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MEDITERRANEAN ACTION PLAN

First meeting of the open-ended working group of Legal and Technical Experts to propose 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

Loutraki, Greece, 7-8 March 2006

FEASIBILITY STUDY COVERING THE LEGAL, ECONOMIC, FINANCIAL AND SOCIAL ASPECTS OF A LIABILITY AND COMPENSATION REGIME IN THE MEDITERRANEAN SEA AND ITS COASTAL AREA

UNEP/MAP
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MEDITERRANEAN ACTION PLAN

Meeting of MAP Focal Points

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FEASIBILITY STUDY COVERING THE LEGAL, ECONOMIC, FINANCIAL AND SOCIAL ASPECTS OF A LIABILITY AND COMPENSATION REGIME IN THE MEDITERRANEAN SEA AND ITS COASTAL AREA

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1. Executive Summary

This report represents a contribution towards current work aiming at considering the pros and cons for the setting up of one or more regimes of liability and compensation of environmental relevance within the area of coverage of the Barcelona Convention, 1995.

The report has built on previous work carried out within the MAP Secretariat as far back as the original Barcelona Convention.

The work involved considerable research as well as consultations with a host of affected socio-economic actors, including the Mediterranean Contracting States.

The report concludes by recommending that Mediterranean Contracting States should move forward with the underlying scheme possibly along priority areas, being land-based pollution, dumping and activities affecting biodiversity.

2. Table of Contents

3. Tables of Regional and Global Legislative & Other Normative Instruments Considered

3.1. Regional Instruments

Instruments appear in chronological order and are followed by their short title in parentheses

Convention on Third Party Liability in the Field of Nuclear Energy of the 29th July 1960, Paris (**Paris Convention**), amended by:

- Additional Protocol, Paris, 28 January 1964;
- Protocol, Paris, 16 November 1982;
- Protocol, Paris, 12 February 2004

Convention of the 31st January 1963 Supplementary to the Paris Convention of the 29th July 1960 on Third Party Liability in the Field of Nuclear Energy, Brussels (**Brussels Supplementary Convention**)

Offshore Pollution Liability Agreement, 4 September 1974 (**OPOL**)

Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, Barcelona, 16 February 1976 (**Barcelona Convention, 1976**)

Convention on Civil Liability for Oil Pollution Damage resulting from Exploration for and Exploitation of Seabed Mineral Resources, London, 1 May 1977

Convention of the Protection and Use of Transboundary Watercourses and International Lakes, Helsinki, 17 March 1992

Convention on the Transboundary Effects of Industrial Accidents, Helsinki, 17 March 1992

Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, Barcelona, 10 June 1995 (**Barcelona Convention, 1995**)

Directive 2004/35/CE of the European Parliament and of the Council of the 21st April 2004 on Environmental Liability with regard to the Prevention and Remedying of Environmental Damage

3.2. Global Instruments

Instruments appear in chronological order and are followed by their short title in parentheses

Vienna Convention on Civil Liability for Nuclear Damage, Vienna, 21 March 1963 (**Vienna Convention**), amended by Protocol, Vienna, 12 September 1997

International Convention on Civil Liability for Oil Pollution Damage, Brussels, 29 November 1969 (**CLC '69**), amended by:

- Protocol, London, 9 November 1976;
- Protocol, London, 25 May 1984;
- Protocol, London, 27 November 1992 (establishing the CLC '92)

Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, Brussels, 17 December 1971

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, Brussels, 18 December 1971 (**Fund Convention '71**), amended by:

- Protocol, London, 9 November 1976;
- Protocol, London, 25 May 1984;
- Protocol, London, 27 November 1992 (establishing the Fund Convention '92);
- Protocol, London, 27 September 2000

Convention on Limitation of Liability for Maritime Claims, London, 19 November 1976 (**LLMC**), amended by Protocol, London, 2 May 1996

United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982 (**UNCLOS**)

Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention, Vienna, 21 September 1988 (**Joint Protocol**)

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Basel, 22 March 1989 (**Basel Convention**)

Rio Declaration on Environment and Development, Rio, 14 June 1992 (**Rio Declaration**)

International Convention on Civil Liability for Oil Pollution Damage, London, 27 November 1992 (**CLC '92**)

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, London, 27 November 1992 (**Fund Convention '92**)

International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, London, 3 May 1996 (**HNS Convention**)

Convention on Supplementary Compensation for Nuclear Damage, Vienna, 12 September 1997

Basel Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal, Basel, 10 December 1999 (**Basel Protocol**)

International Convention on Civil Liability for Bunker Oil Pollution Damage, London, 23 March 2001 (**Bunkers Convention**)

Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters, Kiev, 21 March 2003 (**Kiev Protocol**)

Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, London, 16 May 2003 (**Supplementary Fund Protocol**)

4. List of Abbreviations

CEC	Commission of the European Communities
EC	European Community
HNS	hazardous and noxious substance
HNS Fund	International Hazardous and Noxious Substances Fund
IAEA	International Atomic Energy Agency
IMO	International Maritime Organization
IOPC Fund	International Oil Pollution Compensation Fund 1992
MAP	Mediterranean Action Plan
NFP	(MAP) National Focal Point
OECD	Organisation for Economic Co-Operation and Development
SDR	Special Drawing Right
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme

5. Introduction

The present report constitutes the end-product of MAP's Terms of Reference #4-04110 dated the 16th July 2004 and relating to the preparation of a feasibility study for submission to the Meeting of the Contracting Parties in 2005 covering the legal, economic, financial and social aspects of a liability and compensation regime.[1]

Liability and compensation are matters for the lawmaker and the judge to address ultimately, the former by defining their operating legal parameters and the latter by giving them a factual application within such parameters. However, as expressed in the terms of reference, economic, financial, social and perhaps other types of factors intertwine in the fabric and application of any given regime of liability and compensation, jointly with legal issues.

The report is structured as follows:

- The report opens with the usual sections, i.e. an executive summary,[2] a table of contents,[3] tables of instruments considered[4] and a list of abbreviations;[5]
- A brief recapitulation ensues of previous work concluded under the framework of the Barcelona Convention, 1995 and its predecessor, the Barcelona Convention, 1976 on the subject of liability and compensation;[6]
- The report then provides an exposition of the law of liability and compensation with a particular emphasis on environmental damage in marine and coastal areas in Mediterranean countries, including insights into national, regional and global instruments;[7]
- The outcome of consultations carried out in accordance with the Consultant's terms of reference are then summed up in a separate section 8;
- In the light of both the exposition of the law and the consultations the result of our consultations, we attempt in section 9 a re-assessment of the work carried out previously enabling us to elaborate recommendations on how to move forward. For ease of reference, recommendations are then bundled in section 10;
- A short bibliography is provided in section 11;
- The last section 1 of the report consists of appendices including extracts from the terms of reference[8] and the methodology report filed on the 17th September 2004,[9] sample questionnaires drafted by the Consultant and disseminated through the MAP Office[10] and a list of the non-governmental parties consulted through the medium of those questionnaires.[11]

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[1] See an extract of the terms of reference under Appendix 12.1 to this report.

[2] See section 1 above.

[3] See section 2 above.

[4] See section 3 above.

[5] See section 4 above.

[6] See section 6 below.

[7] See section 7 below.

[8] See section 12.1 below.

[9] See section 12.2 below.

[10] See section 1.1 below.

[11] See section 0 below.

6. Recapitulation of Previous Work

The genesis of the work underlying this project originates in the founding Barcelona Convention, 1976, which has so far lead to a measured effort to reach concrete results.

6.1. Barcelona Convention, 1976

Art. 12 of the original Barcelona Convention, 1976[12] is entitled "Liability and Compensation" and reads:

> "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 geographical scope of application resulting from arts. 4 and following of the Convention is reflected in the expression "Mediterranean Sea Area," which corresponds to "the maritime waters of the Mediterranean Sea proper"[13] excluding, except as may be otherwise provided in the protocols to the Convention, internal waters.[14]

6.2. Lahlou/Loukili Study

As early as 1978, UNEP commissioned a study on the subject of liability and compensation pursuant to the above provisions of the Barcelona Convention to Messrs. A. Lahlou and M. Loukili. The Study concerning the Interstate Guarantee Fund for the Mediterranean Sea Area and the Issue of Liability and Compensation for Damage resulting from Pollution of the Marine Environment (the "Lahlou/Loukili study") was submitted to the Intergovernmental Meeting of Mediterranean Littoral States aiming at evaluating the state of progress of the Mediterranean Action Plan and the First Meeting of Contracting Parties to the Convention for the Protection of the Mediterranean Sea from Pollution and the Protocols relating thereto, which was held in Geneva from the 5th to the 10th February 1979.[15]

By and large, the study advocated the setting up in the Mediterranean Sea area of a regime of strict or objective liability coupled with a system of compensation based on one or more interstate funds the contributions to which would be levied on the industry. The study strongly pressed for a multidisciplinary regime, i.e. covering all sources of pollution, including ship-source oil pollution which, at the time, was already regulated by the CLC '69 and the Fund Convention '71. Arguing that shipping should be covered by the prospective regime, the authors of the study foresaw the need to convene an international global conference to adopt the requisite legal instrument. Insofar as land-based marine pollution was concerned, Messrs. Lahlou and Loukili considered that the sheer extent of the phenomenon required that non-littoral States lying upstream on rivers flowing into the Mediterranean Sea should be brought under the regime.

6.3. Barcelona Convention, 1995

Under the heading "Liability and Compensation," art. 16 of the revised Barcelona Convention, 1995, provides:

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[12] Convention for the Protection of the Mediterranean Sea against Pollution, 1976.

[13] Art. 1(1).

[14] Art. 1(2).

[15] UNEP/IG.14/INF.18.

> "The Contracting Parties undertake 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."

Pursuant to art. 1(1), "Mediterranean Sea Area" means the maritime waters of the Mediterranean Sea proper. Under art. 1(2), "[t]he application of the Convention may be extended to coastal areas as defined by each Contracting Party within its own territory." Accordingly, the prospective regime would theoretically apply at sea in the harbor area, inland waters, as well as the open sea. The question whether it would also extend to coastal areas is left up to each Contracting Party and subject to the geographical limits determined by each Contracting Party within its own territory.

6.4. Brijuni Meeting

A first meeting of government-designated legal and technical experts was convened by the MAP Secretariat at Brijuni, Croatia, from the 23rd to the 25th September 1997 for the purpose of preparing 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.[16] The participants at the meeting generally agreed that a binding legal instrument, rather than a soft law instrument, should be preferable, in the form of a Protocol rather than an Annex to the Barcelona Convention, 1995. The meeting requested the MAP Secretariat to convene a second meeting of experts.

6.5. Athens Meeting

Pursuant to this request, a meeting of legal experts on liability and compensation was held at Athens, Greece, on the 21st April 2003, in order to discuss the grounds and feasibility for a new legal instrument related to liability for damage to the Mediterranean marine environment.[17] In commenting on the results of the previous Brijuni meeting, Prof. Scovazzi, in attendance at Athens, opined that that meeting had come up with a basic proposal and explanatory document setting up a very advanced liability regime; he added, however, that such a regime was seen as too ambitious in various aspects by some countries.

The Athens meeting reached the following conclusions:

> "- to move forward a legal instrument which covers all the activities not already regulated at an international level, taking also into consideration the proposed European Directive on environmental liability, i.e., dumping, operation of offshore installations and land based activities. It was proposed to include the SPA Protocol activities as far as alien species are concerned.
>
> - The legal instrument should have the form of a Protocol in order to allow its adoption by the Parliaments of the Parties
>
> - The Protocol could be divided in two parts: a first part dedicated to the general liability and compensation rules, and a second part containing annexes addressing specific activities. It was proposed to start with offshore installations or dumping"[18]

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[16] UNEP(OCA)/MED WG.117/4.

[17] UNEP(DEC)/MED WG.230/2.

[18] Ibid. p. 5, par. 33.

6.6. 13th Meeting of Contracting Parties

At their 13th meeting held at Catania, Italy from the 11th to the 14th November 2003, the Contracting Parties to the Barcelona Convention, 1995 requested the Secretariat to prepare a feasibility study for submission to the meeting of the Contracting Parties in November 2005 covering the legal, economic, financial and social aspects of a liability and compensation regime based on the organization of a participatory process with the Contracting Parties and socio-economic actors and with a view to avoiding overlapping with any other liability and compensation regime.[19]

[19] UNEP(DEC)/MED IG.15/11, annex III, p. 2.

7. Exposition of the Subject of Liability and Compensation with a Particular Emphasis on Environmental Damage in Marine and Coastal Areas in Mediterranean Countries

This exposition flows from the terms of reference. Its purpose is to inform the discussions taking place in the Mediterranean context aiming at the development of an appropriate liability and compensation regime by considering the existing patchwork of principles and rules on the subject. Devising a future scheme must start by taking stock of the existing system.

Our description and analysis of the law of environmental liability and compensation with particular reference to marine and coastal areas consists of an exposé[20] followed by a tabular presentation.[21] On the one hand, the exposé is thematically structured and attempts to render a coherent statement of perused material together with an assessment of extant regimes. The tabular section, on the other hand, contains descriptive charts providing a fuller and fairly more detailed presentation of systems and regimes in place. The law presented here embraces national, regional as well as international sources.

For obvious time, space and functional limitations, this exposition cannot aim at rendering an elaborate treatise of the law. Focus is placed on the most crucial and debatable elements,[22] keeping in mind the scheme under development. The instances of liability and compensation regimes thus depicted may provide a useful basis for the following discussion centering on the Mediterranean and the formulation of our proposals.[23]

First, however, the expression "liability and compensation" needs to be broken down into its two sub-parts. It should be said that liability is different from compensation in that the former is the vehicle by which answerability in law is placed on a person–or in some cases property–for harm that results or may result to another person's body or property.[24] As such, liability must be differentiated from responsibility, which is concerned with the moral blame or accountability for certain occurrences, but not necessarily in terms of law.[25]

There are various instances of liability, including civil liability and criminal or penal liability. In some jurisdictions, relationships between the arms of government and the citizen generate a species of liability which is different from that arising between private parties, is governed by particular rules and is sometimes referred to as "administrative liability." On the international plane, liability between States is referred to as "State responsibility."[26]

In the civil sphere, with which we are solely concerned here, such answerability may result from a contractual or non-contractual relationship. In other words, a party to a contract may suffer harm at the hands of the other party to the contract as a result of faulty performance of the same. An example is where a building contractor mismanages the construction project to the detriment of his client, who is then entitled to sue him in contract. In such a case, liability is labeled as "contractual" insofar as it flows from the contract. In other instances, the wrong

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[20] See section 7.1 below.

[21] See section 7.2 below.

[22] Issues that are not covered in this exposition include: multiple polluters, court jurisdiction over claims and conflict of laws.

[23] See sections 8 and following below.

[24] "Liable" is defined by the *Oxford English Reference Dictionary* (Oxford/New York: Oxford University Press, 1995), p. 825, as "legally bound."

[25] According to the *Oxford English Reference Dictionary*, ibid., p. 1228, "responsible" is defined as "liable to be called to account (to a person or for a thing)… [or] morally accountable for one's actions…"

[26] See e.g. art. 235(1) United Nations Convention on the Law of the Sea, 1982.

may bring to bear persons who are total strangers as to each other, setting in motion non-contractual or delictual liability, by reference to a delict, which is an objectionable action or omission recognized as such by law.[27] For purposes of this report, liability for environmental damage is to be taken in this non-contractual setting.[28]

Civil liability may materialize in various forms, one of which is compensation which is the payment of a sum of money calculated on the basis of a rational formula as the equivalent of the damage suffered;[29] however, liability may lead to other forms of answerability, for example the actual reinstatement by the liable party of a contaminated site.

Most environmental cases lead to the imposition of financial sanctions (understood broadly) in the form of the condemnation of the polluter to pay a fine at the behest of the State or other local public authority, or else damages awarded to the affected party. However, it is important that other sanctions or remedies compelling the doing of a particular thing are kept in mind and made available in order to achieve whatever reinstatement of the environment is possible.

Directive 2004/35/CE of the European Parliament and of the Council of the 21st April 2004 on Environmental Liability with regard to the Prevention and Remedying of Environmental Damage provides thus in its preambular par. (13):

> "Not all forms of environmental damage can be remedied by means of the liability mechanism. For the latter to be effective, there need to be one or more identifiable polluters, the damage should be concrete and quantifiable, and a causal link should be established between the damage and the identified polluter(s). Liability is therefore not a suitable instrument for dealing with pollution of a widespread, diffuse character, where it is impossible to link the negative environmental effects with acts or failure to act of certain individual actors."

7.1. Exposé

This exposé of the state-of-the-art of liability and compensation is structured thematically. It opens with a discussion of overarching principles and rules which permeate the subject and are key to understanding fundamental aspects and directions in the law.[30] This is followed by an identification and summary description of the various systems and regimes of liability and compensation,[31] which are then dissected thematically.[32]

7.1.1. Overarching Principles and Rules

As a subject of law, liability and compensation cannot be properly depicted without reference to the underpinnings of the system of law in which the rules are meant to operate. There are

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[27] The civilian concept of delict may be likened to the common law tort, which brings into play tortious liability.

[28] Non-contractual liability is also referred to sometimes as third-party liability. This report adopts these terms interchangeably.

[29] The obligation to compensate does not mean that whoever is obliged to compensate is the party who is responsible for the damage: George Wiederkehr, "Dommage écologique et responsabilité civile," in Michel Prieur & Claude Lambrechts (eds.), *Mankind and the Environment* (Paris: Frison-Roche, 1998), p. 523.

[30] See section 7.1.1 below.

[31] See section 7.1.2 below.

[32] See sections 7.1.3 and following below.

certain fundamental rules and principles which underlie the whole structure within which environmental law provides a mechanism for an aggrieved party to claim, establish and obtain an award of damages or other reparation for harm it feels it has unjustly endured. These underpinnings are constituted by the mesh of basic rules of constitutional, administrative, private, judicial and environmental law on which specific rules of liability and compensation for environmental harm in marine and coastal areas are woven and without which the detailed rules lack the crucial building blocks. Our aim will therefore be to present in this part of the exposé such crucial general,[33] environmental[34] and maritime or coastal principles[35] on which the effectiveness of liability and compensation depends.

7.1.1.1. General Principles and Rules

7.1.1.1.1. Rule of Law

The concept of the rule of law lies at the heart of any contribution towards legal protection of the Mediterranean environment. The best regime of liability and compensation is bound to remain a dead letter within a system that pays little heed to the rule of law. Achieving therefore justice for the pollution victim will depend on the effectiveness of the legal system as a whole. It thus becomes important to consider some of the other principles and norms that are crucial to the proper functioning of a liability and compensation regime in marine and coastal areas.

7.1.1.1.2. Access to Justice

Directly flowing from the rule of law concept is the requirement that subjects of law should have sufficient access to justice. The best written laws and codes would mean nothing without the necessary enforcement teeth and the provision of the remedy to whomsoever is entitled to vindicate his right in accordance with the provisions thus laid forth. Access to justice means that victims of pollution should have the ability, including the financial facilities, to attain justice in the proper execution of their legal rights. The concept probably entails a right to information[36] and, where this is required, assistance in completing the procedural requirements for the enforcement of rights, typically in the form of legal aid.

As stated above, liability and compensation would remain a dead letter without the ability for aggrieved interests to lodge their claims within a system that is both fair and efficient. It is noteworthy that a number of international instruments purport to facilitate access to justice in environmental matters.[37]

7.1.1.1.3. Judicial Independence

The regime in contemplation will presumably require a process whereby the given facts of a case are fitted within the parameters of the law. This equation can only be done by a neutral party, normally a judge or a magistrate. It is indispensable for the proper functioning of any

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[33] See section 7.1.1.1 below.

[34] See section 7.1.1.2 below.

[35] See section 7.1.1.3 below.

[36] See section 7.1.1.2.4 below.

[37] See principle 10 in fine, Rio Declaration on Environment and Development; art. 9, Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 1998.

rules of law that the judge or other given decision-making authority meet the highest standards of independence and neutrality.

7.1.1.1.4. Delictual (or Tort) Law

This study is fundamentally about delictual (or tort) law. Delictual law is concerned with the civil reparation of injured parties in situations where there is no pre-existing contract with the perpetrator of the harmful wrong.[38] A typical pronouncement of the principle is to be found in the French Civil Code, which provides:

> "Any act whatever of man, which causes damage to another, obliges the one by whose fault it occurred, to compensate it."[39]

However, delictual liability may also lie at the heart of more specific provisions dealing with particular kinds of damage or activities; the wording of such provisions may differ from that of the general articles on delictual liability found in the national civil code or other basic legal instrument governing the matter.

Delictual law has continually evolved. For instance, the law has been considerably affected by the various international conventions adopted in a number of areas, including environmental law. In Europe, a slow process of harmonization of the national tort laws of EU Member States is underway.[40] All of these developments must obviously be borne in mind in the process relevant to our purposes.

Delictual or tortious liability embraces both fault-based and no-fault liability. The former is dependent on the occurrence of a morally reprehensible act or omission by the defendant, whether intentional (delictual) or unintentional (quasi delictual), and sanctioned as such by the law. No-fault liability, on the other hand, arises independently of any blame and simply on proof that a particular activity has resulted in damage to the plaintiff, within the ambit of a predefined legal framework. No-fault liability as a speedy and simplified means of access to justice has witnessed increasing popularity in recent decades, particularly in the area of environmental protection.

