study of off-shore mining and drilling within the limits of national jurisdiction - liability to pay for compensation for environmental damage" 17/ and draft conclusions 18/ prepared by Mr. J. McLoughlin, UNEP Consultant, formed basis for this examination. Experts from Finland and Sweden presented a paper containing proposals for amending in various ways the set of draft conclusions prepared by the Consultant. 19/

10. The background paper and draft conclusions were introduced by Mr. McLoughlin. The Group indicated that these materials were very useful for its work and expressed its appreciation to Mr. McLoughlin for his work.

11. The Group had a lengthy discussion of the conclusions in Part 4, but because of the complexity of the subject matter as well as the late distribution of the background papers, it was not able to complete only a first reading of all the conclusions in this Part. Lack of time prevented it from completing consideration of a draft conclusion concerning State responsibility (conclusion 8). 20/ The text of these conclusions appears in Annex II of this report.

12. In the course of the debate the representative of OECD expressed the interest of his organization in the work of the Group. The representative of the Legal Office of the United Nations drew the attention of the Group to the work carried out by the International Law Commission on the subject of international liability for injurious consequences arising out of acts not prohibited by international law.

13. The Group decided that it would examine the content and placing of the definition of "installation" at a later stage of its work and confirmed that it would be advisable to examine certain other pending problems (including: using the expression "coastal States" instead of "States" and whether the expression "environment" should be used with or without the adjective "marine") following adoption of all its conclusions.

14. A number of experts considered that it would be necessary to give further attention to the substantive meaning of the term "damage" as used in Part 4.

15. It was emphasized by the Group that the points of view expressed and conclusions reached reflected the opinions of experts in their personal capacities and should not be taken as committing the governments of the respective States.

17/ UNEP/WG.49/2.

18/ UNEP/WG.49/2/Add.1.

19/ UNEP/WG.49/CRP.1.

20/ UNEP/WG.49/2/Add.1.

III. FUTURE WORK

16. It was again underlined that because the next session of the Working Group would be the final one and would constitute the most crucial stage of its work, continuity in the attendance of experts would be highly desirable. In addition, the Group requested that the information as to the exact date and venue of the coming session be communicated to member States well in advance. It was suggested that it would be most useful if a small working party could meet just prior to the Group's eighth session for the purpose of carrying out a preliminary examination of the internal consistency of the entire text from the point of view of drafting. In this regard it was mentioned that would be most useful to that preliminary working party if experts who had any comments which would assist it in its work could forward them in writing to the Secretariat in Nairobi to arrive not later than 5 December 1980.

17. The Group was informed by two experts of developments connected with the proposed Senior Level Meeting on Environmental Law.

Annex I

LIST OF PARTICIPANTS

ARGENTINA

Sr. Juan Vicente SOLA, Secretario de Embajada, Ministerio de Relaciones Exteriores y Culto

AUSTRALIA

Mr. Robert Gordon CRICK, First Secretary, Australian High Commission, Nairobi, Deputy Permanent Representative to UNEP

BRAZIL

M. Luiz Dilermando DE CASTELLO CRUZ, Assesseur du Chef du Département, Consulaire et Juridique du Ministère des Relations Extérieures

CANADA

Mr. James LYNCH, Second Secretary, Mission of Canada to the United Nations in Geneva

Mr. D.W. SMITH, Legal Operations Division, Department of External Affairs

COLOMBIA

Sr. Luis Edmundo MEDINA M., Abogado, Ministerio de Relaciones Exteriores

FINLAND

Mr. Raimo PEKKANEN, Justice, Supreme Administrative Court

Mr. Martti Antero KOSKENNIEMI, Attaché, Ministry of Foreign Affairs

FRANCE

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M. Philippe JEANSON, Chargé de Mission au Ministère de l'Environnement et du Cadre de Vie

M. Bernard Marie de GOUTTES, Magistrat Conseiller juridique, Chef du Bureau de la législation, Ministère de l'Industrie

GERMANY, FEDERAL REPUBLIC OF

Mr. Alexander MUHLEN, Counsellor, Permanent Mission, Geneva

Mr. Erich ROMBACH, First Counsellor, Permanent Mission, Geneva

Mr. Johann WENZL, Second Secretary and Consul, Permanent Mission, Geneva

GHANA

Mr. Dominio Macrae MILLS, Registrar-General, Ministry of Justice

GREECE

Mr. Elefterios DANELLIS, Counsellor, Permanent Mission, Geneva

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JAMAICA

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MOROCCO

M. Abdelkader LAHMIDI, Chef de Division, Aménagements et Planification Physique, D.A.T., Ministère de l'Habitat et Aménagement du Territoire

