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MEDITERRANEAN ACTION PLAN

- First meeting of Government-designated legal and technical experts on the preparation 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

Rijeka, Croatia, 23-25 September 1997

RELEVANT CONVENTIONS AND AGREEMENTS RELATED TO LIABILITY AND COMPENSATION IN THE FIELD OF ENVIRONMENT

(Information paper)

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Introduction

In accordance with article 12 of the Barcelona Convention, which stipulates that the Contracting Parties "*undertake to cooperate as soon as possible in the formulation and adoption of appropriate procedures for the determination of Liability and Compensation for damage resulting from the pollution of the marine environment deriving from violations of the provisions of this Convention and applicable protocols*", the Ninth Ordinary Meeting of the Contracting Parties (Barcelona, 5-8 June 1995) requested the Secretariat to prepare a proposal on a draft procedure for the determination of Liability and Compensation for damage resulting from the pollution of the marine environment in the Mediterranean and to convene a meeting of Government-designated legal and technical experts to review this draft. On the basis of this decision, the First Meeting of Government-designated legal and technical experts will be held in Rijeka, Croatia, on 23-25 September 1997.

The present information document is a brief of selected presentation of International Conventions and Agreements dealing with Liability and Compensation in the field of environment.

I. A. INTERNATIONAL CONVENTIONS ON LIABILITY AND COMPENSATION IN THE FIELD OF ENVIRONMENT

1. CONVENTION ON THIRD PARTY LIABILITY IN THE FIELD OF NUCLEAR ENERGY

Place and date of adoption: Paris 29.7.1960. **Entry into force:** 1.4.1968

Objectives: To ensure adequate and equitable compensation for persons who suffer damage caused by nuclear incidents. To unify the basic rules in various countries relating to liability incurred for such damage.

Establish: a system of **strict (no - fault) and limited liability** of the operator (art. 3) of a nuclear installation for «(l) damage or loss of any property» upon proof that it was caused by a nuclear incident coming from such an installation (art. 4).

Provide: certain number of exceptions or defences «for damage caused by a nuclear directly due to an act of civil war, armed conflict, insurrection, grave natural disaster of an exceptional character. Minimum liability of operator defined (art. 7).

Time limit of liability: 10 years from the date of the incident (art. 8).

2. CONVENTION SUPPLEMENTARY TO THE PARIS CONVENTION OF 29 JULY 1960 ON THIRD PARTY LIABILITY IN THE FIELD OF NUCLEAR ENERGY

Place and date of adoption: Brussels 31.1.1963. **Entry into force:** 4.12.1974

Objectives: To supplement the measures provided in the Paris Convention with a view to increasing the amount of compensation for damage which might result from the use of nuclear energy for peaceful purposes.

Establish a system supplementary to that of the Paris Convention (art. 1) in which shall be applied in accordance and which shall be subject to the provisions of the Paris Convention;

Samely as in the Paris Convention, **strict liability of the operator**; the compensation for damage caused by nuclear incidents to be provided out of funds whose territory the nuclear installation is situated and out of public funds created according to a special formula for contributions (art. 3, 4, and 12).

Time limit of liability, 10 years from the date of the nuclear incident (art. 6). Exceptions provided as in the Paris Convention (art. 7).

3. VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE

Place and date of adoption: Vienna, 21.5.1963.

Entry into force: 12.11.1977

Objectives: To set minimum standards; to provide financial protection against damage resulting from peaceful uses of nuclear energy.

Establish a system of **strict liability** of the operator for nuclear damage on proof that such damage was caused by an incident within the installation, or involving nuclear material originating there from or being sent there to (art. 2); limits on liability and limits on compensation (art. 5, 6). The liability of the operator in such a case shall be absolute, but contributory negligence may be found on the part of the person suffering such damage. In any case, **exceptions provided** as in the Paris Convention: the operator would not be liable if the nuclear incident was due directly to an act of armed conflict, civil war, insurrection or a grave natural disaster of an exceptional character (art. 4). The operator is required to maintain insurance of financial security to cover liability (art. 7). Finally, the parties shall ensure the payment of compensation in cases where they do not provide for insurance of the operator

or beyond the yield of such insurance and up to the operator's liability (Liability of the State). Certainly, all nationals of the Contracting Parties have the right to claim compensation in case of nuclear damage caused by installations situated in the territory of a Contracting Party.