7.1.1.2. Environmental Principles and Rules

In embarking on the formulation of a prospective regime, one should bear in mind the finality of environmental law, as expressed in the following passage taken from Michel Prieur's *Droit de l'environnement*:

> "*La gestion de l'environnement exige non seulement des mesures préventives de police qui, par des autorisations ou des interdictions, permettent d'empêcher ou de contrôler des activités susceptibles de nuire au milieu naturel et à la santé humaine mais aussi des mesures de surveillance, de répression, de réparation et de restauration. Certes les actions et les dispositions de surveillance ne sont pas de même nature que les mécanismes visant à sanctionner les atteintes à l'environnement. On constate toutefois que la répression n'est pas la méthode*

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[38] The term "delict" "…includes all kinds of crimes and misdemeanors, and even the injury which has been caused by another, either voluntarily or accidentally without evil intention." A quasi delict, on the other hand, is "[an] act whereby a person, without malice, but by fault, negligence or imprudence not legally excusable, causes injury to another:" *Bouvier's Law Dictionary*, 6th ed. (1856), http://www.constitution.org/bouv/bouvier.htm.

[39] Art. 1382 (translation on Legifrance, http://www.legifrance.gouv.fr/html/codes_traduits/code_civil_textA.htm#TITLE%20IV%20of).

[40] See *Principles of European Tort Law*, http://www.egtl.org/Principles/index.htm.

> *généralement utilisée en la matière. Quel que soit l'arsenal répressif existant, la politique de l'environnement se veut persuasive et éducative et répugne à utiliser les mesures extrêmes, sauf nécessité absolue… Enfin, l'irréversibilité des atteintes à l'environnement rend souvent dérisoires les sanctions pénales classiques ou l'octroi de dommages-intérêts.*"[41]

In any case, it is clear the liability and compensation regimes must be provided for in environmental matters, as stated by the Rio Declaration on Environment and Development:

> "States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction."[42]

A prospective liability and compensation will have to be built upon the existing patchwork of conventions, laws and regulations, including European Community legislation, affecting the environment. It becomes therefore important to consider the underlying key environmental principles and rules.

7.1.1.2.1. Barcelona Convention Framework

The process underway for the elaboration of an appropriate mechanism for liability and compensation falls under the framework of the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, 1995 (herein referred to as "the Barcelona Convention, 1995)." The Convention and its Protocols must therefore be closely looked at in relation to the development of the intended regime.

Article 16 of the revised Barcelona Convention is arguably broader than its predecessor under the old Convention[43] (art. 12) in at least three respects. First, the application of the new Convention "may be extended to coastal areas as defined by each Contracting Party within its own territory" (art. 1(2)), which is a novelty. Second, under the new Convention, cooperation between Contracting Parties is called for not only for the formulation and adoption of appropriate procedures, but also of rules. This refers to a recognized distinction in law between substantive and procedural or adjective law. While substantive law "creates or defines rights, duties, obligations, and causes of action that can be enforced by law,"[44] procedural law "prescribes the procedures and methods for enforcing rights and duties and for obtaining redress (as in a suit)…"[45] Akin to procedural law, adjective law is defined as "the portion of the law that deals with the rules of procedure governing evidence, pleading, and practice."[46] In other words, it is clear that the framers of the revised Barcelona Convention intended that there be cooperation in the formulation of a comprehensive legal regime covering liability and compensation, substantive rights and implementing processes being the two facets of a whole. Thirdly, it is clear that the deletion of the words "deriving from violations of the provisions of this Convention and applicable Protocols" has opened up the subject of liability and compensation under the revised Convention to instances of pollution

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[41] Michel Prieur, *Droit de l'environnement*, 4th ed. (Paris: Dalloz, 2001), p. 825.

[42] Principle 13.

[43] Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, 1976.

[44] FindLaw Legal Dictionary, http://dictionary.lp.findlaw.com.

[45] Ibid.

[46] Ibid.

falling outside the strict ambit of violations of the explicit prohibitions and obligations contained in the Convention and Protocols.

7.1.1.2.2. Sustainable Development

Sustainable development lies at the heart of current environmental law and policy. One of its most effectual pronouncements is to be found in the Rio Declaration on Environment and Development in the following terms:

> "The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations."[47]
>
> "In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it."[48]

7.1.1.2.3. "Polluter Pays" Principle

The "polluter pays" principle forms a cardinal point in this discussion. As stated in the Rio Declaration, "the polluter should, in principle, bear the cost of pollution."[49] The relevance of this principle is further demonstrated in Directive 2004/35/CE of the European Parliament and of the Council of the 21st April 2004 on Environmental Liability with regard to the Prevention and Remedying of Environmental Damage, which provides:

> "The prevention and remedying of environmental damage should be implemented through the furtherance of the 'polluter pays' principle, as indicated in the Treaty and in line with the principle of sustainable development. The fundamental principle of this Directive should therefore be that an operator whose activity has caused the environmental damage or the imminent threat of such damage is to be held financially liable, in order to induce operators to adopt measures and develop practices to minimise the risks of environmental damage."[50]

The "polluter pays" principle has been given varying meanings to the point of becoming muddied as to its scope and content. Generally speaking, however, two competing definitions seem to surface from the bulk of legislation adopted at various levels, contradistinguishing a liberal approach advocated by environmentalists and victims of pollution from a more restrictive approach espoused by polluters.

7.1.1.2.3.1. Restrictive Approach (Stricto Sensu)

According to the restrictive approach, the polluter must bear:

a) the costs of pollution prevention measures; and

b) the costs of pollution abatement and control measures.

Although the restrictive approach covers the cost of certain clean-up measures following upon pollution as well as the costs of decontamination, it does not cover the costs of reinstatement of the environment as such, e.g. restocking of polluted rivers. Nor does it include the compensation of damage caused by pollution when such pollution is tolerable or

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[47] Principle 3.

[48] Principle 4.

[49] Principle 16.

[50] Directive 2004/35/CE, preamble, par. (2).

even excessive, for instance in the event of an accident. However, from its inception, the adoption of the restrictive approach to the "polluter pays" principle was understood not to affect existing regimes of civil liability so that the polluter should bear such damage as it was already civilly liable for by virtue of such regimes. Likewise, a polluter should continue to be liable for any applicable fines.

The restrictive approach would seem to be reasonably compatible with the idea of charging levies for water pollution on a polluter where such levies are intended to fund measures to control pollution in those waters from activities carried out by other polluters. However, levies intended to finance the State's budget, e.g. carbon or energy tax, or the compensation of victims, e.g. noise tax to compensate victims, depart from the restrictive approach, since they are not referable to pollution prevention and control and do not carry the immediate objective of reducing pollution.

The restrictive approach has served to justify a strict limitation of the costs to be borne by polluters, who argue that it suffices that they implement and fund anti-pollution measures imposed on them statutorily or voluntarily and that they should not shoulder any other expenses, whether in the form of taxes, compensation or any other payments in relation to pollution. Polluters advocating this strict approach tend to oppose the implementation of financial disincentives designed to limit excessive pollution or to thwart the adoption of efficient measures of excessive pollution surveillance. States which are the staunchest supporters of the restrictive approach tend to be those which oppose the most the extension of pollution damage compensation or the imposition of taxes on carbon dioxide emissions or energy.[51]

7.1.1.2.3.2. Broad Approach (Lato Sensu)

Principle 16 of the Rio Declaration on Environment and Development adopts an arguably broader approach to the "polluter pays" principle. Although the expression "cost of pollution" is not formally defined, it would appear that, in the context of the internalization where Principle 16 appears, such cost includes both the cost of pollution prevention and control measures and the cost of damage.[52]

The broad approach entails the imposition of financial liabilities which are proportionate to the pollution generated, e.g. levies and taxes, to the resources utilized or the damage caused, e.g. compensation, in addition to covering the costs encompassed under the "polluter pays" principle stricto sensu. When pollution remains at a very low level and no damage results therefrom, it is normal that no pollution levy or compensation is imposed. This does not mean, however, that there should be no levies or compensation when pollution becomes significant. When the polluter is dispensed with having to compensate particular and collective pollution damage at a "normal" pollution level, he/she should pay a penalty for exceeding such level.

Implementation of the broad approach by States has been unsystematic. Governments continue to show reluctance in collecting pollution levies or taxes whereas polluters are not always required to compensate victims or to pay Governments compensation for collective

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[51] Henri Smets, "Examen critique du principe pollueur-payeur," in Michel Prieur & Claude Lambrechts (eds.), *Mankind and the Environment* (Paris: Frison-Roche, 1998), p. 82-83.

[52] See 1972 OECD Council Recommendation on Guiding Principles Concerning International Economic Aspects of Environmental Policies, calling for the taking into consideration in pricing systems of the cost of the deterioration of environmental resources due to production and consumer activities.

damage. Even if the number of pollution levies or taxes is rising, rates remain low and do not generally reflect the magnitude of the cost of damage.[53]

7.1.1.2.4. Right to Information

The Rio Declaration on Environment and Development provides in its principle 10 as follows:

> "Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available…"

The foregoing principle was further elaborated at regional level in the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 1998. The Convention affirms inter alia that "citizens must have access to information, be entitled to participate in decisionmaking and have access to justice in environmental matters."[54] So that people can fulfill these rights and responsibilities, the Convention obligates signatory states to, among other provisions make environmental information available "as soon as possible," and "without an interest having to be stated" by the requester.[55] Moreover, Council Directive 90/313 of the 7th June 1990 on the Freedom of Access to Information on the Environment assures the public free access to and dissemination of all environmental information held by public authorities throughout the European Union.

The right to information has also found its way to liability and compensation documents. For instance, the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, 1993, provides in its chapter III for a right of access by any person to information held by public authorities and bodies with public responsibilities for the environment as well as by the victim to information held by the operator.

7.1.1.2.5. Other Rules

Because this exposition is not exhaustive, other rules and principles may of course be applicable across the board of environmental law. A noteworthy example is the ability of defendants under French law to be exonerated from all liability as a result of their prior occupation of land ("*pré-occupation individuelle*").[56] This bar to liability prevents for instance a landowner from suing a neighboring factory for pollution damage if the factory's establishment in the area preceded the plaintiff's.[57]

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[53] Henri Smets, loc. cit. p. 83-85.

[54] Preamble. On access to justice, see section 7.1.1.1.2 above.

[55] Art. 4.

[56] Art. L. 112-16 Building and Housing Code.

[57] Prieur criticizes this provision which he considers as anti-economic, anti-social and anti-environmental: Michel Prieur, *Droit de l'environnement*, 4th ed. (Paris: Dalloz, 2001), paras. 1124-1126, p. 890-893.

7.1.1.2.6. Links between Prevention and Liability

Before concluding this very brief discussion of some of the main overarching environmental rules and principles, it should be stated that both from a conceptual and a pragmatic point of view, liability goes hand in hand with prevention. Indeed, all human activities generate environmental damage of some sort; it is the duty of legislators to determine the threshold of damage beyond which responsible parties will be held legally liable. Helping society maintain a level of environmental compliance requires furthermore States to set forth a preventive apparatus consisting inter alia of mandatory obligations relating to equipment and procedures as well as specific prohibitions. Such links between prevention of and liability for environmental damage are evidenced in a number of instruments, including for instance the Basel Protocol on Liability and Compensation[58] and the EC Environmental Liability Directive.[59]

7.1.1.3. Maritime/Coastal Principles and Rules

Since this exercise aims at developing an appropriate regime of liability and compensation covering the Mediterranean Sea Area,[60] we must consider some of the salient and overarching principles and rules which are unique to marine space and coastal zones and would impact on the issues at hand.

7.1.1.3.1. Maritime/Terrestrial Law Duality

Since this exercise crosses boundaries of sea and coast,[61] it is important to stress that any prospective regime would have to be fine-tuned to both terrestrial and maritime law. An example could illustrate the point. Assuming that “Mediterranean Sea Area” covers the coastal zone up to a certain limit determined by the relevant Contracting Party, then the liability and compensation regime would have to be fitted not only within the existing body of maritime rules operating at sea, but also the rules governing activities on land. The task cannot therefore be narrowed down to its maritime law dimension, but must also consider the application of the prospective regime to varying stretches of land (coastal zone) and the law there must be taken into account.

Yet, because of the notional prevalence of the marine aspect–the Barcelona Convention being after all a marine treaty–, the limits of inland application would arguably have to be determined in a way that respects as far as possible the natural or imaginary boundary of the sea/land interface from inter alia a liability and compensation perspective. Incidentally, such an approach recognizes admirably the holistic nature of phenomena affecting the coastal zone.

7.1.1.3.2. UNCLOS

The United Nations Convention on the Law of the Sea, 1982, sets forth a constitution for the seas and is an apposite starting point for any analysis of maritime law issues. Apart from the segmentation of ocean space into various maritime zones governed by specific rules on a wide spectrum of subjects, the Convention postulates that regimes of environmental liability and compensation must be developed under internal law and, where appropriate, through multilateral cooperation, mirroring somehow art. 16 of the Barcelona Convention 1995:

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[58] Art. 6(1).

[59] Art. 1.

[60] Art. 16 Barcelona Convention 1995.

[61] Ibid. art. 1. See section 6.3 above.

> States shall 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.[62]
>
> With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall co-operate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds.[63]

While the Convention clearly envisages a developing body of rules on liability and compensation, any regime to be established must be in conformity with the general principles and rules laid down in the Convention, particularly as regards the distribution of jurisdiction over the various maritime zones

7.1.1.3.3. Unity/Harmony of Maritime Law

In recognition of the needs of shipping, maritime law has for long seen a drive towards unification represented in the high number of international conventions and other law-unifying instruments adopted worldwide. Although the same may not necessarily be said of the non-shipping aspects of maritime law, it remains that the current exercise, inasmuch as it aims at filling a gap in the realm of maritime law, should as far as possible be guided by a global perspective and the need to maintain a measure of uniformity in its shipping rules.

7.1.2. Sources of Liability (the Originating Text of the Regime of Liability under Consideration)

To be upheld by a court, liability and compensation for damage caused to a third party victim must emanate from an official source recognized as such by the legal order in place. The source may be a law, a regulation or even a judicial pronouncement setting forth a binding rule of conduct. It may also consist of an international treaty or convention. In this part of the study, we will outline the principal sources of liability and compensation that are of concern to the type of damage we are interested in.

Given the limitations of the study, the presentation of national sources will be a cursory and exemplary one, whereas international and regional legal instruments will be described more meticulously.

The analysis of sources will be left to the following thematic sections.[64]

Our bipartite classification of sources is teleological or purpose-driven. A first set of sources covers general third-party liability, which is by definition non environmental-specific. Sources dedicated to environmental liability–understood broadly–constitute the second category. Within each category, the presentation will comprise national, regional and global sources.

7.1.2.1. General Liability

Aside from specialized types of liability which may be adopted by legislators for specific fields of activity or purposes, all systems of law contain a general scheme of liability (referred to as

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[62] Art. 235(2).

[63] Art. 235(3). Par. (1) deals with State responsibility.

[64] See sections 7.1.3 and following.

civil, delictual or tortious liability) which can be resorted to for any type of damage inflicted wrongly on others, failing an explicit provision in the law invalidating the applicability of such a scheme.

In some jurisdictions, this general scheme applies unvaryingly in the relationships between private parties and those between government entities on the one hand and private parties on the other hand. Liability of State organs in these jurisdictions is governed by the same rules as those applying to the liability of private parties. However, some systems of law provide for a specific set of rules governing the liability of State organs, called "administrative liability."

Maritime law has for its part traditionally featured its own general liability schemes.

Consideration of the non marine sector specific general liability will thus be made before turning to the peculiar precepts of maritime law on the matter.

7.1.2.1.1. Non Sector Specific

As stated above, general liability usually consists of civil, tortious or delictual liability, which may sometimes coexist with a separate administrative liability affecting State organs.

7.1.2.1.1.1. Civil Liability

General civil liability is still a preserve of national jurisdictions although work has begun for the unification of tort principles in Europe, as will be seen below.

7.1.2.1.1.1.1. National Civil Codes

General civil liability is typically couched in a national civil code, which is a broadly written law encapsulating the basic rules and principles governing social behavior. As a result of a notional but oversimplified common origin in Roman law, civil codes tend to share a unique drafting style and a high level of similarity in content. Examples may be taken from the Italian and French Civil Codes, which provide respectively:

> "Any fraudulent or negligent fact that causes to somebody else an unjust damage requires the author of such fact to compensate the damage occurred."[65]
>
> "Everyone is liable for the damage he causes not only by his intentional act, but also by his negligent conduct or by his imprudence."[66]

It is important to realize that delictual liability may also lie at the heart of more specific provisions dealing with particular kinds of damage or activities;[67] the wording of such provisions may differ from that of the general articles on delictual liability found in the national civil code or other basic legal instrument governing the matter.

7.1.2.1.1.1.2. EU Tort Principles

It is noteworthy that work has begun for the unification of tort principles in Europe.[68]

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[65] Art. 2043 Italian Civil Code (translation courtesy of Dr. Lorenzo Schiano di Pepe).

[66] Art. 1383 French Civil Code (translation on Legifrance, http://www.legifrance.gouv.fr/html/codes_traduits/code_civil_textA.htm#TITLE%20IV%20of).

[67] E.g. defective products liability: French Civil Code, arts. 1386-1 to 1386-18.

[68] See footnote 44 above.

7.1.2.1.1.2. Administrative Liability

As stated above, in certain countries, the liability of State organs towards third parties is governed by a separate body of rules and principles. In France, for instance, administrative liability is based largely on the case-law (not the Civil Code) and is triggered before a specialized type of jurisdictions, which are different from the general courts. Other national laws may treat the liability of State organs in the same manner as that of private parties, subject however to certain adjustments and special rules.

7.1.2.1.2. Marine and/or Coastal Sector Specific

The specific features of shipping gave rise in times immemorial to peculiar rules of liability governing the vessel, remnants of which have been preserved in the modern maritime law. Without going in details of pure historical value, it is noteworthy that the liability of the shipowner continues to be limited for general, including environmental, purposes.

7.1.2.1.2.1. LLMC

Under the Convention on Limitation of Liability for Maritime Claims, done at London on the 19th November 1976, and subsequently amended by the Protocol done at London on the 3rd May 1996, shipowners and salvors may limit their liability for the following claims inter alia:

- claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbor works, basins and waterways and aids to navigation), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;[69]
- aside from claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage,[70] claims in respect of loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;[71]
- claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;[72]
- claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;[73] and
- claims of a person other than the person liable in respect of measures taken in order to avert or minimize loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.[74]

Certain claims are excluded from the scope of application of the Convention.[75]

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[69] Art. 2(1)(a).

[70] See on these art. 2(1)(b).

[71] Art. 2(1)(c).

[72] Art. 2(1)(d).

[73] Art. 2(1)(e).

[74] Art. 2(1)(f).

[75] Art.

The term “shipowner” means the owner, charterer, manager and operator of a seagoing ship.[76] “Salvor” means any person rendering services in direct connection with salvage operations.[77]

The benefit of limitation is lost if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.[78]

The limits of liability are set forth in art. 6.

7.1.2.2. Environmental Liability

Environmental protection as an expansive field of human concern is by and large a creation of the 20th century. The relative novelty of the topic explains the plethora of sources which have been accumulated in a piece-meal manner over the years. In some jurisdictions, consolidating texts were adopted, bringing under an all-encompassing law or code rules which were formerly scattered in a number of instruments.

Environmental legislation may cover one or more sectors, such as land, air, watercourses and lakes, the marine environment, etc. Given the marine and coastal focus of the present project, our outline of environmental sources will include, on the one hand, provisions of general, i.e. non marine- or coastal-specific, environmental liability[79] and, on the other hand, specific marine and/or coastal environmental liability.[80]

7.1.2.2.1. Non Sector Specific

As stated above, we turn first to identify sources of environmental liability of a general purport. Sources considered here are those that cover the marine and/or coastal sector in a manner that is non-selective, that is in addition to other sectors, such as air, land, etc.

As such, general environmental liability is still in its beginnings. This can be explained by a number of factors. To begin with, environmental policies have understandably tended to tackle prevention first and liability second. In many instances, preventive rules were in place for a substantial amount of time before specific liability provisions were considered for adoption. The rationale followed was that environmental damage should be prevented from happening in the first place as this would remove the need for liability ultimately. Furthermore, liability could only be legitimized if there was a preventive mechanism in place, be it in the form of prohibitions or restrictions. Finally, the assessment of damage to the environment, which is an intrinsic element of environmental liability, is often dependent on a prior determination of what is good and bad for the environment, which determination normally lies at the heart of the process leading to the development of appropriate preventive measures.

The adoption of a general regime of environmental liability stumbled furthermore for a considerable period on the perceived enormity of the phenomenon of environmental degradation from the point of view of both its sources and effects. As will be seen further below, environmental liability developed as a result more easily within a sectoral approach.

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[76] Art. 1(2).

[77] Art. 1(3).

[78] Art. 4.

[79] See section 7.1.2.2.1 below.

[80] See section 7.1.2.2.2 below.

Confining the issues to specific fields of activities or sectors allowed somehow for the alleviation of perceived problems.

In recent years, however, the trend has shifted towards a comprehensive environmental protection approach, probably as a result of a regulatory maturation process. It was time to bring coherence to the patchwork of rules already in place and to fill the remaining gaps.

Depending on whether the instrument of general environmental liability deals or not with a particular type of pollution, two sets of sources may be distinguished. In this section, the former set, i.e. sources that apply to any type of pollution, is first considered.

7.1.2.2.1.1. Non Pollution Type Specific

Heralded by the Lugano Convention,[81] which has never entered into force, the process towards the adoption of comprehensive environmental liability has recently accelerated.

