

Introduction

1. Pursuant to Decision IG 17/4 adopted by the Contracting Parties at their 15th Meeting in Almeria in January 2008, a third meeting of the Working Group of Legal and Technical Experts on the implementation of the Guidelines for the Determination of Liability and Compensation for Damage Resulting from Pollution of the Marine Environment in the Mediterranean Sea Area was held on 22 and 23 January 2009 at the Park Hotel, Athens, Greece.
2. The objectives of the meeting were:
 - (a) to discuss general issues related to liability and compensation regimes applied at the Contracting Party level, achievements, difficulties and challenges;
 - (b) to draft and agree on a programme of work based on the priority needs of the Contracting Parties with a view to promoting and facilitating the implementation of the MAP Guidelines on Liability and Compensation at the regional, sub-regional and domestic levels, as appropriate; and
 - (c) to induce a debate on possible future developments with regard to further strengthening of the liability and compensation regime established under the Barcelona Convention/Mediterranean Action Plan (MAP).
3. The meeting was attended by experts from Albania, Algeria, Bosnia and Herzegovina, Croatia, European Community, Egypt, France, Greece, Israel, Italy, Lebanon, Libyan Arab Jamahiriya, Malta, Monaco, Montenegro, Morocco, Slovenia, Syrian Arab Republic, Tunisia and Turkey.
4. The list of participants is attached as **Annex I** to this report.

Agenda item 1: Opening of the meeting

5. The meeting was opened by Mr Paul Mifsud, MAP Coordinator, at 9.30 a.m. on 22 January 2009. Mr Mifsud welcomed the participants and noted that the high level of attendance at the meeting demonstrated the importance attached by the Parties to the establishment of a liability and compensation regime in the Mediterranean. He noted that the expected outcomes of the meeting included the development of proposals for additional steps to be taken with a view to further preparing the Parties for the implementation of the Guidelines, including a proposed programme of activities to be undertaken by the Secretariat, which would probably include capacity building. The meeting should also agree on a reporting format for the Guidelines and would review the findings of the assessment of the implementation of the Guidelines, which had been prepared by the Secretariat on the basis of the responses received to a questionnaire. A total of ten responses had been received to the questionnaire, and it was hoped that others would soon be sent so that the assessment could be updated and disseminated. The outcome of the meeting would be submitted to the meeting of MAP Focal Points, to be held in July, and then to the meeting of the Contracting Parties in November. The time schedule was therefore fairly tight. Although the holding of a further meeting of the Working Group could be considered, it was to be hoped that the necessary decisions would be prepared at the present meeting. However, one of the recommendations of the meeting would almost certainly be that the mandate of the Working Group should be continued over the next biennium. Finally, Mr Mifsud indicated that Ms Tatiana Hema, MAP Programme Officer, who had been responsible for much of the preparatory work, would not be present during the meeting due to family bereavement.

Agenda item 2: Election of Officers

6. In accordance with rule 20 of the “Rules of Procedure for the Meetings and Conferences of the Barcelona Convention and its Protocols”, the meeting elected the following officers:

Chairperson: Mr Didier Guiffault (France)
Vice-Chairpersons: Ms Etleva Canaj (Albania)
Ms Martina Sorsa (Croatia)
Mr Larbi Sbai (Morocco)
Rapporteur: Ms Angeliki Tsachali-Kalogirou (Greece)

Agenda item 3: Adoption of the agenda and organization of work

7. The meeting adopted the provisional agenda (UNEP(DEPI)/MED WG. 329/1) and the timetable of work contained in document UNEP(DEPI)/MED WG 329/2. The agenda of the meeting is attached as **Annex II** to this report.

8. All speakers expressed their condolences to Ms Hema on her family bereavement.

Agenda items 4: State of the art of liability and compensation regimes applied by the Contracting Parties