4. JOINT PROTOCOL RELATING TO THE APPLICATION OF THE VIENNA CONVENTION AND THE PARIS CONVENTION

Place and date of adoption: Vienna, 21.9.1988.

Entry into force: 27.4.1992

Objectives: To establish a special link between the Vienna Convention on Civil Liability for Nuclear Damage of 21.5.1963 and the Paris Convention on Third Party Liability of 23 July 1960; to eliminate possible conflicts arising from the simultaneous application of both Conventions to a nuclear accident; to extend the benefit of the special regime of civil liability for nuclear damage set forth under each Convention.

Establish: (strict) Liability of the operator of a nuclear installation situated in the territory of a Party to either (Vienna or Paris) Convention in accordance with that Convention for nuclear damage suffered in the territory of a Party to the other (Paris or Vienna) Convention and this Protocol [art. 2(a) and (b)]. Article 1 to 4 of the Vienna Convention are applied to the Parties to the Protocol which are Parties to Paris Convention Articles 1 to 14 of the Paris Convention are applied to Parties to the Protocol which are Parties to Vienna Convention. «Either the Vienna Convention or the Paris Convention shall apply to a nuclear incident to the exclusion of the other» (art. 3).

5. INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE

Place and date of adoption: Brussels, 29.11.1969

Entry into force: 19.6.1975

Objectives: To ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from ships; to harmonise international rules and procedures for determining questions of liability and for providing adequate compensation in such cases.

Establish: A system of strict liability of the owner of the ship: «... the owner of the ship at the time of the incident... shall be liable for any pollution damage caused by oil which has escaped or being discharged from the ship as a result of the incident...» (art. 3). «Pollution damage, means loss or damage caused outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship, wherever may occur, and includes the costs of preventive measures and further loss or damage caused by preventive measures» (art. 1 § 6). Where two or more ships have caused such damage the owners shall be jointly and severally liable (art. 4); **exceptions** from liability provided: if the owner proves that the damage «(a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional character... or (b) caused by an act... done with intent to cause damage by a third party or (c) caused by the negligence... of any Government or other authority in maintaining navigational aids [State fault-based liability (art. 3)]. Warships are excluded (art. 2). Limits to liability prescribed as well (art. 5).

The owner of the ship «carrying more than 2000 tons of oil shall be required to maintain insurance or other financial security to cover his liability for pollution damage... (art. 7); Time limit for right of action: 3 - 6 years.

**6. CONVENTION RELATING TO CIVIL LIABILITY IN THE FIELD OF
MARITIME CARRIAGE OF NUCLEAR MATERIAL**

Place and date of adoption: Brussels, 17.12.1971

Entry into force: 15.7.1975

Objectives: Following the Paris Convention of 29.7.1960 and the Vienna Convention of 21.5.1963. To ensure that the operator of a nuclear installation would be exclusively liable for damage caused by a nuclear incident occurring in the course of maritime carriage of nuclear material.

Establish: **Exclusive liability** of the operator of a nuclear installation for damage caused by a nuclear incident occurring in course of maritime transport. Any other person is exonerated from liability for such a damage (art. 1). Same as in the Paris and the Vienna Convention exceptions of liability provided (art. 2).

**7. INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN
INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE**

Place and date of adoption: Brussels, 18.12.1971

Entry into force: 16.10.1978

Objectives: To supplement the International Convention on Civil Liability for Oil Pollution Damage, 1969 (hereinafter «Liability Convention»); to ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from ships;

To distribute the economic burden between the shipping industry and oil cargo interests.

Establish: A new legal person: the International Oil Pollution Compensation Fund («the Fund»), to administer the compensation system, supplementing that of the Liability Convention. «(a) to provide compensation for pollution damage to the extent that, the pollution afforded by the Liability Convention is inadequate; ... (b) to give relief to shipowners in respect of the additional financial burden... (art. 2).