M. Mohamed Hassan BENSAFIDDINE, Secrétaire Auprès de la Mission Permanente du Maroc à Genève

NETHERLANDS

Mr. Hans R. VAN DER VALK, Assistant Legal Adviser, Ministry of Foreign Affairs

POLAND

Mr. Andrzej MAKAREWICZ, Adviser to the Minister, Ministry of Foreign Affairs

Ms. Iwona RUMMEL-BULSKA, Doctor in Law, Polish Institute of International Affairs

SWEDEN

Ms. Kaj MANNHEIMER, Head of Section, Political Department, Ministry of Foreign Affairs

UNION OF SOVIET SOCIALIST REPUBLICS

Mr. Edward VEKILOV, Chief, Department of Environment on the Sea, Ministry of Gas

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Mr. Patrick John SZELL, Legal Directorate, Department of the Environment

UNITED STATES OF AMERICA

Mr. Peter OLSON, Attorney, Legal Adviser's Office, Department of State

VENEZUELA

Sra. Imeria DE ODREMAN, Abogado, Consultoría Jurídica, Ministerio del Ambiente y de los Recursos Naturales Renovables

Observers

AUSTRIA

Mr. Winfred LANG, Deputy Permanent Representative, Permanent Mission, Geneva

CHILE

Sr. Sergio ANGELLOTTI, Consejero, Misión Permanente, Ginebra

Sr. Ricardo PLAZA, Consejero, Misión Permanente, Ginebra

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Mr. Olayiwola SOMORIN, Barrister-at-Law, Legal Adviser, Federal Ministry of Justice

ZAIRE

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Ms. Mahnoush ARSANJANI
Legal Office
New York

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Secretary, Third Committee
Third United Nations Conference on the Law of the Sea

Mr. C. Ian JACKSON
Senior Economic Affairs Officer
Economic Commission for Europe

Specialized agencies

WORLD HEALTH ORGANIZATION

Mr. Yuji SEGUSHI, Associate Legal Officer

INTERGOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

Mr. F. MASSON

Intergovernmental organizations

ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Mr. Richard STEIN, Deputy to the Director of Legal Affairs

THE BALTIC MARINE ENVIRONMENT PROTECTION ORGANIZATION

Mr. Raimo PEKKANEN

THE COMMISSION FOR THE PREVENTION OF MARINE POLLUTION BY DUMPING FROM SHIPS AND AIRCRAFTS (OSLO COMMISSION)

Ms. K. MANNHEIMER

THE COMMISSION FOR THE PREVENTION OF MARINE POLLUTION FROM LAND-BASED SOURCES (PARIS COMMISSION)

Ms. K. MANNHEIMER

Non-governmental organizations

INTERNATIONAL JURIDICAL ORGANIZATION

Mr. Mario GUTTIERES, Lawyer, President IJO

Mr. Charles St. CHARLES

INTERNATIONAL UNION FOR THE CONSERVATION OF NATURE AND NATURAL RESOURCES

Mr. Wolfgang E. BURHENNE, Sec. Parliament. General

Secretariat

Mr. Aldo MANOS
Acting Director, Regional Office for Europe, UNEP, Geneva

Ms. Sachiko KUWABARA
Programme Officer, Environmental Law Unit, UNEP

Mr. J. OFORI-BOATENG
Consultant, UNEP

Mr. James MCLOUGHLIN
Consultant, UNEP

Annex II

LIABILITY AND COMPENSATION

1. States should adopt appropriate measures for the determination of liability and the payment of prompt and adequate compensation for damage suffered as a result of operations. There should be appropriate arrangements for the award and payment of compensation when damage is suffered outside their respective jurisdictions.

2. (a) States should, by appropriate measures, provide for the determination of a person or persons, physical or juridical, to be liable for damage which may result from operations. The operator should be liable unless otherwise provided. Where more than one person is liable, their liability should be joint and several;

(b) The person or persons liable should retain any right of recourse he or they may have against others;

(c) The person or persons referred to in paragraph (a) should be strictly liable for any damage resulting from operations. This need not be applied when no risk of significant adverse effects on the environment is involved or when considered inappropriate.

(d) Exceptions to or modifications of liability may be made, inter alia, when damage results from circumstances of an exceptional, inevitable and irresistible character.