9. Mr Tullio Scovazzi, MAP consultant, introducing the assessment of the implementation of the Guidelines on a liability and compensation regime (document UNEP(DEPI)/MED WG 329/3), recalled that the 15th Meeting of the Contracting Parties in Almeria had called on the Working Group to assess the implementation of the Guidelines and make proposals regarding the advisability of additional action. The assessment prepared by the Secretariat was based on responses to the questionnaire that had been sent out. Replies had been received from nine countries, with a tenth arriving just before the meeting. This represented around 40 per cent of the Contracting Parties and the responses were fairly representative, as they were from countries from all the shores of the Mediterranean, from developing and industrialized countries and from Members of the European Union and non-EU countries. He further recalled that the Guidelines, which had been approved by the Contracting Parties, were not mandatory per se, but were intended to give effect to the obligations set out in Article 16 of the Barcelona Convention, under the terms of which the Contracting Parties undertook to cooperate in the formulation and adoption of appropriate rules and procedures for the determination of liability and compensation for damage resulting from pollution of the marine environment in the Mediterranean Sea Area. The objectives of the Guidelines were therefore broadly accepted by the Parties, although there remained two issues on which full agreement was yet to be reached. These concerned, firstly, the possibility of establishing a compulsory insurance scheme (Guideline No. 28), which might be envisaged by the Parties after a period of five years following the adoption of the Guidelines and on the basis of an assessment of the products available on the insurance market, and secondly a Mediterranean Compensation Fund (Guideline No. 29), in relation to which a similarly cautious approach had been adopted. Despite the non-binding nature of the Guidelines, it was clear that the aim was to achieve a uniform, or at least a consistent level of application of provisions implementing the liability and compensation regime for environmental damage in the region. In this respect, it should be recalled that certain of the Guidelines contained very advanced provisions. One of these was Guideline No. 10 on compensation for environmental damage, which included primary remediation (the reinstatement of the impaired environment), as well as compensatory remediation (to compensate diminution in the value of natural or biological resources pending restoration) and compensation by equivalent (in cases in which it was impossible to restore the impaired

environment, the State would receive compensation to take action in another area). The Guidelines also took into account the importance of economic development and the need to avoid the interruption of economic activities: the related provisions included those on the channelling of liability, exemptions of liability and limitation of liability.

10. Mr Scovazzi indicated that the general findings of the assessment pointed to the great variety of national situations and certain notable difficulties which remained to be overcome. The Member States of the European Union had all implemented or were engaged in implementing the Environmental Liability Directive of 2004, which set forth a high level of environmental protection, but only covered certain fields, namely damage resulting from occupational activities which harmed protected species and natural habitats. Other Parties had also adopted national legislation in the area covered by the Guidelines, in some cases based on international treaties to which they were parties. However, many of the Guidelines were still not broadly implemented by the Parties and much work therefore remained to be done. For example, provisions existed in certain countries concerning public participation and access to information by both individuals and NGOs, as well as their right to bring and/or participate in legal actions. However, this was not the case in all the countries that had sent replies to the questionnaire, suggesting that harmonization was required in this area. Another field in which harmonization was needed related to the definition of traditional and environmental damage in national legislation. There needed to be a method for evaluating loss of environmental quality in monetary terms and it would be necessary to develop jointly accepted criteria in this novel area of international law. With regard to other provisions of the Guidelines, only one country had indicated that its legislation provided that compensation for environmental damage was earmarked for interventions in the environmental field. Several countries had indicated the need for the strengthening of institutional capacity, particularly in terms of responding to incidents of environmental damage, including horizontal collaboration between national authorities and vertical coordination between the central, regional and local authorities. Mr Scovazzi added that several countries in the region were parties to relevant international treaties, including those of the IMO, as well as other instruments, such as the Basel Convention. However, no treaty had been ratified by all the Contracting Parties. This raised a very important issue, as the Guidelines indicated that they were without prejudice to existing global and regional environmental liability and compensation regimes under the instruments indicatively listed in the Appendix. The listed treaties therefore needed to be applied as a priority, with the Guidelines applying to fields that were not covered by those instruments, such as pollution from land-based sources and the exploration and exploitation of the seabed. In order to achieve legislative harmony, it would accordingly be necessary to determine the treaties that it was most important for the Parties to ratify. Finally, the answers to the questionnaire indicated that, while there was some support for the eventual establishment of a compulsory insurance scheme and a Mediterranean Compensation Fund, most of the countries concerned considered that further analysis was required into various aspects of the two issues, such as who would set up a Compensation Fund and who would contribute to it.

11. Mr Evangelos Raftopoulos, MAP Legal Advisor, added that the Guidelines were intended to give effect to the Barcelona Convention and its seven Protocols, including the recently adopted ICZM Protocol, and that the related obligations of the Parties were set out in the Convention and its Protocols. It would also be necessary to make progress in constructing an architecture between the Barcelona System and other liability and compensation regimes, as indicated in Guideline 5. There was therefore a need to examine the interlinkage between the Guidelines and other regimes at the regional and global levels with a view to the identification of priorities in terms of the instruments that were of the most significance for the Barcelona System.

12. The Chairperson observed that ways needed to be identified of achieving the very ambitious objective of harmonizing the legislation and other provisions of the Contracting

Parties, in which there was currently a fair degree of difference. A voluntarist approach should be favoured, consisting of calling upon the Parties to examine those areas in which adaptation was needed. He recalled the two elements on which, despite lengthy discussions during the previous meetings of the Working Group, full agreement had not yet been achieved, namely the establishment of a compulsory insurance scheme and a Mediterranean Compensation Fund. In this respect, he noted that the EU Directive envisaged the preparation by 2010 of a report on financial guarantees. Clearly, no firm response could yet be developed on these issues, not least due to the absence of the requisite financial products on commercial insurance markets.