Provide: Compensation to be paid from the Fund to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of the Liability Convention. (a) no liability for the damage arises under the Liability Convention... (b) the owner liable under the liability Convention is financially incapable of meeting his obligations... (c) the damage exceeds the owner's liability (art. 4 § 1); exceptions and defences following the Liability Convention. [«no obligation of the fund if it proves that the pollution damage resulting from an act of war, hostilities... act or omission with intent...etc.» (art. 4 § 2)] Limits of the Fund's obligations and indemnification of the shipowner are set. (art. 4 § 4) [see also the related protocols 1976 / 1992].

[The 1992 Protocol extends the geographical scope by including the exclusive economic zone: United Nations Convention on the Law of the Sea / Montego Bay 1982). A new definition of pollution damage which retains the present definition but also adds a phrase, clarifies that, for environmental damage the only costs incurred for reasonable measures to reinstate the contaminated environment, are included in the concept of pollution damage].

**8. CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE
RESULTING FROM EXPLORATION FOR AND EXPLOITATION OF
SEABED MINERAL RESOURCES**

Place and date of adoption: London, 1.5.1977. Not yet in force.

Objectives: To ensure that adequate compensation is available to persons who suffer damage caused by the exploration for and exploitation of certain seabed mineral resources; To harmonise rules and procedures for determining questions of liability in such cases.

Establish: Strict liability of the operator (or joint operator «jointly and severally liable») of the installation for damage originates from the installation (art. 3). The pollution damage «(a) resulting from an incident which occurred beyond the Coastal low - water line at an installation under jurisdiction of Controlling State... (b) suffered in the territory of the State Party» (art. 2) Exceptions provided (art. 4).

Exoneration (whole or partial) if the operator proves act or omission done by (or negligence of) the victim with intent to cause damage (art. 4). Limits of liability are set (art. 6). Time limit of liability 15 years after the abandonment of an installation (art. 3)..

**9. CONVENTION ON CIVIL LIABILITY FOR DAMAGE CAUSED DURING CARRIAGE OF
DANGEROUS GOODS BY ROAD, RAIL, AND INLAND NAVIGATION VESSELS.**

Place and date of adoption: Geneva 10.10.1989. Not yet in force

Objectives: To establish uniform rules ensuring adequate and speedy compensation for damage during inland carriage of dangerous goods by road, rail, and inland navigation vessels.

Establish: (Strict) Liability of the carrier, the registered owner or other person controlling a road vehicle or an inland navigation vessel or the operator of a railway line for damage caused during transport of dangerous goods.

Damage, extends to loss of life or personal injury, loss or damage of property, loss or damage by contamination to the environment including reasonable measures for the reinstatement of the environment and the costs of preventive measures.

The carrier's liability shall be covered by insurance or financial security. Limitation of liability per incident possible. The carrier may establish a limitation fund in one of the Court that action has been brought. No claim may be made beyond the regime jurisdiction against the carrier or any person engaged in the transport operation or in related salvage activities. Exceptions provided as well.

10: COUNCIL OF EUROPE.

**CONVENTION ON CIVIL LIABILITY FOR DAMAGE RESULTING FROM ACTIVITIES
DANGEROUS TO THE ENVIRONMENT.**

Place and date of adoption: Lugano, 21.6.1993. Not yet in force.

Objectives: To ensure adequate compensation for damage resulting from activities dangerous, to the environment;

To provide for means of prevention and reinstatement.

Establish: Strict liability for damage resulting from activities dangerous to the environment taking into account the «Polluter Pays» principle: liability of the operator of a dangerous activity (all the operators are jointly and severally liables) in respect of substances, organisms, and certain waste installations (art. 6); of the operator of a site for the permanent deposit of waste (art. 7). [if several operators concerned they are «jointly and severally» liables for all such damage].