3. (a) A State should assure to any person who has suffered damage as a result of operations an enforceable right to full compensation from the person or persons referred to in paragraph (a) of conclusion 35, bearing in mind, inter alia, the degree to which such person may have contributed to the damage. This paragraph is subject to paragraph (b).

(b) The maximum liability of the person or persons referred to in paragraph (a) of conclusion 35 may be limited, taking fully into account the foreseeable damage and the objective of providing full compensation to the person suffering the damage.

4. (a) States should make provision for the joint and several liability of persons referred to in paragraph (a) of conclusion 35 in cases where damage results from the operations of two or more of those persons and where that damage is not reasonably separable.

(b) In cases where the cause of damage emanates from a defined area, but where the particular operation or operations from which the damage emanates cannot be ascertained, States should consider making provision for arrangements to provide compensation.

5. (a) The person or persons referred to in paragraph (a) of conclusion 35 should be required to make appropriate arrangements to meet awards of compensation made against them.

(b) Such arrangements could consist, inter alia, of insurance, compensation funds or other financial securities.

6. A State should give consideration to providing that public authorities or other appropriate persons who take reasonable action designed to prevent the spread of pollution, minimize damage, cleanse and restore the areas affected are entitled to recover all expenses incurred, including payment for any damage caused by such action.

7. A State should consider making arrangements, where its domestic law permits, under which a specific person or authority is entitled to sue for compensation for damage to the environment resulting from operations, in cases where otherwise no person or authority would have standing to sue.

8. In order to facilitate the payment of compensation to persons who have suffered damage as a result of operations, States should consider, inter alia, encouraging the establishment of compensation funds. Such funds may be established to deal in particular with cases in which a person may remain wholly or partially uncompensated.

9. (a) In any one region of operations, States should endeavour to conclude a regional agreement on liability and compensation. Such an agreement, where feasible, should seek to eliminate or reduce any differences in the nature and extent of liability and measure of compensation available under the respective national legal régimes and in the procedures for obtaining relief.

(b) In endeavouring to reach such agreement, States should, with particular regard to the case of persons who suffer damage within the jurisdiction of one State as the result of operations within the jurisdiction of another State, give consideration to the following:

(i) determination of applicable law and competence of courts and facilitation of access to courts;

(ii) enforcement of awards and judgements.

(c) When appropriate, States could give consideration to the establishment of intergovernmental commissions.

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WORKING GROUP OF EXPERTS ON
ENVIRONMENTAL LAW
Eighth session
Geneva, 2-13 February 1981

REPORT OF THE WORKING GROUP OF EXPERTS ON ENVIRONMENTAL LAW ON ITS EIGHTH SESSION

Rapporteur: Mr. A. MAKAREWICZ (Poland)

I. INTRODUCTION

1. By decision 91 (V) of 25 May 1977, 1/ the Governing Council of the United Nations Environment Programme (UNEP) requested the Executive Director, inter alia, to:

"(a) Convene as soon as possible a small working group on environmental law, composed of government experts, to examine and further pursue, inter alia, the work undertaken in accordance with Governing Council decision 66 (IV); 2/

...".

The Executive Director accordingly constituted a Working Group of Experts on Environmental Law, comprising government-nominated experts selected on the basis of equitable geographical distribution and of expressed interest.

1/ Official Records of the General Assembly, Thirty-second Session, Supplement No. 25 (A/32/25), p. 126.

2/ Official Records of the General Assembly, Thirty-first Session, Supplement No. 25 (A/31/25), p. 127. Decision 66 (IV) requested the Executive Director to continue:

"(b) The development of the relevant principles contained in the Declaration of the United Nations Conference on the Human Environment, in particular through studies by a group of governmental and other experts on the specific aspects of the problem relating to liability for pollution and other environmental damage, and compensation for such damage, taking into account, inter alia, the progress made in the work of the Intergovernmental Working Group of Experts on Natural Resources Shard by Two or More States as well as the relevant work of the other international, governmental and non-governmental organizations and forums, especially that of the International Law Commission;". (Report of the Intergovernmental Working Group of Experts on Natural Resources Shared by Two or More States, see UNEP/IG.12/2).