13. Mr Mifsud observed that the responses to the questionnaire suggested the need to carry out capacity-building activities to further the implementation of the Guidelines. He added that there was still time to complete the assessment and therefore called on any countries that had not yet done so to reply to the questionnaire before the end of February.

14. During the discussion that followed, the participants thanked the Secretariat for the preparation of the documents for the meeting. Many speakers referred to the difficulties experienced in preparing instructive answers to the questionnaires, in particular due to the need to consult with and obtain information from a variety of other public authorities. Several speakers, including those representing Albania, Italy, Lebanon, and Monaco, indicated that they would soon be sending in their replies to the questionnaire. Several speakers noted that the main finding from the replies to the questionnaire was the reaffirmation of the considerable gap that existed between Mediterranean countries in law and practice with regard to the implementation of the Guidelines. Many countries in the North of the region were members of the European Union and had made or were making progress in the implementation of the Environmental Liability Directive, with the result that their national situation and legal framework was relatively advanced. In view of this gap, one representative believed that, although many of the basic principles underlying the Guidelines were accepted by all the countries concerned, it was still too early to expect a constructive dialogue and tangible progress on the implementation of other provisions. A transition period would therefore be needed for the implementation of these provisions, during which a programme of capacity-building activities should be decided upon.

15. The representative of Morocco added that it was widely understood that, while the Guidelines were not binding, there was an ethical commitment to their implementation. Moreover, one of the main strengths of the Guidelines was that they adopted the approach of using what was already there in terms of existing liability and compensation regimes, thereby once again demonstrating the capacity for innovation of the Barcelona system. However, there remained many weaknesses at the national level preventing full implementation. Experience in his country two decades ago of an environmental catastrophe involving a major oil spillage had shown up starkly the institutional weaknesses at the time, and improvements had only been introduced slowly since then. It had also shown that, despite any misgivings that individual States might entertain concerning specific international treaties and compensation regimes, they established the rules that applied in the final analysis, even where the States concerned had not formally adhered to the treaties. The Guidelines also had the merit of following the general trend in liability and compensation in the international community, which was now moving towards the compensation of ecological damage, instead of the position that tended to prevail some years ago when any damage that was not economically quantifiable was normally set aside by the competent tribunals.

16. Several representatives provided further information on their national situation and weaknesses with regard to the implementation of the Guidelines. The representative of Montenegro described the many challenges facing his country in its endeavours to prepare itself to apply for membership of the European Union. As a newly independent country, its national institutional and other capacities were very weak and it had not yet ratified the

relevant liability and compensation treaties. The representative of Croatia indicated that, although the legislation in her country was basically sound, despite certain differences in legal definitions, the greatest problem consisted of the lack of institutions and trained personnel, especially for the determination of environmental damage. The representative of the Libyan Arab Jamahiriya referred to the lack of institutional coordination in his country and the weakness in giving effect to international treaties. The representative of Albania said that, despite the efforts that were being made to approximate the national legislation to that of the European Union, the major weakness related to implementation. The representative of Monaco indicated that her country was currently in the process of adopting an Environmental Code which envisaged a system of environmental compensation. However, particularly in view of its size, her country was extremely dependent in this respect on the regimes applicable in neighbouring countries, and of course in the European Union, and on the exchange of information with the countries concerned.

17. The representative of Israel indicated that, since the previous meeting of the Working Group, her Government had undertaken a thorough legal analysis to assess the applicability of the Guidelines in its domestic legislation. Under Israeli law, environmental norms were enforced through both criminal and administrative measures. A recently enacted Polluter Pays Law provided for increased penalties on offenders. She explained that the Israeli system relating to civil liability and compensation was fault-based, with compensation provided for claims based on negligence or on particular civil claims. However, strict liability was not consistent with the existing legislation. "Damage" was defined as "loss or impairment of life, real and moveable property, convenience, physical well-being or reputation". No compensation was payable for pure economic loss. Furthermore, the concept of "equivalent compensation" was not consistent with Israeli civil law. Compulsory insurance was only required in specific circumstances, such as personal injury resulting from motor vehicle accidents. It was highly unlikely that it would be imposed where the scope and definition of potentially polluting activities, the extent of damage and the definition of potential claimants remained unclear. A recent review had concluded that the existing principles of fault-based liability and the principle that pure economic loss was not compensable should be maintained. She added that this position was unlikely to change in the foreseeable future.

