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Intergovernmental Review Meeting of  
Mediterranean Coastal States on the  
Mediterranean Action Plan

Barcelona, 11-13 February 1980

Comments received from Governments  
on the report of the meeting of experts  
on legal aspects of pollution from  
offshore exploration and exploitation

## Introduction

1. At the Intergovernmental Review Meeting of Mediterranean Coastal States and First Meeting of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea against Pollution and its related protocols (Geneva, 5-10 February 1979), the Report of the IJO/UNEP meeting of experts on pollution of the Mediterranean Sea resulting from Exploration and Exploitation of the Seabed (UNEP/IG.14/INF.17) was presented.

2. After consideration of the report, the intergovernmental meeting adopted the following recommendation:

"Taking note of the work already in progress within the UNEP Working Group of Experts on Environmental Law regarding corrective and preventive measures for pollution damage arising from offshore mining and drilling carried out in the areas within national jurisdiction and of the results of the International Juridical Organization (IJO) meeting of experts on Legal Aspects of Pollution Resulting from Exploration and Exploitation of the Continental Shelf, the Seabed and its Subsoil in the Mediterranean, UNEP is requested to bring to the attention of the Mediterranean Governments and the EEC the actions that have been taken and that should assist them to undertake steps for developing a protocol in this respect and to seek their comments and suggestions on this matter."1)

3. Accordingly, UNEP again circulated the report of the IJO/UNEP meeting of experts to the Mediterranean Governments and the EEC under cover of a letter requesting proposals and suggestions as to what follow-up activities could usefully be included in the short-term and/or long-term work programme of the Mediterranean Action Plan. Replies to UNEP's letter were requested by 1 October 1979, with a view to presenting a compilation of such replies for consideration by the intergovernmental meeting scheduled in February 1980. As of 15 November 1979, two replies had been received and these are presented below.

## Reply from the Government of Greece

4. Regarding the work of the IJO already in progress, aiming at the adoption of a Protocol concerning the Prevention of Pollution resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil in the Mediterranean, the Greek Government would like to inform you of the following:

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1) UNEP/IG.14/9, annex V, page 8, paragraph 34.

5. In view of the fact that UNEP, within the framework of the Programme on Environmental Law, is preparing a Protocol similar to the IJO's project, though of a wider geographical application, we believe that in order to avoid duplication of work and to establish a better co-ordination between the two projects, the IJO's project should be examined at the intergovernmental meeting of the Mediterranean States and the EEC, to be convened in early 1980, so that suggestions for the future programme of work on both projects can be made.

Reply from the Government of Israel

6. First, we recommend that experts' meetings be convened to develop separate protocols to cover, first, environmental aspects of offshore exploration and exploitation and, second, liability and compensation for environmental harm from the full range of development activities conducted in, on, under and around the shores of the Mediterranean Sea. These should be convened in parallel, and soon, in view of their related nature and the need to move forward to meetings of governmental representatives.
7. Second, we recommend that protocols considered at these meetings should rely heavily upon the Report, with the caveats and additions suggested in this letter and that a further request for detailed drafting comments be sent to all parties prior to the meetings of experts.
8. In general, the Report is a good point of departure from which to frame a protocol to the Barcelona Convention dealing with protection of the environment from the effects of offshore exploration and exploitation. As a document prepared mainly by a non-governmental organization, however, it cannot represent fixed and final positions or a political consensus. These must be arrived at in the course of at least one meeting of legal and technical experts, followed by a meeting of governmental representatives.
9. The following are some observations which should be considered in drafting protocols based on the Report.
10. The keynote of a sound protocol governing offshore exploration and exploitation should be prevention of harm before the fact through proper planning and safeguards. The Report generally stresses this point. One critical aspect that has been overlooked, however, is the need for sea use planning. This concept, advocated 2) as a logical extension of land use planning, and particularly coastal zone planning, provides an excellent means for coastal states, operating in

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2) Elizabeth Young, Peter Fricke: Sea Use Planning, the Fabian Society, London (1975)

a regional context, to survey and plan the particular uses and conditions of use for various areas of the offshore régime. Sensitive areas such as fishing and spawning grounds and designated or potential marine reserves thus can be protected from adverse effects of offshore exploration and exploitation as well as other development activities.

11. Another area of pre-planning which is treated extensively and well in the Report is the need for environmental impact assessments.<sup>3)</sup> Israel is developing the legal and administrative machinery to integrate such assessments within the existing physical planning system. Already no major new development project can be initiated here without such an assessment. Many other Mediterranean nations are doing likewise. Still, there is great value in setting a requirement for such assessments in the protocol on offshore exploration and exploitation so that uniform and workable regional guidelines may be developed.
12. Contingency planning has been shown to be a vital necessity by such occurrences as the continuing oil well blow-out in the Gulf of Mexico. While this has been dealt with elsewhere,<sup>4)</sup> consideration should be given to including in the protocol on offshore exploration and exploitation a limited set of measures for dealing with blow-outs and other extraordinary contingencies.
13. The subject of liability and compensation, while integral to a consideration of offshore exploration and exploitation, also enters into almost every other area of offshore activity, including navigation, and discharge of pollutants from land. It may prove more workable, therefore, to leave such matters for a separate protocol based on Article 12 of the Barcelona Convention. Such a protocol should have a high priority in the scheduling of the Contracting States and should be developed, at least as soon as the protocol on offshore exploration and exploitation. This does not mean that the work on liability and compensation of the IJO-UNEP expert group which produced the Report has been in vain. Much of this material, and particularly that developed by the Working Group on Civil Liability (Annex D), will be useful to the meeting of experts and governmental representatives which will develop the protocol on liability and compensation.

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3) P.1 et seq., Annex C.

4) Protocol Concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency.

14. One key principle developed here which should be maintained is that of strict 5) and unlimited 6) liability for harm done, so that innocent injured parties will not go uncompensated or inadequately compensated.
15. Other key points developed by this Working Group state that:  
  
"Each State should ensure that its courts possess the necessary jurisdiction to entertain such actions for compensation, and that its courts entertain on a fair and non-discriminatory basis, actions by other member States or their residents and accepts witnesses brought by such parties, and evidence gathered by responsible authorities in other member States." and that  
  
"Each State should ensure the harmonization and adjustment of private international law of each system, so as to render uniform the régimes of competence, jurisdiction and choice of national law applicable to the matter under review."
16. We believe that these points are vital and should be included as terms in the protocol.
17. Since these are among the most important subjects to be considered by the Barcelona signatories, we appreciate this opportunity to comment, and look forward to helping develop the necessary protocols.

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5) P.3, Annex D.

6) Ibid., p.g et seq.