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2. At its first session held at Geneva from 29 August to 2 September 1977, the Group, after considering the topics recommended by the Executive Director, decided that its first study should be of the legal aspects of offshore mining and drilling carried out within the limits of national jurisdiction and proposed terms of reference for the study. 3/ It also tentatively suggested several topics for future study without any indication that any one of them deserved a higher priority than another. 4/

3. During the second session held in Geneva from 3 to 12 April 1978, the Group considered a background paper prepared by Professor A.L.C. de Mestral, UNEP Consultant. 5/ On the basis of the paper and recommendations prepared by the Secretariat, 6/ the Group discussed policy, goals, objectives and methods of carrying out the study. It then drew up a comprehensive work programme for examining at its subsequent sessions the topic of offshore mining and drilling carried out within the limits of national jurisdiction. 7/

4. At its third (5-14 March 1979) and fourth (2-12 October 1979) sessions held in Geneva, the Group examined the matters included in Part 1 of its work programme. 8/ Having discussed a background paper prepared by Professor A. Kiss, UNEP Consultant, 9/ the Group drew up draft conclusions on matters under the following sections: A. General provisions; B. Authorization system; C. Assessment of the impact on the environment; D. Appropriate environmental monitoring systems; and E. Consideration of transfrontier environmental impact when authorizing operations; procedures for information and consultation. 10/ During the fourth session, the Group also undertook preliminary discussions on its long-term programme of work, including the consideration of a priority list of topics for its future work.

5. The fifth session of the Group was held in Geneva from 19 to 29 February 1980. On the basis of a background paper: "Study of offshore mining and drilling carried out within the limits of national jurisdiction - safety measures to prevent pollution", 11/ prepared by the International Juridical Organization (IJO), UNEP Consultant, and draft recommendations, 12/ the Group agreed to draft conclusions on Part 2 (Safety measures). 13/ At the request of the Governing Council, 14/ the Group

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3/ UNEP/WG.12/3, Annex, p. 1.

4/ Ibid., para. 9.

5/ UNEP/WG.14/2.

6/ UNEP/WG.14/3.

7/ UNEP/WG.14/4, Annex II.

8/ Ibid.

9/ UNEP/WG.24/2.

10/ UNEP/WG.34/1, Annex III.

11/ UNEP/WG.36/5.

12/ UNEP/WG.36/3.

13/ UNEP/WG.36/6, Annex II.

14/ Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 5 (A/34/25), p. 109.

discussed further the question of priority topics for its future work. After thorough discussion it was able to reach consensus on a single subject for its immediate future work ("The improvment of remedies available on a national and international basis to the victims of pollution, taking into account the concept of non-discrimination"). For the purpose of preparing its long-term programme of work, the Group stressed the necessity of having before it the Secretariat's study concerning on-going work on environmental law in various international forums. 15/

6. At its sixth session held in Paris from 30 June to 11 July 1980, the Group, having discussed a background paper: "Study of offshore mining and drilling carried out within the limits of national jurisdiction - contingency planning" 16/ prepared by the IJO, UNEP Consultant, and draft recommendations, 17/ agreed to draft conclusions on Part 3 (Contingency planning and implementation measures). 18/ The Group also held a preliminary exchange of views on Part 4 (Liability and compensation) of its exercise.

7. During the seventh session held in Geneva from 21 to 31 October 1980, the Group examined topics under Part 4 (Liability and compensation). A background paper: "Study of offshore mining and drilling within the limits of national jurisdiction - liability to pay for compensation for environmental damage" 19/ and draft conclusions 20/ prepared by Mr. J. McLoughlin, UNEP Consultant, formed the basis for this examination. Because of the complexity of the subject matter and lack of time, the Group was not able to complete its work on conclusions in Part 4. The Group finished its first reading of nine draft conclusions in this Part; 21/ in addition it had a preliminary discussion on a draft conclusion concerning State responsibility. 22/

8. Pursuant to the suggestion of the Working Group, the Executive Director of UNEP convened a small Drafting Group of selected experts for the purpose of carrying out a preliminary examination of the internal consistency, from the point of view of drafting of the texts of draft conclusions already adopted by the Working Group. The Drafting Group, during its meeting held in Geneva from 28 to 30 January 1981, examined all 42 draft conclusions so far considered and also discussed in a preliminary manner certain problems left open by the Working Group. 23/

15/ UNEP/WG.36/6, para. 17.
16/ UNEP/WG.36/4.
17/ UNEP/WG.36/2.
18/ UNEP/WG.44/2, Annex II.
19/ UNEP/WG.49/2.
20/ Ibid., Add.1.
21/ UNEP/WG.49/4, Annex II.
22/ UNEP/WG.49/2, Add.1.
23/ UNEP/WG.54/3.