18. The representative of the European Community provided explanations of the system introduced by the Environmental Liability Directive of 2004, which was based on the principle of administrative liability, and not civil liability. The principal actors were environmental authorities and operators. Only environmental damage was covered, not traditional damage, and there was no compensation for individuals. The Directive envisaged three categories of environmental damage: damage to protected species and habitats, as defined in the Habitats and Birds Directives, with the criteria for the assessment of such damage being set out in Annex I to the Environmental Liability Directive; damage to water, with reference to the Water Framework Directive; and damage to soil where it created a significant risk to human health. The principle of strict liability was applied in relation to certain activities set out in Annex III to the Directive, while fault-based liability was applicable in respect of damage to species, habitats and other activities. The Directive established certain obligations for operators, including the requirement to take preventive measures in the case of an imminent threat of environmental damage. Operators had to inform the authorities when damage had occurred and propose remedial measures, while the authorities were responsible for determining the remedial measures to be taken and for ensuring their implementation. Operators were normally liable to bear the cost of preventive and remedial measures, although Member States could exonerate them from such costs, for example where they were fully in compliance with the applicable legislation or where such damage was not foreseeable. Natural or legal persons affected by damage or with a sufficient level of interest in environmental decision-making, such as NGOs, could request the authorities to take action and could ask courts or other independent bodies to review the legality of the decisions taken, or the failure of the competent authority to act. Finally, she explained that, under the

terms of the Directive, financial security measures were not compulsory, although Member States were under the obligation to encourage the development of financial security instruments. The Commission would prepare a report by 2010 on the availability of insurance and other types of financial security and, if appropriate, would make a proposal for the establishment of a mandatory financial security system. A more general report would also be prepared for 2014 on significant cases of environmental damage and how they had been covered by the system. The Directive did not envisage the establishment of a compensation fund. She concluded that the Directive introduced relatively innovative requirements and that the criteria for their implementation were still to be fully developed. It would therefore be necessary to proceed with caution in the development of a regime for the Mediterranean, taking fully into account existing systems and the problems in their application, the areas not yet covered by such systems and the need for capacity building.

19. The representative of Greece reviewed environmental law in her country and the international treaties relating to liability and compensation regimes that had been signed and ratified. The legal framework for liability and compensation for environmental damage was based mainly on the 1986 Law on the protection of the environment, which established the strict civil liability of any person damaging the environment through his or her acts. The Environmental Liability Directive was in the process of being transposed into national law through a draft Presidential Decree, which was currently under legal control by the Council of State. The draft Decree extended the polluter pays principle in line with the principle of sustainable development, establishing the liability of operators to bear the cost of preventive or remedial measures where they caused environmental damage or created an imminent threat of such damage; where authorities took action, they were empowered to recover the costs incurred from the operator, which was also liable to bear the cost of assessing environmental damage or an imminent threat of such damage. The Aarhus Convention on access to information, public participation and access to justice in environmental matters and the respective EU Directives had also been transposed into Greek legislation.

20. In response to a request for clarification concerning the liability of operators from outside the region which caused environmental damage in the Mediterranean, several speakers emphasized that the Guidelines applied the polluter pays principle, irrespective of whether or not the operator was based in a Mediterranean country. The question was also raised of the competent jurisdiction, which in many cases, such as that of the Amoco Cadiz, was that of the defendant, with the result that damages for an accident that had occurred in Europe had been determined by a court in the United States. Mr Scovazzi added that it would be a situation of great injustice if certain operators were covered by liability for environmental damage and others based outside the region were not. The ultimate goal was of course full uniformity and the ideal solution would be a regime established at the international level, such as that of the Brussels Convention on Civil Liability for Oil Pollution Damage. However, many of the relevant international treaties had not been widely ratified and/or had not yet entered into force. He further recalled the specification in the Guidelines that the Mediterranean regime should not prejudice other existing regimes. While it was true that remedies had been sought through courts in the United States in the case of most of the recent major incidents in the region, this should not prevent the development of a regime in the Mediterranean.

21. With regard to the issue of insurance against environmental damage, which was not currently available on commercial insurance markets, it was recalled that markets were constantly adapting to changing market requirements. For example, insurance coverage of ships was now tending to cover, in addition to damage to the ships themselves and the goods that they carried, pollution caused by the fuel powering the ships. Mr Scovazzi agreed that markets would develop to cover the needs of their clients. Examination of the situation in relation to the Mediterranean would benefit from taking into account the findings of the report

by the European Commission that was due in 2010 and which would assess the insurance products available.