7.1.2.2.1.1.1. Lugano Convention

The Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, done under the auspices of the Council of Europe at Lugano on the 21st June 1993,[82] sets forth an ambitious private liability regime for damage resulting from "dangerous activities." Although the Convention has not entered into force yet and is unlikely to do so in the near future–so far, it has not attracted any ratifications–, its provisions reflect a maturation in environmental policy and can–at least in certain respects–serve as a model for developing a future regime for the Mediterranean.

The Convention fills a gap by establishing a broad environmental liability and compensation scheme, integrating prevention and reinstatement of environmental damage.[83] Although the activities covered by the Convention are strictly defined,[84] the scope of application is extensive. By and large, the Convention covers specified operations, performed professionally and involving dangerous substances[85] as well as genetically modified organisms and micro-organisms posing certain risks.[86] The operation of waste installations and sites is also covered.[87] Carriage carried out otherwise than by pipeline[88] and damage caused by nuclear substances are excluded from the scope of application.[89]

The Convention applies if the incident occurs in the territory of a Party[90] or if the conflict of laws rules lead to the application of the law in force for that territory.[91] This would capture coastal areas if not whole maritime zones.

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[81] Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, 1993. See section 7.1.2.2.1.1.1 below.

[82] See the detailed descriptive chart in section 7.2.3.1.2.1 below.

[83] Art. 1.

[84] Art. 2(1).

[85] Art. 2(1)(a). "Dangerous substances" are defined at art. 2(2).

[86] Art. 2(1)(b).

[87] Art. 2(1)(c) & (d).

[88] Art. 4(1).

[89] Art. 4(2).

[90] Art. 3(a).

[91] Art. 3(b).

In furtherance of the "polluter pays" principle, the "operator," being the person who exercises the control of a dangerous activity, is rendered liable for the damage resulting therefrom. Following current trends in environmental law,[92] the Convention adopts a strict standard of liability.

Apart from the usual cases of exemption from strict liability,[93] the operator is exonerated if he proves that the damage:

- resulted necessarily from compliance with a specific order or compulsory measure of a public authority,[94]
- was caused by pollution at tolerable levels under local relevant circumstances[95] or
- was caused by a dangerous activity taken lawfully in the interests of the person who suffered the damage, whereby it was reasonable towards this person to expose him to the risks of the dangerous activity.[96]

The Convention can be enforced by a number of judicial and administrative measures. Awards in damages to the benefit of the person who suffered the damage are the most obvious, but the Convention also allows environmental organizations to seek the prohibition of dangerous activities[97] and orders requiring the operator to prevent an incident or damage[98] or to take measures of reinstatement.[99] Further orders against operators, public authorities and bodies with public responsibilities for the environment can be obtained requiring them to make information related to the environment and held by them available to members of the general public.[100]

As far as compensable damage is concerned, the Convention covers loss of life or personal injury,[101] loss of or damage to property other than the operator's,[102] loss or damage by impairment to the environment,[103] costs of preventive measures and any loss or damage caused thereby.[104] Under the Lugano Convention, no limitation of liability is set forth. As for compulsory financial security, it is up to each State Party to ensure that, where appropriate, taking due account of the risks of the activity, such a scheme is imposed on operators conducting dangerous activities on its territory.[105]

Actions for compensation are prescribed by a three-year limitation period beginning on the day the claimant knew or ought reasonably to have known of the damage and of the identity

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[92] Preamble, 7th par.

[93] Arts. 8(a) & (b) & 9.

[94] Art. 8(c).

[95] Art. 8(d).

[96] Art. 8(e).

[97] Art. 18(1)(a).

[98] Art. 18(1)(b) & (c).

[99] Art. 18(1)(d).

[100] Arts. 14 to 16.

[101] Art. 2(7)(a).

[102] Art. 2(7)(b).

[103] Art. 2(7)(c).

[104] Art. 2(7)(d).

[105] Art. 12.

of the operator,[106] but in no case 30 years after the date of the incident which caused the damage.[107]

7.1.2.2.1.1.2. EC Environmental Liability Directive

Following a lengthy consultation process, Directive 2004/35/EC of the European Parliament and of the Council on Environmental Liability with regard to the Prevention and Remedying of Environmental Damage was adopted on the 21st April 2004.[108] The Directive must be implemented by the EC Member States by the 30th April 2007.[109] The Directive represents a significant development in environmental policy and law, not the least because it harmonizes the position of national laws on the subject of environmental liability and compensation. The Directive is furthermore credited for having elevated environmental damage per se and independently of any economic considerations to a level worthy of compensation.

As it clearly transpires from its title, the Directive targets both the prevention and remedying of environmental damage. Balancing these two aspects of liability, the Directive goes further than the Lugano Convention and adopts the contemporary approach to the "polluter pays" principle.

The Directive restricts the type of activities and damage to which it applies. Such an approach may be explained by the legislator's concern for legal certainty; conversely, it also shows that a truly comprehensive and open-ended liability and compensation regime would be premature.

Activities that are subject to the Directive's liability scheme are classified as follows:

- Occupational activities which are enumerated in annex III of the Directive;[110] and
- Any non-enumerated occupational activity, *but only insofar as it causes damage or a threat of damage to protected species and natural habitats and <u>whenever the operator has been at fault or negligent</u>.*[111]

Excluded from the scope of application are, however, incidents which give rise to liability and compensation under a number of international maritime and other conventions, notably the CLC, IOPC Fund, Bunkers and HNS Conventions and conventions on nuclear risks.[112]

Turning to instances of damage covered by the Directive, art. 3(1) restricts the latter's application to "environmental damage," which is defined under art. 2(1) as meaning damage to protected species and natural habitats,[113] water damage[114] and land damage.[115]

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[106] Art. 17(1).

[107] Art. 17(2).

[108] See the detailed descriptive chart in section 7.2.3.1.1.1 below.

[109] Art. 19(1).

[110] Art. 3(1)(a).

[111] Art. 3(1)(b). The underlined terms lead to the unfortunate result that the Directive's provisions regarding the operator's obligation to take preventive (art. 5) and remedial action (art. 6) as well as his liability for the ensuing costs (art. 8) would have no application in the event of damage or a threat of damage to protected species and natural habitats from non-enumerated occupational activities unless fault or negligence is proven. This can only be done in a court of law or other similar forum and is likely to be conclusively established long after the occurrence of the incident which led to the damage or the threat thereof in the first place. It would have been preferable had the underlined terms been left outside art. 3 and restricted to art. 8.

[112] Art. 4(4).

The Directive adopts the Lugano Convention's term "operator"[116] as the person liable.[117] The basis of liability is strict or fault-based, depending on the type of activities and environmental assets to be protected (in other words, the damage): as to the occupational activities listed in annex III, liability is strict[118] whereas only proven fault triggers liability in relation to the non-listed occupational activities,[119] which, as stated above, are subjected to the Directive's provisions only insofar as they have given rise to damage or a threat of damage to protected species and natural habitats. In addition to the usual causes of exoneration from liability,[120] the Directive exculpates the operator from his liability *for prevention and remedial costs* when damage or the threat of damage:

- was caused by a third party and occurred despite the fact that appropriate safety measures were in place;[121]
- resulted from compliance with a compulsory order or instruction emanating from a public authority other than an order or instruction consequent upon an emission or incident caused by the operator's own activities.[122]

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[113] For the definition of "protected species and natural habitats, " see art. 2(3).

[114] "Water damage" is defined as follows in art. 2(1)(b):

> "… any damage that significantly adversely affects the ecological, chemical and/or quantitative status and/or ecological potential, as defined in Directive 2000/60/EC, of the waters concerned, with the exception of adverse effects where Article 4(7) of that Directive applies…"

In turn, art. 2(5) defines "waters" as all waters covered by Directive 2000/60/EC, that is inland surface waters, transitional waters, coastal waters and groundwater, defined respectively in that Directive as follows:

> "'Inland water' means all standing or flowing water on the surface of the land, and all groundwater on the landward side of the baseline from which the breadth of territorial waters is measured" (art. 2(3));
>
> "'Surface water' means inland waters, except groundwater; transitional waters and coastal waters, except in respect of chemical status for which it shall also include territorial waters" (art. 2(1));
>
> "'Transitional waters' are bodies of surface water in the vicinity of river mouths which are partly saline in character as a result of their proximity to coastal waters but which are substantially influenced by freshwater flows" (art. 2(6));
>
> "'Coastal water' means surface water on the landward side of a line, every point of which is at a distance of one nautical mile on the seaward side from the nearest point of the baseline from which the breadth of territorial waters is measured, extending where appropriate up to the outer limit of transitional waters" (art. 2(7));
>
> "'Groundwater' means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil" (art. 2(2)).

[115] No definition is provided of "land" under the Directive.

[116] Art. 2(6).

[117] Arts. 5, 6 & 8.

[118] Art. 3(1)(a).

[119] Art. 3(1)(b).

[120] Art. 4(1).

[121] Art. 8(3)(a).

Furthermore, the Directive allows Member States to exculpate the operator from liability *for remedial costs* provided he demonstrates that he was not at fault or negligent and that the environmental damage was caused by:

- an emission or event expressly authorized by, and fully in accordance with the conditions of, an authorization conferred by or given under applicable national laws and regulations which implement those legislative measures adopted by the Community specified in annex III, as applied at the date of the emission or event;[123]
- an emission or activity or any manner of using a product in the course of an activity which the operator demonstrates was not considered likely to cause environmental damage according to the state of scientific and technical knowledge at the time when the emission was released or the activity took place.[124]

A number of judicial and/or administrative measures are specifically provided for in order to enforce the Directive's liability scheme, including awards in damages[125] and orders and instructions which may be issued in relation to the taking of preventive or remedial action, including the provision of information held by the operator.[126]

The operator is called upon to prevent and remedy any damage that he may cause;[127] he also bears the costs of any preventive or remediation actions[128] *vis-à-vis the Member State's designated competent authority*.[129] Liability in this respect extends solely to damage as defined in art. 2(1) and (2).[130] The Directive makes it clear that it does not govern the operator's liability to compensate third parties as a consequence of such damage, leaving the matter for national law.[131] Therefore, this Directive does not affect the right of victims of pollution to sue in tort for bodily harm, property damage or economic loss. Nevertheless, it is possible for certain persons to submit to the Member State's designated competent authority observations relating to instances of environmental damage or an imminent threat of such damage of which they are aware and to request that authority to take action under the Directive. This includes inter alia persons affected or likely to be affected by environmental damage. Non-governmental organizations promoting environmental protection are deemed to qualify for such purpose.[132]

No limitation is placed on the operator's financial liability; however, entitlement to limitation of liability by virtue of maritime law is preserved.[133]

As to financial security, art. 8(2) of the Directive provides:

> "… the competent authority shall recover, inter alia, via security over property or other appropriate guarantees from the operator who has caused the damage or the

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[122] Art. 8(3)(b).

[123] Art. 8(4)(a).

[124] Art. 8(4)(b).

[125] Art. 8(1).

[126] Arts. 5(2) & (3) & 6(2) & (3).

[127] Arts. 5(1) & 6(1).

[128] Art. 8(1).

[129] Art. 8(2).

[130] The Directive actually refers to "environmental damage."

[131] Art. 3(3).

[132] Art. 12(1).

[133] Art. 4(3).

> imminent threat of damage, the costs it has incurred in relation to the preventive or remedial actions taken under this Directive."

The determination of the "security over property or other appropriate guarantees" for purposes of this article is left up to the EC Member States, which, according to art. 14(1):

> "… shall take measures to encourage the development of financial security instruments and markets by the appropriate economic and financial operators, including financial mechanisms in case of insolvency, with the aim of enabling operators to use financial guarantees to cover their responsibilities under this Directive."

The European Commission itself must submit a report by 2010 on the issue of financial security, paving the way ultimately for "a system of harmonised mandatory financial security."[134]

7.1.2.2.1.1.3. National Laws

As stated above, environmental law may has reached a maturation process and an increasing number of States are adopting sweeping environmental liability applying unvaryingly to all parts of the environment and covering non-specific types of pollution. An example on point is the Italian Law No. 349 of the 8th July 1986 instituting the Ministry of the Environment and establishing rules in relation to environmental damage, art. 18(1) of which provides:

> "Any fraudulent or negligent fact in violation of the law, or of provisions adopted on the basis of the law, that impairs the environment by damaging, altering, deteriorating or destroying it in all or in part, requires the author of such fact to compensate the State for the damage occurred."[135]

The action for damage is exercisable by the State or by local authorities only;[136] however certain associations and citizens in general can denounce a given factual situation in order to speed up the exercise of the action by the appropriate authorities.[137] Associations may also intervene in the proceedings for environmental damage and file administrative actions for the annulment of illegitimate acts.[138]

Law No. 349 further provides:

"The court, where a precise quantification of the damage is not possible, shall determine it on the basis of equity, by taking into account the degree of the author's negligence, the necessary cost of restoration and the profit achieved by the author as a consequence of the damaging behaviour for the environment."[139]

The court is also tasked in its final ruling to ensure, where possible, that the environment is restored at the liable party's expense.[140]

In France, liability for environmental damage (be it that suffered by the environment per se or damage caused by pollution to private interests) has traditionally been governed by the

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[134] Art. 14(2).

[135] (Translation courtesy of Dr. Lorenzo Schiano di Pepe.)

[136] Art. 18(3).

[137] Art. 18(4).

[138] Art. 18(5).

[139] Art. 18(6) (translation courtesy of Dr. Lorenzo Schiano di Pepe).

[140] Art. 18(8).

doctrine of abnormal private nuisances ("*théorie des troubles anormaux du voisinage*"). The doctrine was set forth by the French Court of Cassation in 1844.[141] It is based on the idea that life in society entails that certain private nuisances must be considered as normal or that pollution and nuisances must be considered as normal up to a certain level, depending on the locale (or neighborhood). Beyond such level, compensation is available since the inconvenience or the damage becomes anomalous.

7.1.2.2.1.2. Pollution Type Specific

Special liability directed to specific types of environmental degradation and operating across sectors, i.e. air, land, water etc. is considered in this section, starting with nuclear energy and moving to other hazardous and noxious substances.

7.1.2.2.1.2.1. Nuclear Energy

Given the significant risks it poses, nuclear energy has given rise to special liability and compensation regimes early on. An elaborate set of international and regional conventions govern nuclear liability. The Paris and Brussels Conventions apply in Europe and will be looked at first[142] before turning to the Vienna Convention,[143] which provides a global framework.

7.1.2.2.1.2.1.1. Paris Convention & Brussels Supplementary Convention

A number of European countries signed up to the Convention on Third Party Liability in the Field of Nuclear Energy of the 29th July 1960, known as the Paris Convention,[144] and the Convention of the 31st January 1963 Supplementary to the Paris Convention of the 29th July 1960 on Third Party Liability in the Field of Nuclear Energy, known as the Brussels Supplementary Convention.[145] Both these Conventions were adopted within the framework of the Organisation for Economic Co-operation and Development for the purpose of ensuring adequate and equitable compensation for persons who suffer damage caused by nuclear incidents.[146] Amending protocols to both Conventions were adopted in Paris on the 28th January 1964, the 16th November 1982 and the 12th February 2004. Only the latter amendments have not yet entered into force.

The Paris Convention places absolute liability on the operator of a nuclear installation[147] for damage to or loss of life of any person[148] or property other than the nuclear installation itself.[149] Under the 1994 amendments, the Paris Convention specifically covers economic

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[141] Civ. Cass. 27/11/1844, S., 1844.1.221.

[142] See section 7.1.2.2.1.2.1.1 below.

[143] See section 7.1.2.2.1.2.1.2 below.

[144] See the detailed descriptive chart in section 7.2.3.1.4.1 below.

[145] See the descriptive detailed chart in section 7.2.3.1.4.2 below.

[146] Preamble, Paris Convention.

[147] Arts. 3(a) & 4(a) & (b).

[148] Art. 3(a)(i) Paris Convention as amended 1964 & 1982; arts. 3(a) & 1(a)(vii)(1) Paris Convention as amended 2004.

[149] Art. 3(a)(ii) Paris Convention as amended 1964 & 1982; art. s. 3(a) & 1(a)(vii)(2) Paris Convention as amended 2004.

loss,[150] the costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken,[151] loss of income deriving from a direct economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment,[152] and the costs of preventive measures, and further loss or damage caused by such measures.[153]

Compensation under the Paris Convention as amended in 1964 and 1982 is limited to 15 million SDR per operator in respect of damage caused by a nuclear incident.[154] Contracting Parties may under certain circumstances vary this figure[155] subject to an absolute minimum cap of 5 million SDR.[156] Under the 2004 amendments to the Paris Convention, the liability of the operator in respect of nuclear damage caused by any one nuclear incident will not be less than €700 million.[157] Again, the cap may be varied by a Contracting Party, subject to certain minimum thresholds.[158]

There is a requirement for compulsory insurance or other financial security.[159] Pursuant to the 2004 amendments, the Contracting Party within whose territory the nuclear installation of the liable operator is situated will ensure the payment of claims for compensation for nuclear damage which have been established against the operator by providing the necessary funds to the extent that the insurance or other financial security is not available or sufficient to satisfy such claims, up to an amount not less than the amount referred to in art. 7(a).[160]

The basic limitation period for claims is 10 years from the date of the nuclear incident under the original Convention.[161] Under the 2004 amendments, that period is 30 years with respect to loss of life and personal injury[162] and 10 years with respect to other nuclear damage.[163]

As its name suggests, the Brussels Supplementary Convention, aims for its part 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.[164] The Brussels Convention resorts accordingly to a combination of insurance or other financial security and public funds.

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[150] Art. 1(a)(vii)(3) Paris Convention as amended 2004.

[151] Ibid. art. 1(a)(vii)(4).

[152] Ibid. art. 1(a)(vii)(5).

[153] Ibid. art. 1(a)(vii)(6).

[154] Art. 7(b) in limine Paris Convention as amended 1964 & 1982.

[155] Ibid. arts. 7(b) & (e) & 15(a).

[156] Ibid. art. 7(b) in fine.

[157] Art. 7(a) Paris Convention as amended 1994.

[158] Ibid. arts. 7(a) & (e) 15(a).

[159] Art. 10(a) Paris Convention as amended 1964 & 1982; art. 10(a) & (b) Paris Convention as amended 2004.

[160] Art. 10(c) Paris Convention as amended 2004.

[161] Art. 8(a) Paris Convention as amended 1964 & 1982.

[162] Art. 8(a)(i) Paris Convention as amended 2004.

[163] Ibid. art. 8(a)(ii).

[164] Preamble.

According to the Convention prior to 2004 amendments, the overall liability cap is 300 million SDR in respect of damage per incident (€1.5 billion under the 1994 amendments),[165] provided as follows:

- up to an amount of at least 5 million SDR, out of funds provided by insurance or other financial security, such amount to be established by the legislation of the Contracting Party in whose territory the nuclear installation of the operator liable is situated (first tier) (the figure was increased to €700 million under the 1994 amendments);[166]

- between this amount and 175 million SDR, out of public funds to be made available by the Contracting Party in whose territory the nuclear installation of the operator liable is situated (second tier) (increased to €1.2 billion under the 1994 amendments);[167]

- between 175 and 300 million SDR, out of public funds to be made available by the Contracting Parties according to the formula for contributions specified in art. 12 (third tier) (between €1.2 billion and €1.5 billion under the 1994 amendments).[168]

7.1.2.2.1.2.1.2. Vienna Convention & Supplementary Convention

Like the Paris Convention on a regional level, the Vienna Convention on Civil Liability for Nuclear Damage, done under the auspices of the IAEA on the 21st March 1963,[169] aims to establish global minimum standards to provide financial protection against damage resulting from certain peaceful uses of nuclear energy.[170]

Likewise, the operator of a nuclear installation is absolutely liable for nuclear damage.[171] Nuclear damage includes loss of life, any personal injury or any loss of, or damage to, property[172] as well as any other loss or damage so arising or resulting if and to the extent that the law of the competent court so provides.[173] Damage to the nuclear installation is excluded.[174]

The liability of the operator may be limited by the Installation State to not less than US$5 million for any one nuclear incident.[175] The operator is required to maintain insurance or other financial security for his liability in an amount to be set by the Installation State. The latter must ensure the payment of claims for compensation for nuclear damage which have been established against the operator by providing the necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, but not in excess

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[165] Art. 3(a) Brussels Convention.

[166] Ibid. art. 3(b)(i).

[167] Ibid. art. 3(b)(ii).

[168] Ibid. art. 3(b)(iii).

[169] See the descriptive detailed chart in section 7.2.3.2.3.1 below.

[170] Preamble.

[171] Art. IV(1).

[172] Art. I(1)(k)(i) & (iii).

[173] Art. I(1)(k)(ii).

[174] Art. IV(5)(a).

[175] Art. V(1).

of the limit, if any, established pursuant to art. V.[176] A basic 10-year limitation is provided for under the Convention.[177]

The Convention was amended by a protocol adopted in Vienna on the 12th September 1997. The resulting instrument, known as the 1997 Vienna Convention on Civil Liability for Nuclear Damage, entered into force on the 4th October 2003 for five Contracting States, Morocco being the only Mediterranean State.