9. The eighth session of the Group was held in Geneva from 2 to 13 February 1981. Experts from the following States participated in the session: Argentina, Australia, Brazil, Canada, Colombia, Finland, France, Germany, Federal Republic of, Greece, India, Jamaica, Morocco, Netherlands, Poland, Sweden, Switzerland, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela. Observers from the following States attended the session: Austria, Egypt, Chile and Italy. Observers from the following internationa organizations were also present: Economic Commission for Europe, International Labour Organisation, World Health Organization, Inter-Governmental Maritime Consultative Organization, Organisation for Economic Co-operation and Development, The Baltic Marine Environment Protection Commission (Helsinki Commission), the Commission for the Prevention of Marine Pollution by Dumping from Ships and Aircraft (Oslo Commission) and The Commission for the Prevention of Marine Pollution from Land-Based Sources (Paris Commission). The list of participants appears in Annex II to this report.

10. The session was opened by Dr. B. Bohte, Representative of the Executive Director of UNEP. The Group elected Mr. M. Surbiguet (France) as Chairman and Mr. A. Makarewicz (Poland) as Rapporteur. The provisional agenda of the session was adopted. 24/

II. ORGANIZATION OF WORK AND DISCUSSION ON THE CONCLUSIONS

11. The Working Group then proceeded to consideration of its draft conclusions. The proposals of the Drafting Group 25/ were presented by its Chairman, Mr. P.J. Széll (United Kingdom) and were used by the Working Group in its final review of the draft conclusions. In addition the Working Group completed consideration of the nine draft conclusions in Part 4 of its study (Liability and compensation); the possibility of having a tenth conclusion (on State responsibility) was further discussed but no text was adopted.

12. The Group agreed to give the following title to the text it had prepared: "Conclusions of the study on the legal aspects concerning the environment related to offshore mining and drilling carried out within the limits of national jurisdiction".

13. Having completed its review, the Working Group, by consensus, adopted as a whole the texts of all the 42 conclusions. The texts of these conclusions appear in Annex I to the report.

14. After having discussed at length the legal character of its study and the possible forms it might take, the Group agreed that in drafting the annexed conclusions it had in mind that they have the character of guidelines and expressed the wish that the Governing Council adopt them as such.

15. One of the experts from Argentina recalled the statement an Argentinian expert had delivered at the fourth session of the Group in connection with one of the conclusions.

24/ UNEP/WG.54/1.

25/ UNEP/WG.54/3.

16. The Group emphasized that the conclusions adopted and the points of view expressed in its report reflected the opinions of the experts in their personal capacities and could not be taken as committing the Governments of their respective States.

17. Completing its work on the conclusions, the Group indicated that background papers prepared by UNEP consultants for particular sessions had been very useful for its study and expressed its appreciation to the authors.

III. OTHER BUSINESS

18. The observer from the Oslo and Paris Commissions, speaking also on behalf of the observer from the Baltic Commission, spoke with appreciation of the results achieved by the Group and expressed the opinion that the adopted conclusions would make a constructive impact on regional co-operation connected with offshore mining and drilling activities.

19. The Group was informed by two experts of developments connected with the proposed Senior Level Meeting on Environmental Law which it was recognized will have implications for the future work of the Group.

20. The Chairman informed the Working Group that he had received during the session certain letters from experts. These letters form the subject matter of document UNEP/WG.54/INF.1.

ANNEX I

Conclusions of the Study on the Legal Aspects concerning the Environment related to Offshore Drilling and Mining within the Limits of National Jurisdiction

A. General provisions

1. States should, either individually or jointly, by all appropriate means, take preventive measures against, limit, and in so far as possible reduce pollution and other adverse effects on the environment resulting from offshore exploration for and exploitation of hydrocarbons and other minerals, and related activities, within the limits of national jurisdiction (hereinafter referred to as "operations"). To this end, States should, in particular, adopt legislative and regulatory measures and provide appropriate machinery.

2. (1) States should ensure that their laws, regulations and other measures relating to operations are no less effective than international rules, standards and recommended practices and procedures. They should, acting either directly or through the competent international organizations, facilitate and encourage the exchange of legal, scientific and technical information relating to activities intended to prevent, combat and reduce pollution and other adverse effects on the environment resulting from operations.

(2) These laws, regulations and other measures adopted by States should, in so far as possible, be harmonized, in particular at the regional level, taking into account the best available standards and technology. Global or regional rules, standards and recommended practices and procedures should be established.

3. States, acting directly or through the competent international organizations, should co-operate in protecting the environment from pollution and other adverse effects resulting from operations:

(a) in formulating, in particular at the regional level, concerted policies, taking into account characteristic regional features;

(b) by promoting the development of science and the transfer of technology.