22. Many speakers recalled that there had been agreement since the first meeting of the Working Group on the need to adopt a step-by-step approach to the implementation of a liability and compensation regime in the Mediterranean. The Chairperson observed that the fate of many of the relevant regional and international instruments in this field, a good number of which had still not come into force, should serve as a warning. A healthy dose of realism was required to develop a regime that was coherent, based on a broad consensus and therefore likely to be implemented. Certain concepts, with particular reference to the polluter pays principle, were globally accepted and were central to all the proposed measures. However, on other issues, such as compulsory insurance, there was no miraculous solution. The fact that time would be needed for the development of the appropriate solution was reflected in Guideline 28, which envisaged a period of five years from the adoption of the Guidelines, when a review would be carried out of the means of implementation of an insurance scheme. It would be necessary to continue working on the points on which full agreement had not yet been reached with a view to the development of measures that met with consensus. It therefore appeared to be agreed that, while the development of a Protocol on the subject was not ruled out in the future, the non-binding Guidelines were at present the appropriate form for the rules on a liability and compensation regime envisaged in Article 16 of the Barcelona Convention. However, this did not mean that the Guidelines should be applied *à la carte*, leaving out those which did not suit a particular national situation. Even though they were not binding, the Guidelines constituted an integrated whole and the intention was to move towards the establishment of a coherent and comprehensive liability and compensation regime in the Mediterranean. Each Contracting Party would therefore need to examine the extent to which its law and practice was in conformity with the principles set out in the Guidelines with a view to achieving the highest possible level of coherence. Clearly, time would be required for this process.

Agenda item 5: Possible future developments in view of strengthening Mediterranean cooperation on liability and compensation issues and promoting the implementation of the Guidelines

23. Mr Raftopoulos emphasized that possible future developments needed to be realistic, although they could also be both daring and flexible. He indicated that the replies to the questionnaire on the implementation of the Guidelines offered important indications of the areas in which progress needed to be made, especially to overcome deficits in governance. There appeared to be broad agreement on the need to analyse existing legislative provisions at the national level with a view, where necessary, to developing new legislation or amending existing texts. The Parties were also broadly in agreement on the need to strengthen institutional and scientific capacity at the national level and that capacity-building activities should include training for the competent personnel in the use of existing liability and compensation regimes. All the respondents approved the strengthening of public participation and access to information, and most of them endorsed action to strengthen the capacities of the relevant NGOs. With regard to the measures that were to be envisaged on a longer-term basis, namely the establishment of compulsory insurance and of a Mediterranean Compensation Fund, the responses showed that one Party envisaged the establishment of an insurance security regime covering the activities listed in Annex III to the Environmental Liability Directive, while three required operators to participate in a financial security scheme or provide an insurance or financial guarantee to cover liability. Capacity-building activities on this subject could start by examining those areas in which insurance was already required, such as the management of hazardous wastes, and the regimes existing in other parts of the world. Several respondents also supported the eventual establishment of a Mediterranean Compensation Fund and believed that this could be one

aspect of capacity building, starting with a feasibility study. Such a fund could have an important role to play in the case of sudden catastrophic events, as envisaged in the ICZM Protocol, mainly due to climate change. A pilot project might be envisaged on this issue. With regard to other applicable liability and compensation schemes, there was a need to prioritize the treaties listed in the Appendix to the Guidelines in light of the relevant provisions of the Barcelona Convention and its Protocols. Careful thought should also be given to the question of whether the Guidelines should be applicable to all the activities covered by the Convention and its Protocols. While the Guidelines constituted a soft law approach to giving effect to Article 16 of the Convention, and the ultimate aim of the process would appear to be the adoption of a Protocol, consideration could also be given to other types of instruments, such as a model law to guide national legislation.

24. Mr Scovazzi added that there appeared to be a general feeling that it was possible to move forward on most matters in the fairly short term, but that feasibility studies would be useful on the two longer-term issues that could not be resolved at present. On the shorter-term issues, the Secretariat could organize activities at the regional, sub-regional or national levels and a clear indication should therefore be provided of the fields in which capacity building was required with a view to the proposal of a programme of action to the Contracting Parties.

25. During the discussion, the need was emphasized to enhance public participation in the liability and compensation regime. In certain countries, NGOs were not able to instigate court proceedings. If the public was well informed, it could play a valuable role in the promotion of environmental principles, often as an ally of the public authorities. Civil society also had an important role to play in prevention due to its strong presence at the local level. It was suggested in this respect that the Aarhus Convention, to which eleven Mediterranean countries were parties, should be included in the Appendix to the Guidelines.