The main changes brought by the new Convention relate to the explicit addition of the following heads of nuclear damage:

- economic loss arising from loss of life or personal injury and loss of or damage to property;[178]
- the costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken;[179]
- loss of income deriving from a direct economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment;[180]
- the costs of preventive measures, and further loss or damage caused by such measures;[181]
- any other economic loss, other than any caused by the impairment of the environment, if permitted by the general law on civil liability of the competent court.[182]

The 1997 Convention creates multiple tiers and new limits of compensation. For instance, the liability of the operator may be limited by the Installation State for any one nuclear incident, either:

- to not less than 300 million SDRs;[183] or
- to not less than 150 million SDRs provided that in excess of that amount and up to at least 300 million SDRs public funds are made available by that State to compensate nuclear damage;[184] or
- for a maximum of 15 years from the date of entry into force of the new Convention, to a transitional amount of not less than 100 million SDRs in respect of a nuclear incident occurring within that period. An amount lower than 100 million SDRs may be established, provided that public funds are made available by that State to compensate nuclear damage between that lesser amount and 100 million SDRs.[185]

The limitation period is brought under the new Convention:

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[176] Art. VII(1)(a).

[177] Art. VI(1).

[178] Art. I(1)(k)(iii) 1997 Vienna Convention.

[179] Ibid. art. I(1)(k)(iv).

[180] Ibid. art. I(1)(k)(v).

[181] Ibid. art. I(1)(k)(vi).

[182] Ibid. art. I(1)(k)(vii).

[183] Ibid. art. V(1)(a).

[184] Ibid. art. V(1)(b).

[185] Ibid. art. V(1)(c).

- with respect to loss of life and personal injury, to 30 years from the date of the nuclear incident;[186] and
- with respect to other damage, to 10 years from the date of the nuclear incident.[187]

A further Convention on Supplementary Compensation for Nuclear Damage was adopted in Vienna on the same day (12 September 1997)[188] with the aim of establishing a worldwide liability regime to supplement and enhance the measures provided in the Vienna and Paris Conventions as well as in national legislation on compensation for nuclear damage consistent with the principles of these Conventions and increasing the amount of compensation for nuclear damage.[189]

7.1.2.2.1.2.1.3. Joint Protocol

In order to establish a link between the Vienna Convention and the Paris Convention by mutually extending the benefit of the special regime of civil liability for nuclear damage set forth under each Convention and to eliminate conflicts arising from the simultaneous applications of both Conventions to a nuclear incident, a Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention was adopted in Vienna on the 21st September 1988.[190]

7.1.2.2.1.2.2. Other HNS

Apart from the nuclear risk, the Basel Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal provides comprehensively on instances of environmental damage from certain HNS in the course of specified operations and applies on land, at sea and in the air.

7.1.2.2.1.2.2.1. Basel Protocol

Responding to the scourge of illicit and uncontrolled transboundary transfer and disposal of hazardous wastes taking place on a worldwide scale, UNEP sponsored the adoption of an international convention in Basel in 1989 which has attempted at worst to regulate and at best to ban the ignominious phenomenon.[191] The convention was followed up ten years later by the Basel Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal, done at Basel on the 2nd March 1989.[192] Although the Convention is in force, the Protocol is not. So far, from the Mediterranean region, only Syria has bound itself by the Protocol by acceding thereto. An additional 15 Contracting States to the existing five are still needed for the Protocol to enter into force.

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[186] Ibid. art. VI(1)(a)(i).

[187] Ibid. art. VI(1)(a)(ii).

[188] See the detailed descriptive chart in section 7.2.3.2.3.3 below.

[189] Preamble & art. II(1).

[190] See the detailed descriptive chart in section 7.2.3.2.3.2 below.

[191] Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989.

[192] See the detailed descriptive chart in section 7.1.2.2.1.2.2.1 below.

The Protocol provides for a comprehensive regime for liability and compensation in respect of damage resulting from the transboundary movement of hazardous wastes and their disposal, including illegal traffic in those wastes.[193]

Under the Protocol, the party liable for the damage varies depending on the moment of occurrence of the damage. Thus, the person who notifies in accordance with art. 6 of the Basel Convention, i.e. the generator or exporter who may be required by the State of export to notify the competent authority of another State concerned of any proposed transboundary movement of hazardous wastes, is liable for damage until the disposer has taken possession of the wastes.[194] Thereafter, the disposer is liable.[195] The importer may also bear liability in certain cases.[196] Such liability is strict. Interestingly, the Protocol does not exclude the application of fault-based liability, contrary to most international conventions instituting strict liability.[197]

7.1.2.2.2. Marine and/or Coastal Sector Specific

Having considered general environmental liability, the focus turns now to marine and/or coastal environmental liabilities, i.e. those liabilities operating exclusively in relation to some form of environmental damage affecting the sea or the coastal zone.

7.1.2.2.2.1. Non Pollution Type Specific

Given the current trend towards overspecialization in the field of marine environmental law, legislative instances of broadly-based marine and/or coastal environmental liabilities are rather scarce and in most cases remnants of outmoded legislative initiatives. Provisions in national law on the matter must now stand side-by-side with more specialized international conventions and may thus be superseded for most practical purposes as a result of rules of normative hierarchy. An example of such provisions is given below alongside a rare instance of a regional instrument coming close to being a comprehensive marine and/or coastal environmental liability instrument, the Kiev Protocol.

7.1.2.2.2.1.1. National Law

Art. 12(2) of Italy's Law No. 979 of the 31st December 1982 dealing with marine environmental protection provides:

> "The master, the *armatore* or the owner of a ship or the person responsible for an instrument or a plant situated on the continental shelf or on land, are bound, in the event of a malfunction or an incident affecting the same which is susceptible of causing damage to the marine environment, the shore or connected interests through the deposit of hydrocarbons or other injurious or polluting substances, to immediately inform the nearest maritime authority and to take all feasible measures in order to avoid further damage and remove the harmful effects already occurred.
>
> The maritime authority shall immediately request the subjects mentioned in the preceding paragraph to take all necessary measures with a view to preventing the danger of pollution and removing the effects already occurred. Should such a request

[193] Arts. 1 & 3.

[194] Art. 4(1).

[195] Ibid.

[196] Art. 4(2) & (4).

[197] Art. 5.

> remain without effect, or should it fail to produce the expected effects in a set period of time, the maritime authority shall cause the necessary measures to be taken on behalf of the armatore or the owner of the ship and shall recover from them the expenses sustained. In case of an emergency, the marine authority shall cause the necessary measures to be taken on behalf of the armatore or the owner of the ship and shall recover the expenses sustained irrespective of a preventive request to intervene."[198]

As stated above, such a provision would have to be approached carefully since a large number of international conventions nowadays provide specifically on the environmental liability of shipowners, as will be seen below.[199]

7.1.2.2.2.1.2. Kiev Protocol

The Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters was adopted at Kiev on the 21st March 2003.[200] A UNECE instrument, the Protocol complements two earlier conventions concluded under the auspices of that organization, the Convention of the Protection and Use of Transboundary Watercourses and International Lakes and the Convention on the Transboundary Effects of Industrial Accidents, both done at Helsinki on the 17th March 1992. The Protocol requires 16 ratifications to enter into force;[201] so far, it has gathered one ratification from a non-Mediterranean State.

Even though the greater scope of its application concerns inland transboundary waters, the Protocol may be fitted in the category of marine and/or coastal liabilities insofar as it deals in part with transboundary waters located in river mouths.[202] As such, the Protocol sets forth a water regime exclusively and cannot be classified thus under the general type of environmental liabilities.

The Protocol is not restricted to a particular kind of pollution or environmental damage even though the presence of a hazardous substance of some sort forms the essence of the "hazardous activities" to which it applies.[203] The fact that the Protocol refers to "industrial accidents" does not render it inapplicable to incidents occurring otherwise than in the course of the performance of a professional activity.[204]

Although "[the] Protocol is without prejudice to any rights of persons who have suffered damage or to any measures for the protection or reinstatement of the environment that may be provided under applicable domestic law"[205]–thus preserving the applicability of the principles of general civil liability under national law–, the Protocol's drafters saw it fit to

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[198] (Translation courtesy of Dr. Lorenzo Schiano di Pepe.)

[199] See section 7.1.2.2.2.2 below.

[200] See the detailed descriptive chart in section 7.2.3.1.3.1 below.

[201] Art. 29(1).

[202] Arts. 3(1) & 2(1), incorporating art. 1(1) Convention of the Protection and Use of Transboundary Watercourses and International Lakes, 1992.

[203] Arts. 2(2)(e), 2(2)(f) & 3(1).

[204] Ibid.

[205] Art. 17.

provide for a fault-based rule of liability[206] standing side-by-side with the more conventional strict liability mechanism found in similar instruments.[207]

Strict liability is placed on the "operator"[208] for any "damage" caused by an industrial accident, as the latter expression is defined in art. 2(2)(e). In turn, "damage" is defined at art. 2(2)(d) and features a particularly liberal allowance for loss of income.[209]

Strict liability comes with a financial cap and compulsory insurance, together with direct action. The financial cap is represented in the limits of liability set forth in annex II, part I, of the Protocol,[210] which are subject to regular review by the Meeting of the Parties.[211] Interestingly, the limits are a function of the excess of the quantity of hazardous substances present in a given hazardous activity in relation to threshold quantities fixed in the annex.[212] The same formula underlies the determination of the minimum limits of financial security that operators must carry.[213]

The Protocol contains a number of provisions on conflict of laws. Thus, art. 19 provides that the Protocol will be superseded by any bilateral, multilateral or regional liability agreement on the same subject "provided the other agreement is in force for the Parties concerned and had been opened for signature when the Protocol was opened for signature, even if the agreement was amended afterwards." This provision will ensure for instance that the application in coastal waters of such IMO conventions as the International Convention on Civil Liability for Oil Pollution Damage, 1992 is not affected by the Protocol.

7.1.2.2.2.2. Pollution Type Specific

The bulk of marine and/or coastal environmental liabilities has been adopted in response to specified types of pollution, as will be seen in the following sections, dealing consecutively with nuclear risks, oil and other HNS.

7.1.2.2.2.2.1. Nuclear Energy

In the nuclear field, IMO sponsored the adoption of a convention dealing with the potential damage resulting from the carriage by sea of nuclear substances. The Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, done at Brussels on the 17th December 1971[214] aims at resolving difficulties and conflicts which arise from the simultaneous application to nuclear damage of certain maritime conventions dealing with shipowners' liability, as well as other conventions which place liability arising from nuclear incidents on the operators of the nuclear installations from which or to which the material in question was being transported. The Convention entered into force on the 15th July 1975.

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[206] Art. 5.

[207] Art. 4.

[208] Art. 2(1), incorporating art. 1(e) Convention on the Transboundary Effects of Industrial Accidents, 1992.

[209] Art. 2(2)(d)(iii).

[210] Art. 9(1).

[211] Art. 9(2).

[212] Annex II, part I, paras. 1 & 2.

[213] Art. 11(1).

[214] See the detailed descriptive chart in section 7.2.3.2.2.6 below.

Seventeen Contracting States are party to the Convention, including France, Italy and Spain.[215]

The 1971 Convention provides that a person otherwise liable for damage caused in a nuclear incident will be exonerated for liability if the operator of the nuclear installation is also liable for such damage by virtue of the Convention on Third Party Liability in the Field of Nuclear Energy of the 29th July 1960, the Vienna Convention on Civil Liability for Nuclear Damage, 1963 or national law which is similar in the scope of protection given to the persons who suffer damage.

7.1.2.2.2.2. Oil

Pollution of the sea by oil has preoccupied the international community for decades, hence the elaborate system of international conventions in place, adopted for the greater part under the auspices of IMO.

7.1.2.2.2.2.1. CLC/Fund Convention '92

The system of liability and compensation for oil pollution generated by the carriage of oil in bulk by sea lies in two interrelated conventions, that is:

- the International Convention on Civil Liability for Oil Pollution Damage, 1992, done at London on the 27th November 1992 and entered into force on the 30th May 1996 (referred to as "CLC '92"),[216] which seeks to replace the International Convention on Civil Liability for Oil Pollution Damage, done at Brussels on the 29th November 1969 (referred to as "CLC '69"); and
- the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, done at London on the 27th November 1992 and entered into force on the 30th May 1996 (referred to as the "Fund Convention '92"),[217] which seeks to replace the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, done at London on the 18th December 1971 (referred to as the "Fund Convention '71").

The resulting two-tier system of liability and compensation is referred to as the "CLC/Fund '92" system.[218] Both the CLC and Fund Convention '92 are widely adopted, featuring 107 Contracting States representing 93.61% of world tonnage in the case of the CLC '92 and 94 Contracting States or 88.40% of world tonnage in the case of the Fund Convention '92.[219] In

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[215] IMO, *Status of Multilateral Conventions and Instruments in respect of which the International Maritime Organization or its Secretary-General Performs Depositary or Other Functions as at 31 December 2003*.

[216] See the detailed descriptive chart in section 7.2.3.2.2.1 below.

[217] See the detailed descriptive chart in section 7.2.3.2.2.2 below. The Fund Convention '71 has been terminated by virtue of the Protocol of 2000.

[218] As a sign of the interconnection between the two Conventions, the Fund Convention '92 may be ratified, accepted, approved or acceded to only by States which have ratified, accepted, approved or acceded to the CLC '92: art. 36 quinquies, Fund Convention '92, incorporating art. 28(4) Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 18 December 1971.

[219] *Summary of Status of Conventions as at 31 March 2005*, IMO Web site, under *Conventions*, http://www.imo.org/Conventions/mainframe.asp?topic_id=247.

the Mediterranean region, only Bosnia & Herzegovina and Libya have so far stayed outside the CLC and Fund Convention system.[220] Albania and Serbia & Montenegro are Parties to the CLC '69 only whereas Egypt, Lebanon and Syria are Parties to both versions of the CLC, but not to the Fund Convention.[221]

The CLC '92 establishes a first tier of civil liability for oil pollution damage in respect of sea-going vessels constructed or adapted to carry oil in bulk as cargo so that it applies to both laden and unladen tankers, including spills of bunker oil from such ships.[222] Liability under the Convention is strict and channeled to the registered owner of the ship.[223]

Compensation may be sought for "pollution damage,"[224] consisting of:

- loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;[225]
- the costs of preventive measures and further loss or damage caused by preventive measures.[226]

The owner of the ship is entitled to a limitation of liability.[227] Limitation is based on the gross tonnage of the ship; subject to certain adjustments to cater for small ships and to provide for an upper cap, the larger the ship's gross tonnage, the higher the limit of liability. Following amendments adopted in 2000 under the tacit acceptance procedure,[228] the limits of liability currently stand as follows:

- for a ship not exceeding 5,000 gross tonnage, liability is limited to 4.51 million SDR (ca. US$7 million[229]);
- for a ship 5,000 to 140,000 gross tonnage, liability is limited to 4.51 million SDR (ca. US$7 million[230]) plus 631 SDR (US$953[231]) for each additional gross ton over 5,000;
- for a ship over 140,000 gross tonnage, liability is limited to 89.77 million SDR (ca. US$136 million[232]).

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[220] *Status of Conventions by Country as at 31 March 2005*, IMO Web site, under *Conventions*, http://www.imo.org/Conventions/mainframe.asp?topic_id=248.

[221] Ibid.

[222] Arts. III(1) & I(1).

[223] In the absence of registration, liability is channeled to the owner of the ship: art. I(3).

[224] Art. III(1).

[225] Art. I(6)(a).

[226] Art. I(6)(b).

[227] Art. V(1).

[228] Art. XII ter, incorporating art. 15 Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969.

[229] Converted at the rate effective on the 28th April 2005, i.e. 1 SDR = US$1.51.

[230] Ibid.

[231] Ibid.

[232] Ibid.

There is a requirement of compulsory insurance or other financial security for the shipowner's liability[233] and a right to bring the claim directly against the insurer or other person providing financial security.[234]

The second tier of compensation is formed by the Fund Convention '92. Pursuant to the Convention, an International Oil Pollution Compensation Fund (referred to as the "IOPC Fund") was established in London to provide compensation to victims of "pollution damage"[235] over and above the amount paid by the owner of the ship under the CLC '92.[236] Payment under the Fund Convention '92 can also take place where the shipowner is unable to meet his obligations under the CLC '92[237] or if no liability arises under the latter Convention.[238] The IOPC Fund is maintained via annual contributions payable by receivers of oil in the territory of Member States.[239]

Compensation payable under the Fund Convention is, however capped.[240] The limits of compensation are likewise subject to review under the tacit acceptance procedure for amendment.[241] The 2000 amendments raise the maximum amount of compensation payable from the IOPC Fund for a single incident, including the limit established under the 2000 CLC '92 amendments, to 203 million SDR (ca. US$307 million[242]). However, if three States contributing to the Fund receive more than 600 million tons of oil per annum, the maximum amount is raised to 300,740,000 SDR (US$454 million[243]).

On the 16th May 2003, a Protocol to the Fund Convention '92 was adopted in London for the purpose of establishing an International Oil Pollution Compensation Supplementary Fund, which would supplement the compensation available under the CLC '92 and Fund Convention '92 with an additional, third tier of compensation.[244] The Protocol is optional and participation is open to all States Parties to the Fund Convention '92.[245] The Protocol entered into force on the 3rd March 2005[246] and has currently a total nine Parties, including the

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[233] Art. VII(1).

[234] Art. VII(8).

[235] Defined identically under both the CLC '92, art. I(6), and the Fund Convention '92, art. 1(2).

[236] Arts. 2(1)(a) & 4(1)(c).

[237] Art. 4(1)(b).

[238] Art. 4(1)(a).

[239] Art. 10(1).

[240] Art. 4(4).

[241] Art. 36 quinquies, incorporating art. 33 Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 18 December 1971.

[242] Converted at the rate effective on the 28th April 2005, i.e. 1 SDR = US$1.51.

[243] Ibid.

[244] Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971. See the detailed descriptive chart in section 7.2.3.2.2.3 below.

[245] Ibid. art. 19(3).

[246] *Summary of Status of Conventions as at 31 March 2005*, IMO Web site, under *Conventions*, http://www.imo.org/Conventions/mainframe.asp?topic_id=247.

following seven EU States, apart from Japan and Norway: Denmark, Finland, France, Germany, Ireland, Portugal and Spain.[247]

Like the IOPC Fund, the Supplementary Fund is fed out of obligatory contributions from receivers of oil in the territory of Member States[248] following an assessment of needs carried out by the Supplementary Fund's Assembly based on an estimated budget of income and expenditure.[249]

The Supplementary Fund's compensation obligation is triggered once the claimant–the person suffering pollution damage–has been unable to obtain full and adequate compensation for an established claim for such damage under the terms of the Fund Convention '92, because the total damage exceeds, or there is a risk that it will exceed, the applicable limit of compensation laid down in art. 4(4) of the Fund Convention '92 in respect of any one incident.[250] The total amount of compensation payable for any one incident is limited to a combined total of 750 million SDR (ca. US$1.1 billion[251]), including the amount of compensation paid under the existing CLC/Fund Convention '92.[252]

Like other liability and compensation instruments, the CLC and Fund Convention '92 contain a number of provisions of a preventive nature, including coverage within compensable damage of the costs of preventive measures.[253] The IOPC Fund is furthermore required, at the request of a Contracting State, to use its good offices as necessary to assist that State to secure promptly such personnel, material and services as are necessary to enable the State to take measures to prevent or mitigate pollution damage.[254] The IOPC Fund may also on conditions to be laid down in the Internal Regulations provide credit facilities with a view to the taking of preventive measures against pollution damage arising from a particular incident.[255]

7.1.2.2.2.2.2. Bunkers Convention

The International Convention on Civil Liability for Bunker Oil Pollution Damage, done at London on the 23rd March 2001,[256] covers oil pollution emanating from the bunkers of non-oil tankers, which remain outside the ambit of the CLC/Fund Convention '92. Having so far attracted six Contracting States,[257] the Convention is still some time away from the 18 Contracting States figure and overall 1 million gross ton fleet required for its entry into

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[247] *Status of Conventions as at 31 March 2005*, IMO Web site, www.imo.org, under "Conventions."

[248] Art. 10(1).

[249] Art. 11.

[250] Art. 4(1).

[251] Converted at the rate effective on the 28th April 2005, i.e. 1 SDR = US$1.51.

[252] Supplementary Fund Protocol, art. 4(2)(a).

[253] CLC '92, arts. III(1) & I(6)(b) & (7); Fund Convention '92, arts. 4(1) & 1(2).

[254] Fund Convention '92, art. 4(7).

[255] Ibid. art. 4(8).

[256] See the detailed descriptive chart in section 7.2.3.2.2.4 below.

[257] *Summary of Status of Conventions as at 31 March 2005*, IMO Web site, under *Conventions*, http://www.imo.org/Conventions/mainframe.asp?topic_id=247.

force.[258] As far as Mediterranean States are concerned, only Cyprus, Slovenia and Spain are Contracting States.[259]

Modeled on the CLC '92, the Bunkers Convention applies to any ship,[260] defined as any seagoing vessel and seaborne craft, of any type whatsoever.[261] This would mean that offshore platforms are included as far pollution damage[262] from bunker oil[263] is concerned, keeping in mind the geographical scope of application.[264]

The Bunkers Convention takes nonetheless a different approach in comparison with the CLC '92 with regards to the party liable. Under the latter Convention, liability is channeled to the owner of the ship[265] whereas a number of parties are made potentially liable for pollution damage under the Bunkers Convention.[266] Those parties are grouped under the term "shipowner," which is defined as follows:

> "'Shipowner' means the owner, including the registered owner, bareboat charterer, manager and operator of the ship."[267]

Accordingly, claimants have a wide choice as to whom to sue and the traditional maritime law's focus on the owner of the ship for third party liability is thereby tempered.