4. Co-operation between States with regard to protection of the environment from pollution and other adverse effects resulting from operations should be carried out on the basis of good faith and in the spirit of good neighbourliness. Such co-operation should, *inter alia*, not cause any unreasonable delays in the carrying out of the operations.

5. States should designate, either individually in areas under their jurisdiction or, where appropriate, jointly, protected areas in order to safeguard from pollution and other adverse effects of operations, important ecosystems or representative samples thereof, as well as special habitats critical for the survival of endangered species of fauna and flora.

B. Authorization system

6. (1) The important features of operations, including construction, erection on site and major alteration of installations, should be made subject to a prior written authorization from the competent authority of the State which, before granting such authorization, should be satisfied that the applicant has the technical knowledge, ability and economic capacity as deemed to be necessary by the authority to carry out the operations, as well as to apply the necessary safety measures and, whenever necessary, to take contingency action. Such

authorization should be given in accordance with an appropriate procedure. For the purposes of these conclusions, "installation" means any offshore structure or facility, whether fixed or mobile, which is used for exploring for, exploiting, storing, loading or transporting hydrocarbons or other minerals from the seabed or its subsoil, but is not considered to include a ship used for transportation of hydrocarbons or other minerals.

(2) The granting of an authorization should be preceded by an assessment of the effects of the proposed operations on the environment, unless the competent authority is satisfied that in the light of the scope, duration and technical methods employed in the operations, significant adverse effects on the environment cannot be expected.

(3) Authorization should be refused if there are clear indications that the operations are likely to cause significant adverse effects on the environment which could not be avoided by compliance with the conditions in the authorization.

7. The authorization should provide for concrete requirements on environmental protection. Such authorization should, in particular, require the operator:

(a) To take all necessary measures to ensure that spillage, leakage or wastes resulting from the operations do not endanger public health, fauna and flora and coastal regions;

(b) To have an adequate contingency plan;

(c) To remove the installation upon completion of the operations in so far as this is justifiable from an economic and technical point of view;

(d) To rehabilitate, where appropriate, the environment.

C. Environmental assessment

8. The assessment referred to in conclusion 6 (2) should cover the effects of operations on the environment, wherever such effects may occur. It should when deemed appropriate contain the following:

(a) a description of the geographical boundaries of the area within which the operations are to be carried out;

(b) a description of the initial ecological state of the area;

(c) an indication of the nature, aims and scope of the proposed operations;

(d) a description of the methods, installations and other means to be used;

(e) a description of the foreseeable direct and indirect long-term and short-term effects of the operations on the environment, including fauna, flora and the ecological balance;

(f) a statement setting out the measures proposed to reduce to the minimum the risk of damage to the environment from carrying out the operations and, in addition, possible alternatives to such measures;

17. (1) Whenever a State has reason to believe that operations could have significant adverse effects on the environment of other States or of areas beyond the limits of national jurisdiction, it should provide such other States, as well as competent international organizations, with timely information that would enable them, where necessary, to take appropriate measures.

(2) Such information should provide relevant data, the transmission of which is not prevented by national laws or regulations.

18. States involved should be willing to hold consultations about the measures needed to prevent, combat and reduce significant adverse effects on the environment, which operations may produce outside the limits of the jurisdiction of the authorizing State.

19. (1) A State within whose jurisdiction operations are being considered or carried out should take into account any adverse environmental effects without discrimination as to whether such effects are likely to occur within the limits of its jurisdiction or beyond such limits; inter alia, such non-discrimination should be observed in national preventive laws and regulations.

(2) States should endeavour, in accordance with their legal systems and, where appropriate, on a basis agreed with other States, to grant equal access to and treatment in administrative proceedings to persons in other States who may be affected by pollution or other adverse effects resulting from proposed or existing operations.

F. Safety measures

20. States within whose jurisdiction operations are being considered or are being carried out should ensure that such safety measures are undertaken with regard to the design, construction, placement, equipment, marking, operation and maintenance of installations that the provisions set out in conclusion 1 are observed.

21. States should accordingly ensure, inter alia, that:

(a) the materials used in the construction of installations are chosen in the light the load they will have to bear and the conditions governing the service expected of the installations;

(b) installations are designed and constructed so that, except in those circumstances that are both unforeseeable and irresistible, they will withstand any natural conditions to which they may be subjected;

(c) every installation which may pose a danger to navigation is externally marked so as to give adequate warning of its presence and sufficient details for its identification, using appropriate internationally recognized warning signals;

(d) installations are, when appropriate, indicated on charts and notified to those concerned.