Provide [following the above mentioned international conventions] **exceptions** if the operator proves that damage was caused: ... «(a) by an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional inevitable and irresistible character; ... (b) by an act done with the intent to cause damage ... (d) by pollution at tolerable levels under local relevant circumstances (e) by a dangerous activity taken lawfully in the interests of the person who suffer damage...» or «(c) resulted from compliance with a specific order of a public authority» (art. 8). The fault of the person who suffered the damage is taken to account at the compensation (art. 3);

A compulsory financial security scheme: the operators are required to participate in a financial security scheme or to have... financial guarantee up to a certain limit, ...to cover the liability under this Convention (art. 12);

Access to information [held by public authorities (art. 14) held by operators (art. 16)].

Limitation periods of actions for compensation presented: from 3 years (rule) to maximum 30 years after the date of the incident.

Set up the Standing Committee: a legal person which will keep under review problems related to this Convention.

1.B. INTERNATIONAL CONVENTIONS ON CIVIL LIABILITY IN THE FIELD OF ENVIRONMENT
TABLE OF PARTICIPATION BY THE MEDITERRANEAN COUNTRIES

Place / date Adoption	Convention on Third Party Liability in the Field of Nuclear Energy	Convention Supplementary to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy	Vienna Convention on Civil Liability for Nuclear Damage	Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention
Entry into force	Paris: 29.7.1960 1.4.1968	Brussels 31.1.1963 4.12.1974	Vienna 21.5.1963 12.11.1977	Vienna 21.9.1988 27.4.1992
Albania				
Algeria				
Bosnia - Herzegovina				
Croatia			*	
Cyprus				
Egypt			*	*
European Community				
France	*	*		
Greece	*			
Israel				
Italy	*	*		
Lebanon				
Libya				
Malta				
Monaco				
Morocco				
Slovenia			*	
Spain	*	*		
Syria				
Tunisia				
Turkey	*			
* A Party				

INTERNATIONAL CONVENTIONS ON CIVIL LIABILITY IN THE FIELD OF ENVIRONMENT
TABLE OF PARTICIPATION BY THE MEDITERRANEAN COUNTRIES

	International Convention on Civil Liability for Oil Pollution Damage	Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material	International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage	Convention on Civil Liability for Damage resulting from activities Dangerous to Environment
Place / date Adoption	Brussels 29.11. 1968	Brussels 17.12. 1971	Brussels 19.12. 1971	Lugano 21.6. 1993
Entry into force	19.6.1975	15.7.1975	16.10.1978	Not yet in force
Albania	*		*	
Aigeria			*	
Bosnia - Herzegovina				
Croatia	*		*	
Cyprus	*		*	#
Egypt	*			
European Community				
France	*	*	*	
Greece	*		*	#
Israel				
Italy	*	*	*	#
Lebanon	*			
Libya	*			
Malta	*	*	*	
Monaco		*	*	
Morocco	*	*	*	
Slovenia	*	*	*	
Spain	*	*	*	
Syria	*	*	*	
Tunisia	*	*	*	
Turkey	*			

* A Party

A Signatory for Treaties not yet in force

**PART II: INTERNATIONAL CONVENTIONS ON THE FIELD OF ENVIRONMENT
CONTAINING PROVISIONS ON CIVIL LIABILITY.**

PARTICIPATION BY THE MEDITERRANEAN COUNTRIES

International conventions on the field of environment contain general provisions on civil liability, which need to be supplemented by other trends in international level (through protocols, annex etc.) or by internal law.

The Parties undertake to co-operate in formulating and adopting further rules and procedures for the determination of liability and compensation.

1. INTERNATIONAL CONVENTION RELATING TO INTERVENTION ON THE HIGH SEAS IN CASES OF OIL POLLUTION CASUALTIES

Place and date of adoption: Brussels, 29.11.1969.

Entry into force: 6.5.1975

Participation by the Mediterranean Countries: Croatia, Egypt, France, Greece, Italy, Lebanon, Monaco, Morocco, Slovenia, Spain, Syria, Tunisia.

Provision Art. 6: A sort of fault - based State Liability is established, a Party which, by taking measures in contravention of the Present Convention, had caused damaged to others, pays compensation «to the extent of the damage caused by measures which exceed those reasonably necessary to achieve the end of the Convention».