Otherwise, liability is strict,[268] limited[269] and subject to compulsory insurance or other financial security.[270] Interestingly, however, the Bunkers Convention does not set forth its own liability limits, but refers simply to:

> "… the right of the shipowner and the person or persons providing insurance or other financial security to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended."[271]

Compulsory financial security is similarly capped and concerns the *registered owner* of a ship having a gross tonnage greater than 1000 only.[272] In other words, even though other persons apart from the registered owner may be held liable for bunker oil pollution damage in pursuance of the definition of "shipowner,"[273] the obligation to maintain financial security is

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[258] Art. 14(1).

[259] *Status of Conventions as at 31 March 2005*, IMO Web site, www.imo.org, under "Conventions."

[260] Art. 3(1).

[261] Art. 1(1).

[262] Defined in art. 1(9).

[263] Defined in art. 1(5).

[264] Art. 2.

[265] CLC '92, arts. III(1) & I(3).

[266] Art. 3(1).

[267] Art. 1(3).

[268] Art. 3(1).

[269] Art. 6.

[270] Art. 7.

[271] Art. 6.

[272] Art. 7(1).

[273] Art. 1(3).

restricted to the registered owner. A direct right of claim lies against the insurer or other person providing financial security in respect of the registered owner's liability for pollution damage.[274]

7.1.2.2.2.2.3. OPOL

Following the failure of the regional Convention on Civil Liability for Oil Pollution Damage resulting from Exploration for and Exploitation of Seabed Mineral Resources, done at London on the 1st May 1977 to enter into force, a voluntary scheme developed by offshore operators on the United Kingdom's continental shelf was later on expanded to cover North West Europe with the support of a number of Governments. The scheme is contained in the Offshore Pollution Liability Agreement, which was entered into by a number of offshore operators on the 4th September 1974. The agreement is otherwise referred to as "OPOL" and is amended from time to time.

By and large, the agreement is intended to provide an orderly means for the expeditious settlement of claims arising out of an escape or discharge of oil from offshore exploration and production operations. An incidental objective is to avoid complicated jurisdictional problems.

Under OPOL, operating companies accept strict liability for pollution damage and the cost of remedial measures with only certain exceptions, up to a maximum of US$120 million per incident.[275]

The parties have to establish financial responsibility to meet claims arising under OPOL by producing evidence of insurance, self-insurance or other satisfactory means. They also jointly agree that in the event of a default by one of the parties, each will contribute proportionally to meet claims.[276]

7.1.2.2.2.3. Other HNS

Apart from oil and nuclear pollution, other sundry HNS are carried by sea.

7.1.2.2.2.3.1. HNS Convention

After many years of work, the IMO succeeded in preparing an International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, which was adopted in London on the 3rd May 1996, referred to as the "HNS Convention."[277] The Convention is still not in force.[278] So far, only Cyprus, Morocco and Slovenia are Contracting States within the Mediterranean region.[279]

Broadly speaking, the Convention covers damage arising from the carriage of hazardous and noxious substances by sea.[280] For purposes of the Convention, the expression "hazardous

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[274] Art. 7(10).

[275] Clause IV.

[276] See The Offshore Pollution Liability Association Ltd.'s Web site at www.opol.org.uk.

[277] See the detailed descriptive chart in section 7.2.3.2.2.5 below.

[278] *Summary of Status of Conventions as at 31 March 2005*, IMO Web site, under *Conventions*, http://www.imo.org/Conventions/mainframe.asp?topic_id=247.

[279] *Status of Conventions by Country as at 31 March 2005*, IMO Web site, under *Conventions*, http://www.imo.org/Conventions/mainframe.asp?topic_id=248.

[280] Art. 4(1).

and noxious substances" refers to a list of substances, including oils carried in bulk,[281] noxious liquid substances carried in bulk,[282] dangerous liquid substances carried in bulk,[283] liquefied gases,[284] solid bulk materials possessing chemical hazards[285] and residues from the previous carriage in bulk of these substances.[286] Dangerous, hazardous and harmful substances, materials and articles in packaged form are also covered in the definition.[287] The Convention does not apply, however, to pollution damage as defined in the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended, whether or not compensation is payable in respect of it under that Convention,[288] nor to damage caused by a radioactive material of class 7 either in the International Maritime Dangerous Goods Code, as amended, or in appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended.[289] Furthermore, the Convention does not apply to claims arising out of any contract for the carriage of goods and passengers.[290] Under art. 5(1), it is possible for State Parties to exclude small ships,[291] ships that carry hazardous and noxious substances only in packaged form[292] and ships engaged in coastal trade[293] from the provisions of the Convention.

Taking its cue from the CLC and Fund Convention in a single instrument, the HNS Convention provides for a two-tier system of compensation with the owner (of the ship) bearing liability for an initial amount of damages[294] and an international fund enjoying legal personality and called the International Hazardous and Noxious Substances Fund (referred to as the "HNS Fund") taking up compensation of the remainder of the damage suffered by third parties.[295]

In the usual way, the owner's liability is strict[296] while being limited to a financial cap as follows:[297]

- 10 million SDR for a ship not exceeding 2,000 GT;[298]

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[281] Art. 1(5)(a)(i).

[282] Art. 1(5)(a)(ii).

[283] Art. 1(5)(a)(iii).

[284] Art. 1(5)(a)(v).

[285] Art. 1(5)(a)(vii).

[286] Art. 1(5)(b).

[287] Art. 1(5)(a)(iv).

[288] Art. 4(3)(a).

[289] Art. 4(3)(b).

[290] Art. 4(1).

[291] Art. 5(1)(a).

[292] Art. 5(1)(b).

[293] Art. 5(1)(c).

[294] Art. 7(1).

[295] Art. 13(1)(a). Unlike the CLC/Fund Convention, compensable damage includes loss of life or personal injury *on board* or outside the ship carrying the hazardous and noxious substances caused by those substances: art. 1(6)(a).

[296] Art. 7(1).

[297] Art. 9(1).

[298] Art. 9(1)(a).

- 1,500 SDR for each unit of GT from 2,001 to 50,000 GT and 360 SDR for each unit of GT in excess of 50,000 units of tonnage provided, however, that this aggregate amount shall not in any event exceed 100 million SDR.[299]

Compulsory insurance or other financial security[300] and a right of direct action against the insurer or other person providing financial security[301] complement this first tier of liability.

If the person suffering damage has been unable to obtain full and adequate compensation for the damage pursuant to the first tier of liability and compensation established under the Convention, the HNS Fund is then called in to pay compensation to the victim[302] up to a limit equal to 250 million SDR, including any amount actually paid under the first tier.[303]

Given the variety of hazardous and noxious substances, the Fund is divided into a general account[304] and three separate accounts for oil,[305] liquefied natural gas (LNG)[306] and liquefied petroleum gas (LPG).[307] Accordingly, contributions to the Fund are payable into each account by the receivers of the seaborne cargo to which that account relates.[308] Similarly, compensation of damage caused by a particular substance is payable from the appropriate account.[309]

Preventive functions similar to those of the IOPC Fund are provided for in respect of the HNS Fund. Thus, the HNS Fund must, at the request of a State Party, use its good offices as necessary to assist that State to secure promptly such personnel, material and services as are necessary to enable the State to take measures to prevent or mitigate pollution damage.[310] The HNS Fund may also on conditions to be laid down in the Internal Regulations provide credit facilities with a view to the taking of preventive measures against pollution damage arising from a particular incident.[311]

7.1.3. Activities to Which Liability and Compensation Rules Apply

A basic component of any regime of liability and compensation relates to the definition of activities covered. This question forms generally part of the scope of application provisions of a given regime, which usually also include the designation of the geographical extent of application of the regime under consideration.[312]

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[299] Art. 9(1)(b).

[300] Art. 12(1).

[301] Art. 12(8).

[302] Art. 14(1).

[303] Art. 14(5).

[304] Art. 16(1).

[305] Art. 16(2)(a).

[306] Art. 16(2)(b).

[307] Art. 16(2)(c).

[308] Arts. 18 & 19.

[309] Art. 16(4) in fine.

[310] Art. 15(c).

[311] Art. 15(d).

[312] On the geographical application issue, see section 7.1.4 below.

It is trite to say that any human activity which brings about harm to third parties can qualify for purposes of reparation under principles of general civil liability. In a number of instances, however, specifically defined activities were brought under special regimes of liability. The charts describing regimes of liability and compensation and appearing further below[313] indicate for each instrument considered the type of activities covered. These range from manufacturing activities to carriage of goods, waste processing and disposal as well as undefined activities involving certain substances. An enumeration of such activities would fall outside the scope of this study for obvious reasons of space and time.

It goes without saying that the definition of activities covered by specific regimes constitutes a crucial issue when it comes to determining whether these regimes will provide redress in cases of damage. The fact that special regimes of liability and compensation are tailor-made means that activities which fall short of their scope of application will be governed by the general system of liability and compensation with its resulting inadequacies and shortcomings.

7.1.4. Geographical Application

Each regime of liability and compensation has its own provisions relating to its geographical scope of application. The matter is of importance in any given factual situation of damage since, unless the damage, the incident, the dangerous activity and/or the installation where such activity is being carried out are within the boundaries of the geographical area of coverage of the relevant regime, the latter's application will be excluded.

A further issue relates to the application of rules to areas outside national jurisdiction. In certain cases, indeed, regimes of liability and compensation have been made applicable for instance on the high seas. In the Mediterranean context, the extent of the high seas has witness accelerated changes recently with the adoption by various coastal States of fishing zones, ecological zones, fishing and ecological zones and exclusive economic zones. A synopsis of the current situation is given below.[314]

For instance, according to legislation which dates back to 1951[315] and which was subsequently confirmed,[316] Tunisia claims along the southern coastline (from Ras Kapoudia to the border with Libya) a fishing zone delimited according to the criterion of the 50-meter isobath. In 1978, Malta established a 25-mile exclusive fishing zone.[317] Algeria claimed for its part in 1994 a fishing zone, stretching 32 nautical miles from the maritime border with Morocco to Ras Tenes and 52 nautical miles from Ras Tenes to the maritime border with Tunisia.[318] By Royal Decree 1315/1997 of the 1st August 1997, modified by Royal Decree 431/2000 of the 31st March 2000, Spain created a fishing protection zone in the Mediterranean. The zone is delimited according to the equidistant line between Spain and three opposite or adjacent countries (Algeria, Italy and France). No fishing zone was established off the Spanish Mediterranean coast facing Morocco. Finally, by a Declaration of the 24th February 2005, Libya established a fishing zone extending for 62 nautical miles from the baselines of the territorial sea.

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[313] See section 7.2.3 below.

[314] The information was provided by Prof. Tullio Scovazzi.

[315] Decree of the Bey of Tunis of the 26th July 1951.

[316] Tunisian Laws No. 63-49 of the 30th December 1963 and No. 73-49 of the 2nd August 1973.

[317] Territorial Waters and Contiguous Zone Amendment Act, 1978.

[318] Legislative Decree No. 94-13 of the 28th May 1994.

As far as ecological zones are concerned, French Law No. 2003-346 of the 15th April 2003 provides that France can create an ecological protection zone where it exercises only some of the competences granted to the coastal State under the exclusive economic zone regime, namely the competences relating to the protection and preservation of the marine environment, marine scientific research and the establishment and use of artificial islands, installations and structures. The first ecological zone was created along the French Mediterranean coasts.[319] In some areas, the outer limit of this zone, as it results from the list of coordinates given in the decree, does not follow the equidistance line. On the 13th May 2005 the Italian Chamber of Deputies approved a bill on the creation of ecological protection zones beyond the limits of the territorial sea. The bill has been transmitted to the Senate for discussion and approval.

On the 3rd October 2003, the Parliament of Croatia adopted a "decision on the extension of the jurisdiction of the Republic of Croatia in the Adriatic Sea" and established accordingly an ecological and fisheries protection zone. The purpose of the zone relates presumably to Croatia's sovereign rights under the exclusive economic zone regime for the purpose of exploring and exploiting, conserving and managing the living resources beyond the outer limits of the territorial sea, as well as jurisdiction with regard to marine scientific research and the protection and preservation of the marine environment. The Croatian Parliament decided furthermore that "the implementation of the legal regime of the ecological and fisheries protection zone [would] commence twelve months after its establishment," that is on the 4th October 2004. However, on the 3rd June 2004 the Croatian Parliament, amending its 2003 decision, resolved to postpone the implementation of the ecological and fishing zone with regard to member States of the European Union until the conclusion of the fisheries partnership agreement between the European Community and Croatia.

In 1981 Morocco created a 200-mile exclusive economic zone,[320] which applies to both its Atlantic and Mediterranean coasts. For its part, Law No. 28 adopted by Syria on the 19th November 2003 provides for the establishment of an exclusive economic zone.[321] Such a zone was similarly proclaimed by Cyprus under the Exclusive Economic Zone Law adopted on the 2nd April 2004.

7.1.5. Liable Party (Whom to Sue?)

In the vein of what activities are covered, the determination of the party who will be held liable in law for a given damage or loss is key to the fabric of a given regime of liability and compensation. Depending on the philosophy underlying the regime being considered, a number of parties may be earmarked for liability and/or compensation purposes. For instance, a regime of compensation based on a societal undertaking of the risks of dangerous activities can lead to the setting up of schemes of compensation derived from public funds with or without the levying of contributions from the persons carrying out dangerous activities. As discussed above, the "polluter pays" principle, which is increasingly being implemented across environmental law, posits that the remedying of environmental damage must be paid for by the originator of the damage. As a result, most of the regimes of liability and compensation currently in place put liability and the obligation to compensate on the persons carrying out the dangerous activity and/or compensation funds constituted and maintained through compulsory contributions levied on such persons.

The designation of the liable party takes on a significant importance as it identifies the person who can be sued in courts of law to answer for damage suffered unduly by innocent victims.

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[319] Decree No. 2004-33 of the 8th January 2004.

[320] Dahir No. 1-81-179 of the 8th April 1981.

[321] Arts. 21 to 25.

7.1.6. Basis of Liability (How Liability Arises)

The basis of liability is another crucial element in any regime of liability and compensation being considered. It refers to the legal fiction whereby obligations arise in relation to a set of facts. The process may involve fault (or negligence) as the condition sine qua non of or, in other words, the element triggering legal answerability–and thus, liability leading to, inter alia, compensation–(in which case it is said that liability is based on fault), or it may involve no element of fault whatsoever (being labeled in such instance no-fault liability, which may be sub-classified into strict and absolute liability). While fault-based liability (also known as negligence law) imposes liability for the failure to use reasonable care (fault or negligence as such), strict liability imposes liability regardless of fault–the plaintiff need not prove that the defendant breached any standard of care. Absolute liability goes further than strict liability and renders the defendant, in effect, an insurer. The resort to either basis of liability is usually justified by policy considerations, which may vary depending on the type of damage and activity being considered and the country concerned. Of course, compensation of private parties' losses may also be done by other means. For instance, governments may decide to allocate public funds for such purpose with or without provisions as to their recoupment from parties who would be liable under general principles of delictual (or tortious) liability.

In most instances of environmental liability covered by specific regimes, it would appear that strict or no-fault liability is the general norm. This is not to say that other bases of liability have no place under the regimes in question. In fact, fault-based liability appears at times in conjunction with strict liability while liability is purely absolute in a limited number of cases dealing with nuclear damage.

For instance, Directive 2004/35/EC of the 21st April 2004 on Environmental Liability with regard to the Prevention and Remedying of Environmental Damage features both a strict and a fault-based system of liability.[322] Strict liability is provided for in relation to environmental damage or the threat thereof when caused by one of the occupational activities listed in annex III of the Directive;[323] the latter annex lists a number of dangerous and potentially dangerous activities which are regulated by EC environment-related law. Given the public policy of utmost protection of biodiversity, the Directive also captures damage or the threat of damage to protected species and natural habitats caused by other non-listed occupational activities, but in this case, the operator's liability requires proof of fault or negligence in the absence of a presumption of the dangerous character of the non-listed activities.[324]

In the following sub-sections, some observations are made regarding fault-based and no-fault liability. A separate sub-section is devoted to the special category of administrative liability in France under French law.

7.1.6.1. Fault-Based Liability

As stated above, fault-based liability is liability which arises following upon proof of fault, whether by commission or omission, as against the defendant. A typical pronouncement of fault-based liability is found in most national civil codes. For instance, art. 1382 of the French Civil Code provides:

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[322] Art. 3(1).

[323] Art. 3(1)(a).

[324] Art. 3(1)(b).

> "Any act whatever of man, which causes damage to another, obliges the one by whose fault it occurred, to compensate it."[325]

It should be said that fault-based liability as posited in the national civil codes has rarely been applied in environmental cases, possibly for the very reason that proof of fault is required. However, it would usually suffice to establish such fault by proving violation by the defendant of a statutory or regulatory environmental requirement. The proliferation of legislation setting forth specific obligations and prohibitions, particularly in the industrial sector, would tend to facilitate resort to fault-based liability insofar as it renders proof of fault all the more easier. In turn, this would lead to the blurring of the distinction between no-fault and fault-based liability.[326] It should however be stated that, in any case, observance of administrative or statutory requirements is not per se a bar to civil liability.[327]

7.1.6.2. No-Fault Liability

No-fault liability is not unheard of in traditional delictual or tortious law. The mechanism has for some time been in existence, largely as a result of judicial creativity, side-by-side with fault-based liability. As a more victim-friendly alternative, no-fault liability has been widely adopted in various sectors, including environmental protection. Its two sub-species of strict and absolute liability will be considered below.

7.1.6.2.1. Strict Liability

Strict liability means that the defendant is liable to the plaintiff regardless of fault. In some situations, even if the defendant acted in a reasonable manner and took all necessary precautions, he may still be liable. Strict liability is applied when inter alia ultra hazardous activities, dangerous animals, or manufacturers of defective products cause harm. To win a strict liability case, the plaintiff must prove only causation and damages.

Strict liability differs from absolute liability insofar as the latter practically excludes any exculpation of liability whereas, under strict liability, the defendant can still invoke certain limited causes of exoneration from liability. He cannot avoid liability, however, by showing merely that he was not at fault.

Some of the applications of strict liability are looked at below.

7.1.6.2.1.1. Act of a Thing

A typical instance of strict liability arises in relation to the act of things which are in the custody of the defendant. Such is the rule under art. 1384(1) in fine of the French Civil Code. Despite its attractiveness of dispensing with the need to prove fault or an abnormal inconvenience,[328] this rule has been reluctantly applied by French courts in environmental cases, possibly because it would appear to be overly advantageous to victims of pollution.[329]

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[325] (Translation on Legifrance, http://www.legifrance.gouv.fr/html/codes_traduits/code_civil_textA.htm#TITLE%20IV%20of.) In certain cases, the law will provide for a presumption of fault which facilitates proof of the claim.

[326] Michel Prieur, *Droit de l'environnement*, 4th ed. (Paris: Dalloz, 2001), par. 1103, p. 871-872, queries the effect of the precautionary principle on the appraisal of faulty behavior.

[327] Ibid. par. 1111, p. 877.

[328] See section 7.1.6.2.1.2 below.

[329] Michel Prieur, op. cit. par. 1104, p. 872.

7.1.6.2.1.2. Doctrine of Abnormal Private Nuisances under French Law

As stated above,[330] the jurisprudential doctrine of abnormal private nuisances ("*théorie des troubles anormaux du voisinage*") governs in France liability for environmental damage (be it that suffered by the environment per se or damage caused by pollution to private interests). It is based on the idea that life in society entails that certain private nuisances must be considered as normal or that pollution and nuisances must be considered as normal up to a certain level, depending on the locale (or neighborhood). Beyond such level, compensation is available since the inconvenience or the damage becomes anomalous.

The doctrine has not been without its detractors. Prieur's authoritative *Droit de l'environnement* argues that, because defendants can escape liability on the basis of their prior occupation of the land, the law leads to an aggravation of social and environmental inequality and consecrates an illegally acquired right to harm by polluters. Despite its liberal and progressive manifestations in the dispensation from proof of fault and the presumption of liability, the doctrine of abnormal private nuisances is seen as passé, segregationist and serving policies of industrial development and unlimited growth. The doctrine takes no account of the extent of the damage or the inconvenience suffered, nor of the gravity of the damaging event or its abnormality. Only disadvantage, a consideration lying halfway between the damaging event and the damage, is relevant.[331]

Prieur further says that the doctrine of abnormal private nuisances is applied inconsistently by the courts, which consider erratically the damage, the nuisance or the inconvenience in order to reach a final decision. He concludes that the doctrine is unsuitable for environmental damage.[332]

7.1.6.2.1.3. Products Liability

Liability for defective products is another instance of strict liability.[333] Pursuant to art. 1386-1 of the French Civil Code, all the plaintiff must prove is damage, the defect and the causal relationship between defect and damage. The "producer"[334] is then held strictly liable.[335] The regime applies to a wide array of "products;" however, pure environmental damage is not

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[330] See section 7.1.2.2.1.1.3 below.

[331] Michel Prieur, op. cit. par. 1107, p. 875:

> "*Admise par certains comme évitant que la réparation ne revienne à enrichir sans cause la victime, la théorie de la préoccupation collective a été vigoureusement attaquée à juste titre comme aggravant les inégalités sociales et écologiques et consacrant les droits de nuire acquis illégalement par les pollueurs. Sous son aspect libéral et progressiste dans la mesure où la faute n'est pas exigée et la responsabilité présumée, la théorie des troubles du voisinage est en réalité un régime désuet et ségrégationniste qui sert la politique de développement industriel et de croissance illimitée. On ne tient compte ni de la réalité des dommages et de la gêne subie, ni de la gravité du fait dommageable ou de son anormalité mais simplement de l'«inconvénient», élément intermédiaire entre le fait dommageable et le dommage.*"

[332] Ibid.