22. States should also ensure, inter alia, that:

(a) all phases of operations, whether at the stage of exploration or exploitation, are properly prepared;

(b) in the case of offshore exploration and exploitation of hydrocarbons, adequate controls are exercised, in particular, over:

- well-head equipment and protective devices including blowout prevention equipment;

- devices for controlling seabed equipment from the surface;

- mud programmes and procedures for well casing and cementing;

- operating procedures applicable to installations and their implementation;

(c) the operator monitors all his operations;

(d) storage offshore of hydrocarbons and other minerals is effected in a safe manner;

(e) hydrocarbons and other minerals from the seabed are transported to shore in a safe manner.

23. Furthermore, States should ensure that:

(a) the use of any installation is conditional upon obtaining a certificate of approval issued by a competent body;

(b) continuing supervision of installations is maintained and proper inspections are conducted.

24. States should ensure:

(a) sufficient manning levels on installations;

(b) suitable qualifications and experience of persons working on installations, taking into account the best available standards and technology;

(c) appropriate training programmes, including training on a continuing basis, particularly as regards safety and environmental matters.

25. States should, as far as possible:

(a) ensure that, during operations, international rules, standards and recommended practices and procedures as regards occupational safety, health and conditions of work, are effectively followed;

(b) encourage co-operation among workers, employers and government on matters relating to safety, health and conditions of work in operations.

G. Contingency planning and implementation measures

26. (1) States within whose jurisdiction operations are being considered or are being carried out should ensure the development and, whenever necessary, application of plans to deal with accidents and other unforeseen events resulting in pollution and other adverse effects on the environment, or the threat thereof (hereinafter referred to as "contingencies").

(2) Contingency plans should, in particular, establish special procedures for dealing with contingencies which could create pollution of such significance or magnitude, that widespread or lasting damage, or the risk thereof, could ensue.

27. States should ensure that action is taken to deal effectively with contingencies. To this end, they should:

(a) ensure that operators take the actions necessary under their contingency plans;

(b) as appropriate, take action in accordance with their national contingency plans; and

(c) take such other actions as may be necessary.

28. States should not allow the commencement or continuation of operations unless satisfied as to the availability of the technical knowledge, trained personnel and financial and other resources necessary to carry out the contingency plan referred to in conclusion 7 (b) and that satisfactory arrangements for their use in case of a contingency have been made.

29. The operator's contingency plan should establish appropriate measures for dealing effectively with contingencies and, in particular, should include arrangements for:

(a) the immediate raising of an alarm in the area of the operations;

(b) rapid warning of an authority or authorities designated for the purpose;

(c) the warning, as may be necessary, to shipping which might be about to enter the immediate vicinity;

(d) an up-to-date list of the persons to be alerted and informed, together with the speediest means available of, and necessary information for, making contact with them;

(e) a continuing flow to an authority or authorities designated for the purpose of full information relating to particulars of the contingency, measures already taken and further action required;

(f) immediate action to deal with a contingency under the direction of a designated person, in particular to protect human life and also to protect living resources;

(g) the stemming of the flow of toxic or other harmful substances and the extinguishment of fires, as well as the means necessary to achieve these ends;

(h) the removal, as appropriate, of polluting substances;

(i) the reduction of and, insofar as possible, prevention of adverse effects on the environment, as well as mitigation of such effects;

(j) as appropriate, joint action by mutual assistance among operators to respond to a contingency; and

(k) periodic emergency exercises.

30. States should prepare national contingency plans which set forth measures for undertaking or taking control of the conduct of actions in response to contingencies. To this end, the plans should, inter alia, include provisions for:

(a) supervision of the activities of the operator at all times during a contingency;

(b) a procedure under which the appropriate authorities may intervene whenever they consider it necessary or desirable. Such intervention may involve either giving directions to the operators or a State authority itself undertaking action to deal with a contingency;

(c) establishing arrangements for:

(i) the designation of a single authority to take command of the actions referred to in subparagraphs (a) and (b) above;

(ii) the receipt and, as necessary, the obtaining and dissemination of information concerning contingencies;

(iii) ensuring the ready availability, at strategically placed centres, of the necessary personnel, equipment and materials;

(iv) ensuring the communication of notice of contingencies to the appropriate national authorities and competent international organizations with a view to avoiding danger to shipping or other interests;

(v) complementing the capability of operators to take the actions envisaged under, inter alia, conclusion 29 (d) and (f) to (i); and

(d) establishing, as necessary, other administrative arrangements for implementing national contingency plans.