26. It was further agreed that criteria needed to be developed for the quantification of environmental damage for use by the responsible authorities, as well as by tribunals at the national and international levels. It would be useful in this respect to analyse any criteria already developed in the context of other liability and compensation regimes. It was emphasized in this regard that the quantification of environmental damage was a complex technical process involving several authorities. Nor was the determination of compensation an exact science. Moreover, it was first necessary to know the original state of the environment before degradation, based on a baseline assessment of its original condition. The criteria developed should also provide guidance on the application of the concept of compensation by equivalent. It was recalled that the Environmental Liability Directive provided for compensation by equivalent, for example by taking measures to improve another site where they could not be carried out on the original site. A similar approach was adopted by legislation in the United States. Compensation by equivalent was not a new concept, and could also involve work of public interest. In view of the multiplicity of the actors and authorities involved, capacity-building activities would need to be broader than the mere organization of workshops and training courses. It was necessary to develop a Mediterranean vision of how to achieve progress towards a liability and compensation regime in gradual steps, with a programme to help each country.

27. In response to a question concerning the motivation of national authorities for the adoption of a liability and compensation regime, it was emphasized that they stood to benefit greatly from the application of the polluter pays principle. In the event of environmental damage, such as oil damage to beaches, it was often the State that paid to remedy the damage so that the amenities could be used again as soon as possible. In cases of emergency, it was almost impossible for the State not to intervene. Moreover, it often took considerable time to determine liability, particularly where several operators were involved. These situations were covered by Guideline 16, which proposed that, where operators failed

to take the necessary measures, could not be identified or were not liable under the respective legislation, States should take the necessary measures and recover the costs from the operator where appropriate. Reimbursement might also in future be obtained from a Mediterranean Compensation Fund.

28. The Chairperson recalled that the issue of a Mediterranean Compensation Fund could not be set aside, even if it was only being envisaged in the long term. The Working Group could suggest to the Contracting Parties that a feasibility study be carried out, which should examine the legal context in which other similar funds already existed, the arrangements made for contributing to them, those called upon to contribute and the arrangements for the management of such funds. He added that there was also a necessary interaction between a Mediterranean liability and compensation regime and other existing regimes. Analysis would therefore be needed of all the relevant regimes. Those most germane to the Mediterranean should be identified, as well as the areas that were not yet covered by any such regimes. Several speakers emphasized the need for capacity building on the application of other relevant treaties and regimes, with particular reference to the procedures for bringing claims, which could be extremely complex. The analysis should also, where appropriate, examine the factors that were preventing the ratification and implementation of such treaties in the Mediterranean. While the Guidelines were not intended to prejudice any existing regime, it was also necessary to proceed on the understanding that it was extremely unlikely that all the Contracting Parties would adhere to a specific treaty.

Agenda item 6: Reporting format on the implementation of the MAP Liability and Compensation Guidelines

29. Mr Mifsud recalled that the Contracting Parties had approved a reporting format for the Barcelona Convention, for which an electronic version had been developed and would soon be available to enable the Parties to report online on the implementation of the Convention. He provided a demonstration of the electronic version of the reporting format for the Convention. A similar approach could be adopted to reporting on the implementation of the Guidelines, based on a simplified version of the questionnaire that had been used for the assessment of their implementation.

30. Mr Scovazzi, noting the difficulties described by country representatives in responding to the questionnaire, considered that it should be simplified for use as the reporting format, with fewer questions which should focus on new developments and the situation with regard to the ratification of the relevant treaties. One suggestion would be to eliminate questions 6, 15, 16, 17, 20, 23, 33 and 34 and to greatly simplify Part 3 (Future steps) of the questionnaire.

31. During the discussion that followed, while many speakers agreed with the approach of simplifying the questionnaire, the view was expressed by several representatives that care should be taken to retain questions relating to substantive issues concerning the implementation of the Guidelines. One speaker noted the importance of Part 3 and hoped that it would not be simplified. Care should also be taken when developing the reporting format and its electronic version to ensure that the possibility was given in all questions for the respondent countries to make the comments that they felt were important, rather than confining answers to a simple yes/no format. In view of the complexity of the questionnaire, it would be useful for further explanations to be provided of the concepts involved to assist the Parties in preparing their replies. It was therefore agreed that the Secretariat would be requested to prepare a reporting format based on the questionnaire, taking into account the views expressed, which would be submitted to the meetings of the MAP Focal Points and the Contracting Parties for approval.

Agenda item 7: Elaboration of a draft programme of work to facilitate the implementation of the MAP Guidelines on Liability and Compensation

32. Based on the discussions on agenda items 4 and 5, the Secretariat submitted to the meeting a draft text of a proposed programme of work, containing a series of short- and longer-term actions, which the participants were invited to prioritize. During the discussion of the draft text, it was agreed that, while certain actions were intended for measures that would be taken in the longer term, with specific reference to a compulsory insurance scheme and a Mediterranean Compensation Fund, it would nevertheless be necessary to start the feasibility studies on these two measures in the near future so that the necessary information was available to the Parties for consideration with a view to achieving agreement on the way forward. It was therefore agreed that there should be a single list of proposed actions, which would not be divided into short- and long-term actions. Moreover, the Working Group decided not to establish any priority for the actions, although the Secretariat was invited to assess the work involved and the resources needed for each proposed action as a basis for the establishment of priorities for their implementation, if necessary, by the meeting of the Contracting Parties. The draft programme of action, as adopted by the Working Group, is contained in Annex to the draft decision to be submitted to the MAP Focal Points and the Contracting Parties, which is reproduced in **Annex III** to this report.