2. CONVENTION ON THE PREVENTION OF MARINE POLLUTION BY DUMPING OF WASTES AND OTHER MATTER (AS AMENDED)

Place and date of adoption: London, Mexico City, Moscow Washington, 28.12.1972.

Entry into force: 30.8.1975

Participation by the Mediterranean Countries: Croatia, Egypt, France, Greece, Italy, Lebanon, Malta, Monaco, Morocco, Slovenia, Spain, Tunisia.

Provision Art. 10: In accordance with the «State responsibility for damage to the Environment of other States or any other area...» the contracting Parties «undertake to develop procedures for the assessment of liability and the settlement of disputes regarding dumping».

3. CONVENTION FOR THE PROTECTION OF THE MEDITERRANEAN SEA AGAINST POLLUTION.

Place and date of adoption: Barcelona 16 2.1976.

Entry into force: 12.2.1978.

Status of the participation by the Mediterranean Countries: Albania, Algeria, Bosnia - Herzegovina, Croatia, Cyprus, Egypt, European Community, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Morocco, Slovenia, Spain, Syria, Tunisia, Turkey.

Provision: Art. 12: entitled «Liability and Compensation»; announces (State) Responsibility of the Contracting Parties to adopt "appropriate procedures for the determination of liability and Compensation for damage resulting from the pollution of the marine - environment deriving from violations of the provisions of this Convention and applicable Protocols". General provision to be followed by supplementary trend.

4. UNITED NATIONS CONVENTION ON THE LAW OF THE SEA.

Place and date of adoption: Montego Bay 10.12.1982

Entry into force: 16.11.1994

Status of the participation by the Mediterranean Countries: Bosnia - Herzegovina, Croatia, Cyprus, Egypt, Greece, Italy, Lebanon, Malta, Slovenia, Spain, Tunisia.

Provision: Section 9: Article 235: entitled «Responsibility and liability: general provision express the progress on Liability in international level: States are responsible and liables in accordance with international law and their international obligations concerning the protection and preservation of the marine environment. They are responsible to «ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction (§ 2)»; To «co-operate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment and the compensation for damage...» and «development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds.»

5. BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL

Place and date of adoption: Basel 22.3.1989. **Entry into force:** 5.5.1992

Status of the participation by the Mediterranean Countries: Croatia, Cyprus, Egypt, European Community, France, Greece, Israel, Italy, Lebanon, Monaco, Morocco, Slovenia, Spain, Syria, Tunisia, Turkey.

Provision Art. 12: Announces the adoption of a Protocol «setting out appropriate rules and procedures in the field of liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes» as soon as practicable.

[A draft protocole on Liability and compensation is being developed under the Basel Convention Conference 1994].

6. CONVENTION ON THE PROTECTION AND USE OF TRANSBOUNDARY WATERCOURSES AND INTERNATIONAL LAKES.

Place and date of adoption: Helsinki: 17.3.1992. Not yet in force.

Status of the participation by the Mediterranean Countries: Albania, European Community.

Provision: art. 7: Entitled «Responsibility and liability»; general provision: "The Parties shall support appropriate international efforts to elaborate rules, criteria and procedures in the field of responsibility and liability".

7. CONVENTION ON THE TRANSBOUNDARY EFFECTS OF INDUSTRIAL ACCIDENTS

Place and date of adoption: Helsinki: 7.3.1992. Not yet in force.

Status of the participation by the Mediterranean Countries: Albania.

Provision: Art 18: General Provision in the same concept to above mentioned Convention on Protection and Use of Watercourses and International Lakes.

Selected elements from :

«Selected Multilateral Treaties in the field of the Environment». A.C. Kiss UNEP Reference Series 3, UNEP Nairobi 1983, VOL. 1.

«Selected Multilateral Treaties in the field of the Environment». I. Rummel-Bulska, S. Osafo, UNEP, CAMBRIDGE GROTIUS PUBLICATIONS L.T.D., 1991 VOL.2

«Green Globe Yearbook», The Fridtjof Nansen Institute, Oxford University Press, 1996.