31. A State within whose national jurisdiction actions are being considered or are being taken to deal with contingencies, should take into account any potential adverse environmental effects without discrimination as to where, in particular in areas of equivalent ecological importance, such effects are likely to occur.

32. (1) Whenever a State has reason to believe that any contingency within the limits of its national jurisdiction is likely to have significant adverse effects on the environment of other States, it should provide as soon as practicable such other States, as well as any competent international organizations, with information that would enable them, where necessary, to take appropriate measures.

(2) Such information should provide relevant data, the transmission of which is not prevented by national laws or regulations.

33. A State should:

(a) when considered necessary, inform other States within its region of the technical expertise, trained personnel, equipment and materials kept available pursuant to conclusion 30 (c) (iii);

(b) provide such assistance as it can reasonably make available, including technical expertise, trained personnel, equipment and materials. To this end it should:

(i) consider making on a bilateral and multilateral basis standing arrangements for mutual assistance and co-operation; and

(ii) in the absence of a standing arrangement, provide such assistance at the request of another State requiring assistance under an ad hoc arrangement relating to the specific contingency, which may include appropriate financial provisions.

H. Liability and compensation

34. States should adopt appropriate measures for the determination of damage suffered as a result of operations and liability therefor, as well as for the payment of prompt and adequate compensation for such damage. There should be appropriate arrangements for the award and payment of compensation when damage is suffered outside their respective jurisdictions.

35. (1) States should, by appropriate measures, provide for the determination of a person or persons, physical or juridical, to be liable for damage which may result from operations. The operator should be liable unless otherwise provided. Where more than one person is liable, their liability should be joint and several.

(2) The person or persons liable should retain any right of recourse he or they may have against others.

(3) The person or persons referred to in paragraph (1) above should be strictly liable for any damage resulting from operations. This provision need not be applied when no risk of significant adverse effect on the environment is involved or when considered inappropriate

(4) Exceptions to or modifications of liability may be made, inter alia, when damage results from circumstances of an exceptional, inevitable and irresistible character.

36. (1) A State should assure to any person who has suffered damage as a result of operations an enforceable right to prompt and adequate compensation from the person or persons referred to in conclusion 35 (1), bearing in mind, inter alia, the degree to which such person may have contributed to the damage. This paragraph is subject to paragraph (2) below.

(2) The maximum liability of the person or persons referred to in conclusion 35 (1) may be limited, taking fully into account the foreseeable damage and the objective of providing full compensation to the person suffering the damage.

37. (1) States should make provision for the joint and several liability of persons referred to in conclusion 35 (1) in cases where damage results from the operations of two or more of those persons and where that damage is not reasonably separable.

(2) In cases where the cause of damage emanates from a defined area, but where the particular operation or operations from which the damage emanates cannot be ascertained, States should consider making provision for arrangements to provide compensation.

38. (1) The person or persons referred to in conclusion 35 (1) should be required to make appropriate arrangements to meet awards of compensation made against them.

(2) Such arrangements could consist, inter alia, of insurance, compensation funds or other financial securities.

39. A State should give consideration to providing that public authorities or other appropriate persons who take reasonable action designed to prevent the spread of pollution, minimize damage as well as cleanse and restore the areas affected are entitled to recover all expenses incurred, including reimbursement of any payments for any damage caused by such action.

40. When it is in accordance with its legal system, a State should consider adopting special provisions by means of which a specific person or authority is entitled to sue for compensation for damage to the environment resulting from operations, in cases where otherwise no person or authority would have standing to sue.

41. In order to facilitate the payment of compensation to persons who have suffered damage as a result of operations, States should consider, inter alia, encouraging the establishment of compensation funds. In particular, such funds might be established to deal with cases in which such a person or persons remain wholly or partially uncompensated.

42. (1) In any one region of operations, States should endeavour to conclude an agreement on liability and compensation. Such an agreement should, where feasible, seek to eliminate or reduce any differences in the nature and extent of liability, the principles for determining damage, the measure of compensation available under the respective national level régimes and the procedures for obtaining compensation.

(2) In endeavouring to reach such agreement, States should, with particular regard to the case of persons who suffer damage within the jurisdiction of one State as the result of operations carried out within the jurisdiction of another State, give consideration to the following:

(a) determination of the applicable law and the competence of courts, as well as facilitation of access to courts;

(b) enforcement of awards and judgements.

(3) When appropriate, States should give consideration to the establishment of intergovernmental commissions.

Annex II

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