[333] See French Civil Code, arts. 1386-1 et seq., transposing Council Directive 85/374/EEC of the 25th July 1985 on the Approximation of the Laws, Regulations and Administrative Provisions of the Member States concerning Liability for Defective Products.

[334] This can be the product's manufacturer or importer: art. 1386-6 French Civil Code.

[335] Ibid. art. 1386-1.

covered. An interesting provision of the Directive and its French transposition is the possibility for the "producer" to exonerate itself on the basis of developmental risks.[336]

7.1.6.2.1.4. Miscellaneous Applications

Legislators have introduced strict liability under various special laws and regulations. An example in maritime law is the International Convention on Civil Liability for Oil Pollution Damage, 1992, which establishes strict liability on the owner of the ship for oil pollution damage originating therefrom.[337] Justifying strict liability in such an instance is the perception of the risks posed by certain undertakings which are deemed to require legislative response in the form of "quasi automatic," i.e. strict liability.[338]

7.1.6.2.1.5. Exemptions from Strict Liability

In almost all the regimes of strict liability with environmental relevance considered for the purpose of this study, standard causes of exoneration from strict liability are found to re-occur consistently. For instance, under the HNS Convention, the following cases exculpate the owner of the ship from liability:

- the damage results from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character;[339]
- the damage is wholly caused by an act or omission done with the intent to cause damage by a third party;[340]
- the damage results either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person.[341]

Special exemptions of strict liability are also provided for by the same Convention as follows:

- the damage is wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function;[342]
- the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped either causes the damage, wholly or partly, or leads the owner not to obtain the requisite insurance.[343]

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[336] Art. 7(e) Council Directive 85/374/EEC of the 25th July 1985; ibid. art. 1386-11(4).

[337] The Convention is implemented, e.g., in France via Laws Nos. 77-530 of the 26th May 1977 and 94-478 of the 10th June 1994 (Environmental Code, art. L. 218-1 et seq.). Other examples in French law include the liability of aircraft operators, viz art. L. 142-2 Civil Aviation Code, and the liability attaching to exclusive research mining permits, viz art. 75-1 Mining Code.

[338] Michel Prieur, *Droit de l'environnement*, 4th ed. (Paris: Dalloz, 2001), par. 1105, p. 872-873.

[339] Art. 7(2)(a).

[340] Art. 7(2)(b).

[341] Art. 7(3).

[342] Art. 7(2)(c).

[343] Art. 7(2)(d).

7.1.6.2.2. Absolute Liability

In its most radical form, no-fault liability is absolute. The compilation of regimes of liability and compensation in place points to only a few instances where such a high standard is adopted, namely in relation to nuclear damage. Exemptions from absolute liability are very few if not non-existent. This is not to say that the party liable is deprived of his legal right of recourse against the person responsible for the damage.[344]

7.1.6.3. Administrative Liability under French Law

The special case of governmental liability for environmental damage deserves a consideration on its own especially when, depending on the legal system in place, it differs substantially from liability under private law. For instance, in France, the liability of government agencies may arise in environmental matters in the following three cases:

- pollution caused by a public utility or public works;
- shortcomings of government agencies in the control of private polluting activities;
- measures taken for the protection of nature.

A consideration of each of these instances is effected below.

7.1.6.3.1. Pollution Due to a Public Utility or Public Works

As far as liability for environmental damage caused by public works or a public utility (or undertaking) is concerned, the applicable regime is to be found in the French Law of the 28th Pluviôse, Year VIII, which establishes no-fault liability. Administrative courts having jurisdiction are called upon to apply the doctrine of abnormal private nuisances and will allocate compensation whenever the damage is considered to be abnormal bearing in mind factors of locale, time and persons. The assessment of abnormality is more or less the same as the one adopted by the ordinary courts.

Government agencies may also invoke their prior occupation of the land in order to escape liability, either fully or partly. That defense is available to a public utility, but not to damage caused by public works. Where, however, the damage has, subsequently to the arrival of the plaintiff, increased and the increase was not foreseeable, the court may award damages for the aggravation of the harm. It remains that ordinary courts tend to be more generous than their administrative counterparts. For instance, the former may decide to award lower damages against government rather than negating any right of recovery.

Pursuant to French administrative law, a favorable rule to victims of pollution is to the effect that when the pollution attributable to a government agency was in fact caused by multiple sources, e.g. a watercourse subject to both industrial pollution and municipal effluents, the government agency cannot be exonerated from its no-fault liability on grounds of the act of a third party.

7.1.6.3.2. Defective Control and Policing of Pollution

Turning to the liability of the administration in the faulty monitoring of the environment, various instances should be considered separately:

- Fault of the administration vis-à-vis third parties consisting of unlawful policing measures ("*mesures de police*"): An administrative act declared illegal may result in the condemnation of the government agency which enacted it. This is so for example

[344] See, e.g., art. X, 1997 Vienna Convention on Civil Liability for Nuclear Damage.

in relation to general and absolute prohibitions, the unlawful issuance of a permit to open a scheduled establishment or the illegal refusal of an import license for wild animal skins.[345]

- The refusal to take adequate policing measures rendered necessary by certain nuisances, including lack of action by a mayor or a prefect, may be considered as faulty. Depending on the circumstances, the omission must amount to gross negligence ("*faute lourde*") or it suffices if there is mere fault ("*faute simple*"). Nonetheless, it appears that mayors' inaction in the exercise of their policing measures must constitute a gross negligence for a right of suit to arise. In the case of asbestos, the State was held liable for having failed to adopt in a timely manner protective regulations which were deemed necessary in light of the risks to human lives.
- Deficiency of the administration in charge of scheduled establishments in its powers of control: Since 1972, administrative courts have affirmed that the State is liable for the prefect's inertia, slowness or insufficient measures exerted in the control of scheduled establishments. Mere fault will suffice in such cases to trigger the administration's liability. As a result, the administration in charge of scheduled establishments is induced to carry out its pollution controls in a vigilant manner.

7.1.6.3.3. Damage Due to Natural Protection Measures

Measures aimed at the protection of wildlife may potentially result in damage. For instance, the re-introduction of bears in nature has caused injury to the agricultural sector. In France, amicable settlements were reached for the compensation of injured farmers. Accordingly, the Pyrenees National Park has allocated amicable compensation for damage caused by bears since 1967; damage caused by lynxes is similarly amicably settled jointly by the World Wide Fund and the French Government through its Fund for Environmental Protection. Legislators have not, however, seen it fit to enact rules in relation to damage caused to protected wildlife whereas and the jurisprudence remains cautious in awarding compensation. For his part, Prieur advocates no-fault liability of the State for damage caused by the law in the absence of an express legal provision to the contrary.[346]

In any case, the success of measures for the protection of wildlife depends to a large extent on the establishment of a generalized system of compensation. Art. 13-IV of the French Law of the 27th December 1968 provided that, in the event of damage caused to crops either by wild boars or big game hailing from a reserve or an estate subject to a permitted hunter-kill ratio provided for by former art. L. 225-3 of the Rural Code,[347] the person who suffered damage could claim compensation from the National Hunting Bureau. As such, the regime prevented the State from being held liable at common law. These provisions were amended by art. 16-II of the Law of the 6th July 1992[348] and Decree No. 92-1151 of the 15th October 1992. Art. 33 of the Law of the 26th July 2000 has transferred compensation to departmental federations of hunters[349] through amendments to arts. L. 226-1 to L. 226-5 of the Rural Code.[350] Departmental federations of hunters will process applications and tender amounts of compensation established in accordance with departmental scales.

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[345] Michel Prieur, *Droit de l'environnement*, 4th ed. (Paris: Dalloz, 2001), par. 1119, p. 886.

[346] Ibid. p. 887.

[347] Now art. L. 425-1 Environmental Code.

[348] Art. L. 226-5 Rural Code.

[349] As of the 1st July 2001.

[350] Arts. L. 426-1 to 6 Environmental Code.

The foregoing sets forth a regime of compensation which is quasi automatic and amounts to no-fault liability. All the victim has to prove is the occurrence and extent of the damage and that the damage originates from big wildlife. Applications for compensation above a certain amount are considered by a departmental compensation board presided over by the prefect and comprising the departmental director of agriculture and representatives of hunters and farmers from the department.[351] Appeals from the decisions of departmental boards are heard by a national board.[352] By virtue of art. 15 of Decree No. 75-542 of the 30th June 1975, the maximum amount of compensation cannot exceed 95% of the damage. That figure used to be 80%. Two important restrictions limit the right of recovery: for instance, no compensation can be granted for damage caused by game originating from one's own estate; furthermore, the victim must not have helped in the arrival of the game on its estate by growing enticing crops. In such a case, compensation cannot exceed 20%.

Prieur opines that for the wider hunting community to have to bear those losses is quite debatable given that the spin-offs of this new policy will inure solely to big game hunters who represent about 30% of hunters. Such a discrepancy was alleviated through the imposition of a levy on hunters benefiting from kill ratios[353] with a view to compensating damage caused to crops by certain species of game.

The resulting system of automatic compensation does not per se do away with the operation in other sets of circumstances of the normal rules of civil liability allowing farmers to obtain compensation by proving fault of a neighboring land owner or of the holder of hunting rights.[354]

Finally, turning to the issue of the liability of the State arising from harmful laws, it is noteworthy that, despite an earlier decision by an administrative appeals court holding the State liable for damage caused by greater flamingoes by reason of legislation adopted by France, the State Council has clearly overruled such jurisprudence by arguing that laws for the protection of wildlife are adopted in the public interest. This line of authority has been followed and applied to damage caused by other protected species. Persons who suffered damage attempted to launch their claims on another foundation, i.e. the deficiency of administrative organs in the control and regulation of populations of protected species, but the appeals judge dismissed fault-based liability given that the State had no precise duty in the active management of protected fauna.[355]

7.1.7. Compensable Damage

The extent of compensable damage differs obviously depending on the regime of liability and compensation considered. Generally speaking, it is important that injured parties are recompensed for all damage suffered so that they are put back as far as possible in the

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[351] Decree No. 75-542 of 30 June 1975, amended by Decree No. 79-1100 of 20 December 1979 and by Decree No. 86-1386 of 31 December 1986, art. R. 226-1 et seq., Rural Code.

[352] It is noteworthy that by virtue of Decree No. 79-1100 of the 20th December 1979, as far as big game is concerned, the board entrusted with the consideration of individual kill ratios was merged with the compensation board so that damage caused by the animals is better taken into consideration in the management of wildlife populations.

[353] Art. 17, Law 78-1240 of 29 December 1978, art. L. 225-4, Rural Code, art. L. 425-4, Environmental Code.

[354] Michel Prieur, *Droit de l'environnement*, 4th ed. (Paris: Dalloz, 2001), par. 1123, p. 888.

[355] Ibid. par. 1123, p. 888-889.

position they would have been in had the damage not occurred. This is a basic tenet of civil liability in almost all systems of law.[356]

Damage can take many forms, but is generally classified into the following categories:

- Bodily harm or death;
- Moral damage (or pain and suffering);
- Property (or material) damage;
- Economic loss.

Reference is made to the general textbooks on delictual or tortious liability on the subject of compensable damage.

For its part, the concept of environmental damage is not an easy one. Set against the background of general civil liability (delictual or tortious), the idiosyncrasies of environmental damage call for a number of remarks:

- It is arguable whether compensation should extend to damage to the environment per se, i.e. independently of any pecuniary loss to individuals;[357]
- Assuming that environmental damage per se is compensable, who can claim compensation for it? Is it the State, a designated legal entity, specific environmental organizations, mere individuals or perhaps the various environmental constituents, i.e. fauna, flora, water, air etc.?[358]
- How is environmental damage to be assessed? Great uncertainty usually pervades the question of the existence and extent of the damage, aside from the difficult task of putting a money figure to the damage;[359]
- In any case, it seems that environmental damage features certain unique attributes which contradistinguish it from other types of damage, i.e.: environmental degradation is usually irreversible; environmental damage is often a consequence of technological progress; pollution has cumulative and synergic effects, which means that various sources of pollution combine and add up amongst each other; the accumulation of harm across the food chain can have catastrophic consequences (e.g. Minamata disease in Japan); the effects of environmental damage can be felt far field from the source point; environmental damage is a collective type of damage, both as regards its causes and its effects (social costs); environmental damage is diffuse in its manifestations (air, radioactivity, water pollution) and insofar as the causation

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[356] Art. 107 of the Tunisian Obligations and Contracts Code provides thus (free translation):

> "The damage, in cases of delicts and quasi delicts, is the effective loss sustained by the petitioner, the necessary expenditures that he had to incur or should have incurred in order to repair the consequences of the act committed to his detriment as well as the profits of which he is deprived in the normal course following upon such act. The court will have to, besides, evaluate the damage differently, depending on whether the debtor committed a fault or fraud."

[357] In this regard, some French authors distinguish environmental damage from pollution damage: Michel Prieur, *Droit de l'environnement*, 4th ed. (Paris: Dalloz, 2001), par. 1100, p. 868-869.

[358] Ibid. par. 1100, p. 868-869; George Wiederkehr, "Dommage écologique et responsabilité civile," in Michel Prieur & Claude Lambrechts (eds.), *Mankind and the Environment* (Paris: Frison-Roche, 1998), p. 515-517.

[359] George Wiederkehr, loc. cit., p. 517-518.

> element is concerned; environmental damage affects first and foremost a natural element and then affects indirectly private interests.[360]

It is noteworthy that, under the EC Environmental Liability Directive, compensable damage is restricted to "environmental damage," which expression is defined in article 2(1) as constituting damage to protected species and natural habitats, water damage and land damage. Pursuant to paragraph (14) of the preamble to the Directive, the latter "does not apply to cases of personal injury, to damage to private property or to any economic loss and does not affect any right regarding these types of damages."

Espousing, however, the "polluter pays" principle, the Directive adopts an expansive definition of damage insofar as the operator is liable to bear the costs of both prevention and remedial of damage. As such, the Directive is quite avant-garde. Furthermore, pursuant to the Directive's preambular par. (18):

> "… It is also appropriate [by virtue of the "polluter pays" principle] that the operators should ultimately bear the cost of assessing environmental damage and, as the case may be, assessing an imminent threat of such damage occurring."

Moreover, par. (19) of the same preamble stipulates that Member States may provide for flat-rate calculation of administrative, legal, enforcement and other general costs to be recovered.[361]

7.1.8. Limitation of Liability

Limitation of liability forms an integral part of most of the specialized regimes of environmental liability and compensation considered in this study.

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[360] Michel Prieur, op. cit., par. 1101, p. 870-871.

[361] A noteworthy development on the compensation of environmental damage is provided by practice before the United Nations Compensation Commission (UNCC), which is charged with the assessment of claims following upon Iraq's invasion of Kuwait. The basis of Iraq's liability is U.N. Security Council Resolution 687 (1991), stating that Iraq is "liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait" (para. 16).

Decision 7, adopted by the Governing Council of the UNCC in 1991, provides a more detailed guidance on the entries which may constitute "direct environmental damage and depletion of natural resources." This includes losses or expenses resulting from:

> "(a) Abatement and prevention of environmental damage, including expenses directly relating to fighting oil fires and stemming the flow of oil in coastal and international waters;
>
> (b) Reasonable measures already taken to clean and restore the environment or future measures which can be documented as reasonably necessary to clean and restore the environment;
>
> (c) Reasonable monitoring and assessment of the environmental damage for the purposes of evaluating and abating the harm and restoring the environment;
>
> (d) Reasonable monitoring of public health and performing medical screenings for the purposes of investigation and combating increased health risks as a result of the environmental damage; and
>
> (e) Depletion of or damage to natural resources" (para 35).

In matters affecting ship operations, the IMO's Convention on Limitation of Liability for Maritime Claims, 1976 sets forth a system of general limits of liability applicable to claims arising from a specific incident.

There is no provision in the EC Environmental Liability Directive to the effect that compensation of environmental damage should be limited quantitatively as this would contradict the "polluter pays" principle. The Directive does provide, however, that it is without prejudice:

> "to the right of the operator to limit his liability in accordance with national legislation implementing the Convention on Limitation of Liability for Maritime Claims (LLMC), 1976, including any future amendment to the Convention, or the Strasbourg Convention on Limitation of Liability in Inland Navigation (CLNI), 1988, including any future amendment to the Convention."[362]

7.1.9. Causation Link

Establishing the link of causation between the wrong and the damage is often very difficult in the case of environmental damage. Pollution tends to be diffuse, deferred and insidious and requires protracted and costly expert evidence to prove. Even if it may be obvious that a particular source has fouled water, air or wildlife, it may be difficult to establish to what extent a third party has suffered thereby. Such an indirect link of causality may bar any recovery. The resort to precise and concordant presumptions by the magistrate may help the victim in certain cases, e.g. compensation of damage presumed to result from supersonic booms. In certain cases, the law has established presumptions, for instance in the area of nuclear accidents where it is presumed by law that certain affections are caused by such accidents. In any case, the insistence of the law on a direct causation link is somehow inapt for tackling environmental damage as ecology's main teaching is that living and inanimate things make up a complex whole and that interdependence is a fundamental feature of the universe.[363]

No-fault liability systems usually do away, at least at surface, with the issue of causation; however, it is argued by some that causation, which lies at the heart of liability–and bearing in mind that compensation is not necessarily co-extensive with liability–, has a salutary role for the pollution victim, who can free its mind once the person responsible for the pollution has been designated.[364]

7.1.10. Insurance or Other Financial Security

Insurance or other financial security is often an essential element of liability and compensation schemes.

7.1.10.1. History of Environmental Liability Insurance

Like other risks, pollution of the environment can be insured against in the form of liability insurance. However, the unique nature of environmental damage and the inability to determine exactly the financial liabilities involved in respect of damage revealing itself long after the facts have led certain underwriters to tender special contracts covering environmental damage.

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[362] Art. 4(3).

[363] Michel Prieur, op. cit. par. 1110, p. 876-877.

[364] George Wiederkehr, "Dommage écologique et responsabilité civile," in Michel Prieur & Claude Lambrechts (eds.), *Mankind and the Environment* (Paris: Frison-Roche, 1998), p. 523.

Risk valuation in environmental matters is quite difficult both for the business operator and the underwriter. It requires expert and scientific knowledge. The extent and kind of harm are difficult to foresee. Causation is often indirect.

Although some major incidents are well-documented, few accidents occur in fact, relatively speaking, since pollution is predominantly an insidious and continual process, e.g. gas emissions in the atmosphere, discharges, noise, vibrations, odors. An insurer cannot afford to cover a large number of concerns even if they operate in conformity with the applicable legislation on scheduled establishments.

Medium-size industries do not usually consider that the risk of pollution requires a special policy unless they have already suffered from an accident. Settlements with victims often lead to making pollution look less dramatic in the minds of certain companies which are hence reluctant to take additional insurance and increase thereby their overhead expenses. Large corporations often resort to self-insurance in the environmental field. It is estimated that less than 1% of environmental damage is insured within the European Union.[365]

In France, the taking into consideration of environmental risks is a recent phenomenon. Until the 1960s, most third-party liability policies taken by industrial undertakings contained no reference to pollution damage. Only occasionally coverage explicitly extended to accidental water or air pollution resulting from an event that was sudden, unforeseen and external to the victim or the property damaged.

Starting in the 1970s, underwriters introduced exclusion clauses relating to damage caused to bodies of water and air. These clauses were extended in 1974 to various instances of impairment of the environment such as noise, odors, radiances, rays or temperature change.

Environmental damage could thus only be covered by way of a special rider to the third-party liability insurance contract. This supplementary cover was referred to as “accidental pollution” and required the occurrence of a sudden event, understood as a fortuitous and unforeseeable event. Damage resulting from a deliberate act, defective equipment or installations or otherwise denoting inobservance of applicable regulations was excluded. New contracts sometimes included synergetic pollution by covering damage resulting from pollution caused through the unexpected combination of various substances or even potential pollution, that is pollution which is impossible to predict.

This type of contract was negotiated on a case-by-case basis. However, because of lack of technical expertise on the part of insurance agents, the valuation of pollution risks remained superficial. A “technical report” was generally drawn up, yet an on-site survey was by no means systematically effected.

Since the 1st January 1994, insurers have decided to discontinue offering such type of contracts. As a result, cover has had to be placed with Assurpol, a pool of co-reinsurers, under a specific policy. Unfortunately, the latter provides insufficient cover to gradual pollution and ceiling amounts ranging from one to two million Francs were much lower than pollution risks, e.g. in 1988, fire at the Protex plant in Tours cost over 100 million Francs.[366]

The first Assurpol contract was offered in 1977 (GAR-POL). The pool itself brings together both French and foreign insurers operating in France and is specifically directed to covering environmental liabilities. The current terms and conditions of cover are set forth in a new Assurpol policy, effective as from the 1st January 1989.

The ASSURPOL contract is intended principally for scheduled establishments be they industrial or agricultural establishments, which are governed by the Law of the 19th July 1976.[367] Cover is comparatively more extensive insofar as the cause of the loss is not tied to

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[365] Prieur, op. cit. par. 1134, p. 904.

[366] Ibid., par. 1135, p. 904-905.

[367] Arts. L. 551-1 et seq., Environmental Code.

a sudden accident, but can result from environmental harm of a non-accidental nature. Furthermore, the contract extends automatically not only to polluting discharges to air, water or soil, but also to other nuisances such as odors, noise, vibrations and radiances exceeding the measure of ordinary neighborliness obligations. A supplementary clause may be added to the effect of providing reimbursement of pollution clean-up costs aiming at neutralizing, isolating or cleaning up polluted property insofar as the same is called for pursuant to an administrative injunction or an agreement entered into between the insured and the insurer. The costs of replacing damaged equipment or machinery are not covered by such clause. Although the loss does not have to be sudden, it has to be fortuitous meaning unforeseeable from the point of view of the insured. Cover obviously does not operate unless observance of statutory and regulatory provisions and maintenance of equipment by the insured are considered sufficient.