Agenda item 8: Next meeting of the Working Group and its main agenda items

33. It was agreed that, as the Working Group had completed the tasks requested of it by the Contracting Parties, it was not necessary to hold a further meeting of the Working Group before the meetings of the MAP Focal Points and the Contracting Parties later in the year. However, it would be proposed that the mandate of the Working Group should continue over the next biennium.

Agenda item 9: Any other business

34. No other issues were raised by the participants for discussion.

Agenda item 10: Adoption of conclusions

35. A set of draft conclusions, prepared by the Secretariat, was examined and amended by the participants. The conclusions, as adopted by the Working Group, are reproduced in **Annex IV** to this report.

Agenda item 11: Closure of the meeting

36. Following the customary exchange of courtesies, the Chairperson declared the meeting closed at 4.30 p.m. on 23 January 2009.

ANNEX I

LIST OF PARTICIPANTS

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**UNITED NATIONS BODIES AND SECRETARIAT UNITS
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<p>UNITED NATIONS ENVIRONMENT PROGRAMME COORDINATING UNIT FOR THE MEDITERRANEAN ACTION PLAN PROGRAMME DES NATIONS UNIES POUR L'ENVIRONNEMENT UNITE DE COORDINATION DU PLAN D'ACTION POUR LA MEDITERRANEE</p>	<p>Mr Paul Mifsud MAP Coordinator Tel.: +30.210.7273101 E-mail: paul.mifsud@unepmap.gr</p> <p>Mr Evangelos Raftopoulos MAP Legal Adviser Professor of International Law Panteion University of Athens 136 Syngrou Avenue Athens 17671, Greece Tel : +30-210-9610591, Mobile: +963-93-304803 Fax : +30-210-9610591 E-mail : eraft@hol.gr</p> <p>Mr. Tullio Scovazzi MAP Consultant Università di Milano - Bicocca Via Alfonso Cossa 29 20138-Milan Italy Tel: +39 02 7610149/64484015 (University) Fax: +39 02 7610149 E-mail : tullio.scovazzi@unimib.it</p>
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AGENDA

1. Opening of the meeting
2. Election of Officers
3. Adoption of the Provisional Agenda and organization of work
4. State of the art of liability and compensation regimes applied by the Contracting Parties
5. Possible future development in view of strengthening the Mediterranean cooperation on liability and compensation issues and promoting the relevant MAP Guidelines implementation
6. Reporting format on the implementation of MAP Liability and Compensation Guidelines
7. Elaboration of a draft programme of work to facilitate the implementation of MAP Guidelines on Liability and Compensation
8. Next meeting of the Working Group and its main agenda items
9. Other matters
10. Adoption of conclusions
11. Closure of the meeting

ANNEX III

Draft decision

The 16th Meeting of the Contracting Parties,

Pursuant to Decision IG 17/4 of the 15th Meeting of the Contracting Parties that the Working Group of Legal and Technical Experts for the Implementation of Guidelines for the Determination of Liability and Compensation for Damage resulting from Pollution of the Marine Environment in the Mediterranean Sea Area should facilitate and assess the implementation of the Guidelines and make proposals regarding the advisability of additional action;

Taking into account the conclusions of the third meeting of the Working Group, held in Athens on 22 and 23 January 2009;

Noting that all the Parties recognize that these Guidelines provide a good basis for further cooperation for the development of a more comprehensive and effective regime in this field;

Taking note of the findings of the Questionnaire sent out by the Secretariat with regard to liability and compensation for damage resulting from pollution of the marine environment in the Mediterranean Sea area and of the discussions held during the meeting of the Working Group which show differences of approach in national legislation and institutional and administrative frameworks in the Contracting Parties in this field;

Considering that specific practical action is needed to address current weaknesses at the national, sub-regional, regional and international levels;

Takes note of the assessment report on the implementation of the Guidelines prepared by the Secretariat, contained in Annex 1 to this Decision;

Adopts the reporting format for reporting on the implementation of the Guidelines, contained in Annex 2 to this decision;

Approves the Programme of Action to facilitate the implementation of the Guidelines, contained in Annex 3 to this decision; and

Decides to extend the mandate of the Working Group of Legal and Technical Experts for the biennium 2010-2011.