Given the scope of application of the contract, a vetting mechanism was instituted. Risks are underwritten only after the insurance company has conveyed to the ASSURPOL technical board an application questionnaire completed by the prospective insured together with a survey report. Analysis and measurement of pollution may be required at the applicant's expense. The board will thereafter recommend to the insurance company whether to insure the risk and, in doing so, will fix the amount of the premium generally above market levels.

The contract is for a firm limited period of one year and can only be renewed with the express consent of the insurer. A right of survey at anytime operates during the period of cover. The insurer reserves the right to impose the use of new technology failing which the contract is suspended or terminated. In the event of a loss, claims are handled by the underwriting company. Indemnities can reach 200 million Francs.

A special contract intended for businesses which turn out to be the actual victims of pollution is also offered by ASSURPOL. Indeed, extraneous pollution may halt certain industries, e.g. pulp, brewing and bleaching industries. The cover extends to the costs of clean-up to be undertaken at the victim's premises as well as to loss of earnings resulting from a cessation of activities due to the contamination of elements forming an integral part of the manufacturing process such as water.[368]

Since 1974, an English policy of insurance called EIL (Environmental Impairment Liability) is also available. It covers accidental pollution as well as residual, continual, synergetic and potential pollution whether resulting from any substance, whether in gas, solid or liquid form, and from odors, noise, vibrations, light, electricity, radiation, temperature change or any other phenomenon causing or contributing to environmental pollution. Pollution removal and clean-up costs are covered.[369]

7.1.10.2. Does Insurance Lead to Improved Environmental Protection?

Proper and effective risk management is a preferable avenue to the payment of a very high insurance premium for environmental liability. Risk management should also normally lead to the decrease of premiums.[370]

Insurers play however an important role in environmental protection. The duty of the insured to abide by statutory and regulatory standards, the conditions of cover, the setting of premiums and deductibles affect the behavior of insured undertakings and reduces the chances of occurrence of a loss causing damage to the environment. It is not clear however whether compulsory insurance in the environmental field improves the compensation of victims bearing in mind the great caution of insurance companies at the time of settling

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[368] Prieur, op. cit. par. 1136, p. 905-906.

[369] Ibid. par. 1137, p. 907.

[370] Ibid. par. 1138, p. 907-908.

claims and the number of exclusion clauses. Compulsory insurance is slowly making its way nonetheless, being provided for not only as part of no-fault liability schemes, but being called for in the 1993 Lugano Convention and the European Commission's Green Paper of May 1993. However, compulsory insurance was removed from the Commission's White Paper on Environmental Liability of February 2000 in favor of voluntary financial guarantees.[371]

Despite the strides achieved by insurance law in encompassing a wide variety of causes of loss, only corporeal, physical and economic losses are covered. Pure environmental damage affecting nature, animals and the sundry environmental constituents which are not appropriated (res nullius, res communis) remains excluded and uncompensated. Law is once again incapable of allotting non-proprietary environmental constituents to a legal person. In such a case, compensation of damage caused to common environmental heritage should be applied for by the State or by public interest groups.

The only extension provided for in Assurpol ITF 1994 relates to pure economic loss, for instance the interruption of activities caused to manufacturing plants following a water or air pollution alert.[372]

7.1.11. Administrative and/or Judicial Measures

Apart obviously from the monetary compensation, it is important for victims of pollution to see to it that the pollution complained of actually stops and that similar pollution does not occur in the future. Reinstatement of the environment is also amongst the possible desiderata of liability suits.

In keeping with the terms of reference of this study, this report emphasizes compensation, but this is not to mean that other remedies are less important than monetary awards.

Under the Basel Protocol, the matter is left for instance to national law.[373]

In the case of damage caused by public works or a public utility under French administrative law, pollution should ideally lead to an order for its stoppage. The problem for ordinary courts stems from their limited powers given their reluctance to encroach on the jurisdiction of the administration in respect of scheduled establishments. Administrative courts on the other hand are prevented from acting by virtue of certain other principles of law. First, an administrative judge cannot order an alteration of the public work or other corrective measures without running foul of the rule prohibiting him from issuing orders to the administration. Secondly, the judge has to abide by the rule treating a public work as inviolable and barring therefore an order for its destruction. Such a rule has been criticized as it stands in the way of citizens applying for a cessation of nuisances and is seen as contrary to public interest. Certain administrative courts however have ordered the government to pay annuities for as long as damage would last. This amounted to ordering indirectly the administration to cease the damage.

7.1.11.1. Damages

The idea of compensation is to offset nuisances caused by pollution through a monetary award, which is viewed as the equivalent of the damage sustained by the plaintiff.

In France, compensation has been granted more or less in a few *isolated cases*: red mud pollution in Corsica[374] and pollution of the bay of the Seine.[375] The determination of the

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[371] Ibid. par. 1138, p. 908.

[372] Ibid.

[373] Arts. 19 & 20(1).

[374] TGI Bastia, 8/12/1976, *D.* 1977-427, commented by Rémond-Gouilloud.

amount of compensation is often a delicate matter for the courts. A lump sum is usually awarded, in the way of so much per cubic meter of contaminated water surface; however, this method of assessment of damages may seem quite arbitrary. The Amoco Cadiz disaster in 1978 and the resulting spillage of 220,000 tons of oil led American courts to grant one billion francs to the French State, 220 million francs to French boroughs and 2.5 million francs to fishermen. In 1991, by settling its case against Exxon, the State of Alaska obtained the equivalent of 7.5 billion francs following the release of 38,000 tons of oil from the Exxon Valdez in 1989.

7.1.11.2. Compensation Funds

Because of difficulties related to the substance and procedure for obtaining satisfactory compensation for environmental damage, a number of countries have set up special compensation funds. The setting up of such funds helps in the compensation of environmental damage and the reinstatement of the environment, particularly when the polluter cannot be identified or where no private rights were prejudiced. Contributions or levies may be charged to polluters. There is a number of examples of national schemes, e.g. the Dutch fund for air pollution which has been in operation since 1972; the fund for protection of the coast of Maine from oil pollution; US Superfund on waste; Japanese law of 5 October 1973 relating to the compensation of bodily harm as a result of pollution. Under the Japanese system, any victim suffering from injuries imputable to air or water pollution is entitled to compensation following review by a board without the need to identify the party responsible or to prove fault. The fund is contributed to by levies on polluting emissions and by a fraction of the tax on motor vehicles. However, compensation is only granted automatically in high risk areas and in relation to specially enumerated illnesses.

Other examples of funds include in France: compensation of damage caused to crops by big game and paid by the National Hunting Bureau and the financing of activities aimed at reducing nuisances suffered by neighbors of the Orly and Roissy airports. Prieur argues that it would be fairly easy to set up a fund aimed at compensating damage caused by water pollution and constituted of levies paid by water basin agencies. In order for polluters not to escape liability, levies must be sufficiently high and the compensation fund should only intervene in a supplemental fashion and in cases where it is impossible to identify the polluter or if the polluter is insolvent. The fund should be able to sue in return the faulty polluter.

7.1.11.3. Operational Prescriptions

In France, the judiciary is generally wary of prescribing operational measures on scheduled installations as this could be seen as an interference with the attributes of the administrative organ of government. However, because of laxity on the part of administrative authorities, the judiciary is often justified de facto to encroach on the former's jurisdiction for the effective combating of nuisances. A further argument buttressing the authority of the judiciary in this respect is the fact that administrative authorizations are usually granted subject to the rights of third parties.[376]

7.1.11.4. Reinstatement of the Environment

The deterioration of the environment, be it willful or not, is generally speaking irreversible. However, partial reinstatement may be possible.

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[375] Court of Appeals of Rouen, 30/1/1984.

[376] Prieur, op. cit., par. 1112, p. 878.

Apart from reinstatement ordered against the defendant as specific compensation of environmental damage in a civil or administrative liability suit, reinstatement is already widely used in environmental law in various forms, i.e.:

- As a penal or administrative sanction: In France, penal sanctions may be ordered by the common courts or the administrative courts, in the latter case as a result of the commission of a "*contravention de grande voirie*." Administrative sanctions are usually pronounced by the prefect.[377]
- Furthermore, various administrative authorizations carry an obligation of environmental reinstatement.[378]
- The obligation also arises following upon an environmental accident or incident; failing intervention by the operator of the activity or hand-in-hand with such intervention, the State or the appropriate public authorities may take appropriate reinstatement measures, in which case the expenses incurred by the State or the public authorities are usually to be reimbursed by the party responsible for the accident or incident without prejudice to the compensation of other damage caused.[379]
- Otherwise, reinstatement may be ordered in the form of an administrative injunction by public authorities in the event of emergencies or accidents; the administration's powers in such cases are different from those exercised to sanction offenders.[380]
- Reinstatement may also be ordered by the court in situations of emergency calling for the issuance of immediate orders (judicial injunctions). Such orders are generally available in administrative ("*référé administratif*") as well as in judicial proceedings ("*référé civil*") and, in certain cases, in penal proceedings ("*référé pénal*").[381]

In the context of liability suits, reinstatement is rarely used by the French judicial courts in environmental matters for fear of encroaching on the powers of the administrative organs of government when the polluter holds an administrative authorization. This position of the French courts is criticized by Prieur.[382]

Furthermore, in practice, forced execution of reinstatement measures by authorities of their own motion is rare. Moreover, the fixing of insufficient rates of default fines ("*astreinte*") does not help in making these measures effective either.[383]

Where public works are involved, reinstatement measures are usually unavailable by virtue of the rule declaring them as inviolable.[384]

7.1.12. Access to Justice or Environmental Decision-Making or Who Can Sue?

It is noteworthy that the EC Environmental Liability Directive aims fundamentally at ensuring through a dissuasive system of financial liability that operators will adopt preventive and, where damage occurs, remedial action to limit or abate strictly defined environmental

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[377] See ibid., par. 1127, p. 896-897.

[378] See ibid., par. 1128, p. 897-898.

[379] See ibid., par. 1129, p. 898-899.

[380] See ibid., par. 1130, p. 899.

[381] See ibid., par. 1131, p. 899-900.

[382] See ibid., par. 1127, p. 897.

[383] Ibid., par. 1132, p. 901.

[384] Ibid.

damage.[385] Liability is there to ensure that the costs of preventive and remedial measures are properly taken up in accordance with the "polluter pays" principle. If the operator fails to take the required action, the State, acting through a designated competent authority, is then called upon to intervene[386] and may, in such instance, recoup costs incurred from the operator.[387] The Directive gives however other parties certain rights of suit: these are encapsulated in art. 12(1) which allows certain groups of persons, including non-governmental organizations in the environmental field, to submit to the competent authority observations relating to instances of environmental damage or an imminent threat of such damage of which they are aware and request the competent authority to take action under the Directive.[388]

Furthermore, the Directive clearly provides that it does not give private parties a right of compensation as a consequence of environmental damage or of an imminent threat thereof.[389] This should be read in conjunction with the preambular provision stating that the Directive does not give rise to compensation for personal injuries, damage to private property or any economic loss.[390]

Under the Basel Protocol, access to justice is left to national law.[391]

7.1.13. Transfrontier Pollution & Inter-State Cooperation

Transfrontier pollution requires that the OECD-adopted principles of equal access and non-discrimination be observed.

The EC Environmental Liability Directive deals with transfrontier damage in an original way in its art. 15. It is noteworthy that the objective is always to facilitate the taking of preventive and remedial action. Cooperation and the sharing of information among Member States is thus properly insisted upon by the Directive in this regard.

7.1.14. Limitation of Actions

Each regime of liability and consideration considered sets forth its own limitation period.

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[385] Arts. 5(1) & 6(1).

[386] Arts. 5(4) & 6(3).

[387] Art. 8(2).

[388] See also art. 13(1) which explicitly allows such groups of persons to bring their case before a court or other competent body.

[389] Art. 3(3).

[390] Preamble, par. (14).

[391] Arts. 19 & 20(1).

7.2. Tabular Presentation of the State of the Art of National and European Community Systems as well as Regional and Global Regimes of Liability and Compensation

The charts presented in this part of the report are designed to provide a systematic picture of the law of environmental liability and compensation. There are three sets of charts tackling in turn Mediterranean national systems,[392] the EC system[393] and, lastly, regional and global regimes of liability and compensation.[394]

7.2.1. National Systems

The information gathered in this section of the report emanates from the responses provided by MAP National Focal Points to the Questionnaire on the State of the Art of Systems of Liability and Compensation in Mediterranean Countries with Particular Reference to Environmental Damage in Marine and Coastal Areas.[395] It should be said that only the national systems of those countries from which completed questionnaires were received are featured, i.e. Bosnia and Herzegovina, Croatia, France, Malta and Morocco.

7.2.1.1. Bosnia & Herzegovina

Government office surveyed		**National Coordinator Office for MAP B&H**	
Issue	Sources of liability	**Question**	Indicate the provisions of your national law which set forth each of the following types of third-party liability, if any.
Instance	General civil liability	**Answer**	**Law on Environmental Protection - LEP** (Official Gazette of the F B&H, No. 33/03, Official Gazette of Republic Srpska, No. 53/02) **Article 6. (6) of LEP** "The environment beneficiary that constitutes a hazard to the environment or causes damage to the environment shall be obliged to promptly cease the activity that constitutes hazard or damages the environment.

[392] See section 7.2.1 below.

[393] See section 7.2.2 below.

[394] See section 7.2.3 below.

[395] A sample questionnaire is provided in section 12.3.1 below.

			A beneficiary shall be obliged to eliminate and repair the damage caused to the environment in the event that the damage occurred as a result of his/her activity". **Article 11. (11) of LEP** "The polluter shall bear the expenses for pollution control and prevention, regardless of whether the expenses were incurred as a result of enforcing the obligation due to pollution emissions, of compensations stipulated by appropriate financial instruments or as an obligation provided for in the regulation on environmental pollution reduction. The environment beneficiary shall be responsible for all activities that have an impact on the environment, pursuant to this law and other regulations".
Instance	General administrative liability (liability of State organs) (if different from general civil liability)	**Answer**	**Article 91. (91) of LEP** "The competent Ministry shall establish the inspection and control system for plants and installations using hazardous substances, including those that store hazardous substances, in order to control the safety system management and the implementation of the Major Accident Prevention Plan. The competent Ministry shall develop a control programme that envisages minimum one annual on-site control for the installations referred to in the implementative regulations. If the installation must undergo the EIA procedure, the work of the EIA bodies shall be coordinated with the work of the Environmental Inspector". **Article 92. of LEP** "Upon the performed inspection, the Inspector shall issue a decision ordering the following: - deadline for elimination of irregularities; - taking necessary measures, including the shut down of the plant and installation if the irregularities have not been eliminated within the given deadline and - taking remedial actions. In case of repeated violations of the regulations or in case of a serious hazard to human health and the environment that can not be resolved with other measures, the Environmental Inspector shall request the competent Ministry to annul the granted environmental permit". **Law on Waste Management** - **LWM** (Official Gazette of the F B&H, No. 33/03, Official Gazette of Republic Srpska, No. 53/02) **Article 54. (55) of LWM** "It is the responsibility of the B&H Federation to undertake direct waste management tasks –first of all emergency actions or cleaning up actions - in case the responsible person may not be identified and the interest of the protection of human health, flora and fauna and the environment require direct and quick action. This provision from paragraph 1 of this article does not exclude the seeking for a remedial

			action and recovery of costs. In order to prevent greater damage and limit further harmful impacts to the environment, the Federal Minister and the Cantonal Minister can take all the measures to prevent and limit further damage or harm at the cost of the party whose activity has caused the unlawful situation".
Instance	Marine liability	**Answer**	B&H has no port.
Instance	Environmental liability	**Answer**	**Environmental Damage** **Article 109. (108) of LEP** "In the event that a hazardous activity causes environmental damage, the operator shall compensate the damage assessment and restoration costs. The compensation claim shall also encompass the costs of prevention or mitigation measures for environmental damage, as well as the extent of damage inflicted on people and the property and caused by those measures. The person taking those measures shall be entitled to the costs referred to in paragraphs 1 and 2 of this Article". **Water Law - WL** (Official Gazette of the F B&H, No. 18/98) **Article 128. of WL** "If, due to a special case, defect or any other reason, there is a danger for water to be polluted by hazardous or harmful materials, the legal person or citizen whose activity or fault caused the danger, is obliged to report it straight away, without any delay, to the police in the police station. A person who has noticed that there is a larger extent of water pollution or that there is a possibility of water pollution under paragraph 1 of this Article or any other case is obliged to inform, without any delay, police in the police station. If a ship captain or any other responsible person on the ship, a member of the ship, respectively, notices larger extent of water pollution, he is obliged to report it to police in the police station. In case under paragraph 1 to 3 of this Article , police is obliged to inform, without any delay, the cantonal water management inspection and the Public company in charge for that watershed area upon receiving a notification regarding the danger of water pollution occurrence and/or water pollution. The Public company in charge for that area or another authorized company is obliged immediately, after being informed of water pollution danger or water pollution, to undertake all measures for elimination of the danger for water to be polluted and/or water pollution. The costs for the measures taken under paragraph 5 of this Article , by the Public company in charge for that watershed area or another relevant company, shall be paid by the legal person

			or citizen's expenses whose activities or fault caused danger and/or water pollution". **Article 130. of WL** "Legal persons and citizens must not pollute water contrary to this law and the International obligations that the Federation is bound to, and they shall be responsible in case of water pollution. Responsibility for water pollution from the above paragraph l of this Article exists, if water pollution is caused by higher force, if the beneficiary of the structure or plant, and/or the owner of the motor-vehicle or any other means of transport of hazardous materials, had not previously undertaken measures that he was, according to the valid regulations, bound to undertake to prevent water pollution".
Issue	Basis of liability	**Question**	Indicate for each type of third-party liability whether liability is fault-based, strict or absolute and what exemptions from liability, if any, are provided for under national law.
Instance	General civil liability	**Answer**	**Liability for Environmentally Hazardous Activities** **Article 104. (103) of LEP** "The operator that carries out an environmentally hazardous activity shall be held liable for the damage inflicted to people, the property and the environment by the respective activity, irrespective of his/her guilt. Environmentally hazardous activities shall be those activities that constitute a significant risk to people, the property or the environment and these are: - management of environmentally hazardous location sites; - release of genetically modified organisms and - release of microorganisms. Location sites such as mining sites, oil deposits or refineries, installations for gas supply and smelting, thermal power stations, coke ovens, installations for the production and processing of metals and minerals, chemical installations, installations for the treatment, incineration and storage of waste, waste water treatment plants, slaughterhouses, dye works and tanneries, paper fabrication installations, dams and oil or natural gas pipelines shall constitute an environmental hazard due to the manner in which they are managed or due to the materials used in them. An organism is any biological entity capable of reproduction or transfer of genetic material. A microorganism is any biological entity, cellular or non-cellular, capable of replication or of transfer of genetic material. In the event that multiple operators carry out a hazardous activity together, they shall be held collectively liable for the damage".

			Exemption from Liability **Article 105. (104) of LEP** "The operator shall not be held liable for the damage caused by: - war or some special natural phenomenon, - third party whose intent was to cause damage or - due to special orders and measures of competent authorities that directly caused the damage. The operator shall be exempt from liability for damage if s/he proves s/he applied the appropriate protection measures required in the circumstances in order to prevent or mitigate the damage". **Presumption of Causation** **Article 106. (105) of LEP** "In the event that an environmentally hazardous activity may cause damage due to the specific circumstances of the case, it shall be presumed that the damage was caused by this activity. The activity that causes damage shall be assessed on the basis of operation mode, utilized installations, type and concentration of the materials used or generated by the activity, genetically modified organisms or microorganisms, meteorological conditions, and the time and place of the damage accidence. The presumption of causation shall be rejected if the operator proves that s/he did not cause the damage or if s/he proves that the damage was more probably caused by another operator or another circumstance".
Instance	General administrative liability (liability of State organs) (if different from general civil liability)	**Answer**	-
Instance	Marine liability	**Answer**	-
Instance	Environmental liability	**Answer**	-
Issue	Compensable damage	**Question**	Is pure environmental damage, e.g. loss of biodiversity, compensable under your national law and, if so, who can sue for it? Indicate any relevant provisions of national law.