Annex

Programme of Action to facilitate the implementation of the Guidelines for the Determination of Liability and Compensation for Damage resulting from Pollution of the Marine Environment in the Mediterranean Sea Area

The Programme of Action is aimed at building the capacity of all the relevant stakeholders, including the competent authorities and personnel at all levels (local, regional and national), scientific institutions and non-governmental organizations. The following action should be organized by the Secretariat, in close cooperation with the Parties, in particular through the convening of workshops and seminars or through consultancies at the Mediterranean or country levels and should cover the following subjects:

- The identification among the treaties listed in Annex 1 to the Guidelines of those that are most relevant for the establishment of a consistent and effective regime of liability and compensation in the Mediterranean, and where appropriate the constraints that have so far impeded their entry into force, and the steps that could be taken to ensure the broadest possible participation to these treaties by the Parties to the Barcelona Convention;
- The identification of the activities covered by the Barcelona Convention and its Protocols that are likely to cause damage to the environment but are not addressed by any relevant treaty;
- The analysis of existing national legislation, and the consequent development, where necessary, of updated legislation;
- The harmonization of the key definitions used in the relevant legal instruments;
- The formulation of criteria for the evaluation of environmental damage, especially as regards diminution in value of natural resources pending restoration, and compensation by equivalent;
- The strengthening of national institutional capacity and inter-institutional coordination at both the horizontal and vertical levels;
- The development of means to ensure effective access to information by the public and its right to take or participate in legal actions;
- Taking into account all available information and studies, an assessment of the products available on the insurance market for the possible future development of a compulsory insurance regime, as envisaged in Guideline 28;
- Taking into account all available information and studies, the preparation of a study of the feasibility of a Mediterranean Compensation Fund, as envisaged in Guideline 29.

ANNEX IV

Draft Conclusions

Pursuant to Decision IG 17/4 of the Contracting Parties adopted at their 15th Meeting in Almeria in January 2008, the Third Meeting of the Working Group on Guidelines for the Determination of Liability and Compensation for Damage resulting from Pollution of the Marine Environment in the Mediterranean Sea Area was convened in Athens on 22 and 23 January 2009 to facilitate and assess the implementation of the Guidelines and make proposals regarding the advisability of additional action.

The meeting of the Working Group reached the following conclusions:

- The replies provided by Contracting Parties to the questionnaire distributed by the Secretariat on the state of the art and the steps to be taken for the effective implementation of the Guidelines in their national legislation have provided valuable information on the situation at the national level. In view of the value of such information, and the difficulties involved in obtaining the information necessary to provide full and informative answers, those Contracting Parties that have not yet done so are invited to send in replies to the questionnaire as soon as possible so that the resulting report (UNEP(DEPI)/MED WG 329/3) can be updated and made available to the Parties.
- The information available on the national situation with regard to the implementation of the Guidelines shows the wide gap between countries in terms of the provisions adopted and institutional and other capacities. In view of this situation, a gradual and step-by-step approach is needed in the implementation of the Guidelines, affording the necessary transition period to build the required capacities, where necessary. In accordance with the step-by-step approach, concerted action should now be taken to commence the implementation of the Guidelines.
- At the present time, in the view of the Working Group, the Guidelines constitute an appropriate set of rules and procedures, as required by Article 16 of the Barcelona Convention, for the establishment of a liability and compensation regime in the Mediterranean. The development of a legally binding regime, which may take the form of a Protocol, could be considered in the longer term. In the meantime, it is necessary to develop action to build capacities in Mediterranean countries for the implementation of the Guidelines and for meetings of the Working Group to continue with a view to reaching full consensus on all aspects of such a regime.
- Further research is needed into: the international instruments respecting liability and compensation that are most relevant to the situation in the Mediterranean; the constraints that have prevented countries from ratifying them more widely; and the areas that are not covered by such instruments, but which lie within the scope of the Barcelona Convention and its Protocols and should therefore be covered by a Mediterranean liability and compensation regime; the development of means to ensure effective access to information by the public, the evaluation of the products available in the insurance market and a feasibility study for a compensation fund.
- In order to build support for the establishment of a liability and compensation regime in the Mediterranean, concrete examples should be analyzed of cases in which the parties involved, with particular reference to the public authorities, would benefit from

such a scheme, not only in terms of the enhanced protection of the environment, but also with regard to financial aspects.

- The attached draft Decision, together with its Annexes, should be submitted to the meeting of MAP Focal Points with a view to its further consideration and approval by the 16th Meeting of the Contracting Parties, which may wish to prioritize the proposed action taking into account the most urgent needs and the available resources.