		Answer	**Compensation for Environmental Damage** **Article 110. (109) of LEP** "In the event that environmental damage cannot be repaired by appropriate measures, the person that caused the damage shall be held liable for the compensation in the amount of destroyed assets. The compensation amount should approximate the economic and ecological value of the destroyed asset. If the value cannot be determined by usual economic methods, the court shall determine the damage amount under the equity principle, taking into account necessary repair costs, the risk that the activity constitutes to the environment, the level of individual liability and the benefits gained by causing environmental damage. If the person liable did not cause the damage intentionally or by utter negligence or if the person liable is of a poor financing standing and the payment would lead him/her into want, the court may reduce the compensation amount to a reasonable level. The Federation shall keep the right to damage compensation if there are no other entitled persons".
Issue	Remedies	**Question**	Indicate whether the following types of remedies are available in the event of third-party liability concerning environmental harm. Elaborate on the facilities and difficulties encountered in taking advantage of each type of remedy. In particular, refer to any system of compulsory insurance for third-party liability in existence.
Instance	Damages	**Answer**	**Financial Warranty** **Article 108. (107) of LEP** "The operator that performs an environmentally hazardous activity shall provide the funds for the compensation of possible damage through insurance or in another manner".
Instance	Operational prescriptions (measures imposed by the court on the defendant affecting the conduct of its activities and aiming at reducing environmental harm)	**Answer**	**Article 44. (45) of LEP** "In case there came about an environmental damage or there is a danger of environmental damage, the Prosecutor shall be entitled to file an action requesting prohibition or restriction of the activity and compensation for damages resulting from the activity". **Compensation for Environmental Damage** **Article 110. (109) of LEP** "In the event that environmental damage cannot be repaired by appropriate measures, the person that caused the damage shall be held liable for the compensation in the amount of destroyed assets. The compensation amount should approximate the economic and ecological value of the

	harm)		destroyed asset. If the value cannot be determined by usual economic methods, the court shall determine the damage amount under the equity principle, taking into account necessary repair costs, the risk that the activity constitutes to the environment, the level of individual liability and the benefits gained by causing environmental damage. If the person liable did not cause the damage intentionally or by utter negligence or if the person liable is of a poor financing standing and the payment would lead him/her into want, the court may reduce the compensation amount to a reasonable level. The Federation shall keep the right to damage compensation if there are no other entitled persons".
Instance	Reinstatement of the environment	**Answer**	**Article 6. (6) of LEP** "The environment beneficiary that constitutes a hazard to the environment or causes damage to the environment shall be obliged to promptly cease the activity that constitutes hazard or damages the environment. A beneficiary shall be obliged to eliminate and repair the damage caused to the environment in the event that the damage occurred as a result of his/her activity".
Issue	International and regional regimes of liability and compensation	**Question**	Specify any global, regional or sub-regional system of liability and compensation relating to environmental harm affecting marine and coastal areas that has been adopted or is in force in your country.
		Answer	-
Issue	Transformation of international conventions (or treaties) into domestic law	**Question**	Is a legislative instrument (Act of Parliament or of another legislative body) required to make an international convention (or treaty) binding on the domestic courts and on the citizens (etc.) of the State? Would your answer to the foregoing question be different with regard to 'self-executing' international conventions (or treaties)?
		Answer	-
Issue	Adequacy of existing rules	**Question**	In your opinion, are the existing rules of liability and compensation adequate to deal with the consequences of environmental degradation in marine and coastal areas?
		Answer	In my opinion the existing legislation of liability and compensation is partly adequate to deal with the consequences of environmental degradation, but the main problem is lack of the control and

		implementation of the relevant legislation.

7.2.1.2. Croatia

Government office surveyed		**Ministry of Environmental Protection, Physical Planning and Construction of Croatia**	
Issue	Sources of liability	**Question**	Indicate the provisions of your national law which set forth each of the following types of third-party liability, if any.
Instance	General civil liability	**Answer**	Liability for damage is such a type of obligations relation in which one party has the obligation to repair the damage caused to another party, whereas this other party is authorised to require such reparation. Art. 170 of the Civil Obligations Act. For damage caused to a third party by a worker while performing work or in relation to work the liability is born by the company in which the worker was working at the moment of causing the damage, unless it is proven that the worker acted as she/he had to under the given circumstances. Art. 171 of the Civil Obligations Act states that the provisions of Art. 170 apply also to other legal persons performing their activity independently through personal work with regard to the liability for damage caused by workers working with them while performing work or in relation to work. Art. 172 of the Civil Obligations Act. A legal person is liable for the damage caused by its body while performing its functions or in relation to its functions. Art. 176 of the Civil Obligations Act states that instead of the holder of a dangerous object, and in the same way as the holder, liability is born by the person that was entrusted by the holder with the dangerous object for the purpose of using the object or the person that has otherwise the obligation to supervise the object while not working with the holder.
Instance	General administrative liability (liability of State organs) (if different from general civil liability)	**Answer**	Art. 13 of the Act on State Administration System (OG 190/03, 199/03). Damage occurring to citizens, legal persons or other parties due to unlawful or irregular work of state administration bodies, local and regional self-government units or legal persons having public authorities in performing state administration affairs entrusted to them, shall be compensated by the Republic of Croatia.

Instance	Marine liability	**Answer**	Art. 385, Maritime Code (OG 181/2004). The ship operator shall be responsible for obligations arising in relation to navigation, unless otherwise provided by this Law. Art. 750, paragraph 1, Maritime Code. For damages caused by collision of ships, that ship or those ships shall be held responsible with regard to which it is proved that the damage was caused by their fault, thereby implying the responsibility of the ship owner. Art. 810, paragraph 1. Death and physical injury of bathers and other persons in the sea caused by a ship shall be the responsibility of the ship owner and operator, as well as of the person that at the moment of the occurrence was operating the ship. There are no special regulations on the responsibility of third persons in this Law, but there is subsidiary application of the general provisions of the law of obligations.
Instance	Environmental liability	Answer	Environmental Protection Act (OG 82/94, 128/99): A natural or legal person having caused environmental pollution is liable for the damage done, according to the principle of objective liability (causality), in compliance with general provisions of the mandatory law. The person having enabled or permitted environmental pollution by illegal or unsuitable activity is also liable for environmental pollution, Art. 50.
Issue	Basis of liability	**Question**	Indicate for each type of third-party liability whether liability is fault-based, strict or absolute and what exemptions from liability, if any, are provided for under national law.
Instance	General civil liability	**Answer**	Art. 170 of the Civil Obligations Act. A legal person is released from liability for damage if it proves that the worker acted as she/he had to under the given circumstances (absolute liability), except for liability rules with regard to damage from a dangerous object or dangerous activity (strict liability). Art. 173 of the Civil Obligations Act. Damage from a hazardous object is regarded to have originated from this object, unless it is proven that the damage has not been caused by such object (strict liability). The holder of the object is released from liability, if he/she proves that the damage

			has its origin from a cause outside the object, the effect of which could not have been foreseen, avoided nor removed, as well as if the damage had occurred exclusively due to an action by the injured party or a third person that could not have been foreseen nor removed, as well as if the injured party partly contributed to the occurrence of the damage.
Instance	General administrative liability (liability of State organs) (if different from general civil liability)	**Answer**	In compliance with general provisions of the mandatory law, according to the principle of proved fault (fault- based liability).
Instance	Marine liability	**Answer**	The Maritime Code stipulates responsibility by applying the principle of presumed fault (strict liability), whereas for the operator of a nuclear ship the responsibility is objective (absolute). Exemptions from liability, except for those stipulated by general rules of the law of obligations, may with regard to death and physical injuries be gross negligence or the intent of the injured party, as well as force majeure, if the accident occurred outside a bathing area but within the sea belt up to 150 m from the coast. Exemption from liability for damage caused by a ship carrying bulk oil exists if the damage is a consequence of war or of an unavoidable and indeclinable natural phenomenon (*vis maior*), willful activities or intentional neglect by a third party, activity or neglect of the state or of organisations in charge of maintaining lighthouses or other facilities providing for the safety of navigation. If the ship owner proves that the damage has in full or in part occurred due to the fact that the injured party has acted or failed to act with the intent to cause damage, or due to utmost negligence of this person, the ship owner may in full or in part be released from liability towards that person.
Instance	Environmental liability	**Answer**	Environmental liability is defined in compliance with general provisions of the mandatory law, according to the principle of objective liability (causality) *(strict liability)*.
Issue	Compensable damage	**Question**	Is pure environmental damage, e.g. loss of biodiversity, compensable under your national law and, if so, who can sue for it? Indicate any relevant provisions of

			national law.
		Answer	According to the Environmental Protection Act (OG 82/94, 128/99) if inspector ascertain that the law or any other regulation has been violated, while performing inspection, they have both the right and are fully entitled to: • file a report on the perpetration to the relevant State body without delay or set the punishment for the violation set by the law or by some other regulation; • propose the relevant court to erase from the Judicial Register the activity for which it has been established that the legal person's performance does not meet the requirements set by the present Law; • undertake other measures and perform other actions which they have been authorised for; Art. 67(2). Nature Protection Act (OG 163/03) defined compensation conditions as actions undertaken to mitigate or compensate for the foreseeable damages to nature, Art. 23(1). The forms of compensation conditions are: • establishment of a compensation area showing features identical or similar to those of the nature damaged; • establishment of another area important for conservation of the biological and landscape diversity, or protection of natural values; • payment of a sum to the value of damage caused to nature in case that no remediation or other compensation conditions may be carried out, Art. 23(4). According to the Nature Protection Act, the Inspector may order urgent measures for the protection of human life and reduction of the damage caused by execution of non-permitted activities, actions or works, Art. 264(2). Should the Inspector, when exercising the inspection control, find out that an offence as determined by the present Act has been committed, he may issue a document of the offence in accordance with a special law or take steps necessary for initiation of an offence procedure, Art. 265(1). Pursuant to Art. 156 of the Civil Obligations Act, each party is entitled to request from another party to remove the source of danger giving raise to threat of relevant

			damage to the party itself or a certain number of persons, and to restrain from activities from which disturbance or risk of damage arises, if the occurrence of disturbance or damage cannot be prevented by appropriate measures. Since this article refers also to cases where risk of environmental damage occurs, the theoretical view is that on the basis of the indicated a so-called ecological action may be taken. There is lack of information whether in practice such legal actions are taken.
Issue	Remedies	**Question**	Indicate whether the following types of remedies are available in the event of third-party liability concerning environmental harm. Elaborate on the facilities and difficulties encountered in taking advantage of each type of remedy. In particular, refer to any system of compulsory insurance for third-party liability in existence.
Instance	Damages	**Answer**	There are no relevant provisions.
Instance	Operational prescriptions (measures imposed by the court on the defendant affecting the conduct of its activities and aiming at reducing environmental harm)	**Answer**	There are no relevant provisions.
Instance	Reinstatement of the environment	**Answer**	Art. 55 of the Environmental Protection Act 1. An environmental polluter must, within the time-limits set by the Government, elaborate and implement a restoration programme for repairing the environmental damage caused. 2. The Restoration Programme as referred to in paragraph 1 of the present Article contains: • analysis of the environmental pollution type; • proposal of production-related and other solutions with a suitability evaluation of the chosen solution in relation to long-term environmental impacts; • measures for restoring former environmental state quality or

			improving the existing one; • schedule and time-limits for implementing the Restoration Programme; • a plan for ensuring financial means, including expenses related to the restitution paid for environmental damage and the reduction of its value. 3. Environmental polluter has to obtain approval from the Ministry of Environmental Protection, Physical Planning and Construction regarding the Restoration Programme as referred to in paragraph 2 of the present Article, and, according to the estimation by the Ministry of Environmental Protection, Physical Planning and Construction, possibly also opinions of the relevant ministries. 4. The restoration programme type, as well as the scope and methodology of its elaboration, the manner of public participation in its elaboration and implementation, as well as penalty clauses for the contravention of regulation provisions are passed by the Director, upon agreement with the relevant ministers. 5. Time-limits as referred to in paragraph 1 of the present Article, in compliance with the Government's approval, may be either shortened or prolongated. Art. 56 of the Environmental Protection Act 1. If environmental polluter cannot be identified, and there is a need to elaborate an integrated restoration programme, the preparation and elaboration of the restoration programme are performed by the Ministry of Environmental Protection, Physical Planning and Construction, in co-operation with the relevant ministries. 2. The Government sets the order and priorities in the implementation of the restoration programme as referred to in paragraph 1 of the present Article, and ensures financial means for the implementation thereof. Art. 57 of the Environmental Protection Act In case of environmental pollution of local range, the restoration programme

			preparation and elaboration and the implementation schedule and priorities are set by the respective county authorities, i.e. by the authorities of the Greater Zagreb.
Issue	International and regional regimes of liability and compensation	**Question**	Specify any global, regional or sub-regional system of liability and compensation relating to environmental harm affecting marine and coastal areas that has been adopted or is in force in your country.
		Answer	International regimes of liability and compensation. Pursuant the notification on succession, the Republic of Croatia became a party to the Convention for the Protection of the Mediterranean Sea against Pollution in 1991. and in 2004. Republic of Croatia accepted Amendments to the Convention. The Republic Croatia also ratified or signed following Protocols: -Protocol for the Prevention and Elimination of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft: Pursuant the notification on succession, the Republic of Croatia became a party in 1991 -Amendments to the Convention for the Protection of the Mediterranean Sea against Pollution: Came into force with respect to the Republic of Croatia in 2004 -Amendments to the Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea**:** Came into force with respect to the Republic of Croatia in 2004. **-**Protocol Concerning Cooperation on Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea: Came into force with respect to the Republic of Croatia in 2004 -Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean: Came into force with respect to the Republic of Croatia in 2002 **-**Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources**:** Pursuant the notification on succession, the Republic of Croatia became a party in 1991 -Protocol for the Protection of the Mediterranean Sea against Pollution From Land-Based Sources and Activities**:** Republic of Croatia signed the Protocol. -Protocol for the Protection of the Mediterranean Sea against Pollution Resulting

			from Exploration and Exploitation of the Continental Shelf and the Seabed and its Sub-Soil**:** Republic of Croatia signed the Protocol. **-**International Convention for the Prevention of Marine Pollution from Ships -International Convention on Civil Liability for Oil Pollution Damage **-**Protocol Concerning Cooperation on Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea: Came into force with respect to the Republic of Croatia in 2004 -Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean: Came into force with respect to the Republic of Croatia in 2002 **-**Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources**:** Pursuant the notification on succession, the Republic of Croatia became a party in 1991 -Protocol for the Protection of the Mediterranean Sea against Pollution From Land-Based Sources and Activities**:** Republic of Croatia signed the Protocol. -Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Sub-Soil: Republic of Croatia signed the Protocol. **-**International Convention for the Prevention of Marine Pollution from Ships -International Convention on Civil Liability for Oil Pollution Damage -Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969
Issue	Transformation of international conventions (or treaties) into domestic law	**Question**	Is a legislative instrument (Act of Parliament or of another legislative body) required to make an international convention (or treaty) binding on the domestic courts and on the citizens (etc.) of the State? Would your answer to the foregoing question be different with regard to 'self-executing' international conventions (or treaties)?
		Answer	Pursuant to Art. 139 of the Constitution of the Republic of Croatia (OG 41/01, 55/01), international agreements which entail the passage of amendment of laws, international agreements of military and political nature, and international agreements which financially commit the Republic of Croatia shall be subject to

			ratification by the Croatian Parliament. The President of the Republic shall sign the documents of ratification, admittance, approval or acceptance of international agreements ratified by the Croatian Parliament. International agreements which are not subject of ratification by the Croatian Parliament are concluded by the President of the Republic at the proposal of the Government, or by the Government of the Republic of Croatia. Art. 140 of the Constitution of the Republic of Croatia stipulates that international agreements concluded and ratified as above indicate and which are in force, shall be part of the internal legal order and shall be above law in terms of legal effects.
Issue	Adequacy of existing rules	**Question**	In your opinion, are the existing rules of liability and compensation adequate to deal with the consequences of environmental degradation in marine and coastal areas?
		Answer	Yes. The existing rules, e.g. international agreements, environmental and nature legislation, marine legislation, mandatory law regulations, contain articles that address problems related to consequences of environmental degradation.

7.2.1.3. France

Office chargé de remplir ce questionnaire		**Ministère de l'écologie et du développement durable Direction générale de l'administration, des finances et des affaires internationales Sous-direction des affaires juridiques Bureau du droit communautaire et international**	
Thème	Sources de responsabilité	**Question**	Indiquer les dispositions de votre loi nationale prévoyant chacun des types suivants de responsabilité à l'égard d'autrui, s'il en est.
Item	Responsabilité civile générale	**Réponse**	Sur le plan civil, deux ordres de responsabilité: - **une responsabilité contractuelle** lorsque le dommage résulte de l'inexécution d'une obligation née d'un contrat (Code civil article 1146 et suivants) - **une responsabilité délictuelle** dans les autres cas (Code civil articles 1382 et suivants). La finalité de ces deux régimes est identique à savoir permettre la réparation des dommages que la victime a subis. La réparation des dommages suppose d'une part leur évaluation, d'autre part que soit établie la relation entre un fait anormal résultant soit d'une faute soit

			faisant suite à une mauvaise exécution d'une obligation contractuelle et ce dommage et qu'enfin puisse être déterminé le responsable qui aura la charge de la réparation.
Item	Responsabilité administrative générale (responsabilité des organes de l'Etat) (en cas de dissemblance d'avec la responsabilité civile générale)	**Réponse**	**Fondé par la jurisprudence du Conseil d'Etat, le régime de responsabilité administrative est un régime autonome par rapport au régime de responsabilité de droit privé**. Ce régime de responsabilité relève de la juridiction administrative autonome par rapport à la juridiction civile. La mise en œuvre de la responsabilité administrative est subordonnée à l'existence d'un préjudice, d'un fait dommageable et à la détermination d'une personne responsable financièrement. **C'est à la victime qu'il incombe d'apporter la preuve de ces trois conditions**. En principe la responsabilité de la puissance publique est engagée sur la base d'une faute. La faute simple est de plus en plus admise par le Conseil d'Etat pour engager cette responsabilité sauf en matière de fonctionnement du service public de la justice ou la faute lourde est requise. Il existe toutefois des régimes dérogatoires de responsabilité administrative fondés sur l'absence de faute ou sur le risque.
Item	Responsabilité maritime	**Réponse**	Sur leur façade méditerranéenne, les autorités françaises ont adopté des mesures législatives qui renforcent les sanctions à l'encontre des auteurs de pollutions marines par hydrocarbures. Ainsi la loi du 3 mai 2001 relative à la répression des rejets polluants des navires a multiplié par quatre le montant des peines maximales. celles -ci ayant fait l'objet d'une aggravation par la loi du 9 mars 2004. **De même, par la loi du 15 avril 2003 portant création d'une zone de protection écologique en Méditerranée,** les autorités françaises se sont données désormais les moyens d'engager des poursuites devant les juridictions nationales à l'encontre des contrevenants français et étrangers qui auraient commis des dégazages ou déballastages au-delà des eaux territoriales. La création de cette zone de protection écologique dont les limites ont été définies par le décret du 8 janvier 2004 s'inscrit dans la logique de la lutte contre la pollution liée aux rejets illicites d'hydrocarbures et aux immersions par les navires en Méditerranée en contribuant ainsi à un renforcement de la coopération entre Etats riverains.
Item	Responsabilité environnementale	**Réponse**	**Le droit français ne traite pas de façon spécifique la responsabilité pour les dommages environnementaux**. Il leur applique pour l'essentiel les principes généraux de la responsabilité civile.
Thème	Base de la responsabilité	**Question**	Indiquer pour chaque type de responsabilité à l'égard d'autrui si la responsabilité est à base de faute, si elle est stricte ou si elle est absolue. Indiquer aussi quelles exonérations de responsabilité sont prévues le cas échéant en vertu de la loi nationale.
Item	Responsabilité civile générale	**Réponse**	- Dans le domaine de la responsabilité délictuelle deux ordres de responsabilité sont à distinguer : **1. la responsabilité du fait personnel fondée sur la faute soit intentionnelle (Code**

			civil art. 1382) soit faute de négligence ou d'imprudence (Code civil art 1383). **2. 2. la responsabilité du fait d'autrui et des choses dont on a la garde (Code civil art 1384-al 1).** - Causes d'exonération : la force majeure, le fait d'un tiers ou la faute de la victime exonèrent totalement l'auteur du dommage. Le fait de la victime s'il présente les mêmes caractéristiques que la force majeure exonère en totalité. Il peut toutefois y avoir partage de responsabilités s'il y a à la fois faute de la victime et du responsable du dommage.
Item	Responsabilité administrative générale (responsabilité des organes de l'Etat) (en cas de dissemblance d'avec la responsabilité civile générale)	**Réponse**	**- La responsabilité de la puissance publique est en principe fondée sur une responsabilité pour faute.** C'est à la victime de faire la preuve de la faute qu'elle allègue. Le mécanisme des présomptions de faute a pour effet de renverser la charge de la preuve en imposant au défendeur de prouver qu'aucune faute qui lui serait imputable n'est à l'origine du dommage. L'obligation jurisprudentielle d'une faute lourde concerne le fonctionnement du service public de la justice mais a été progressivement abandonnée notamment en matière d'activité médicale de secours et sauvetage. - Au titre des régimes de responsabilité sans faute il faut citer d'une part la responsabilité en raison d'un risque spécial de dommage (responsabilité pour risque) ainsi qu'au profit des collaborateurs des services publics ainsi que des tiers victimes d'accidents de travaux publics. D'autre part, la responsabilité sans faute joue en matière de rupture de l'égalité devant les charges publiques à savoir pour dommages permanents de travaux publics, du fait des décisions administratives régulières et enfin du fait des lois et conventions internationales. Enfin en ce qui concerne les rapports entre l'administration et ses agents, la jurisprudence oppose parmi les fautes commises par les fonctionnaires la faute de service qui engage la responsabilité de l'administration de la faute personnelle qui engage la responsabilité de la personne de son auteur.
Item	Responsabilité maritime	**Réponse**	- Le régime international de responsabilité de 1992 couvre les dommages par pollution causés par des déversements d'hydrocarbures persistants provenant de pétroliers naviguant dans les eaux côtières. Le premier niveau est celui de la responsabilité du propriétaire du navire, laquelle est régie par la Convention CLC. - Le régime CLC est complété par le Fonds international d'indemnisation pour les dommages dus à la pollution par les hydrocarbures (FIPOL) institué par la convention FIPOL afin d'indemniser les victimes lorsque la responsabilité du propriétaire ne suffit pas à couvrir les dommages.
Item	Responsabilité environnementale	**Réponse**	- Le régime de responsabilité pour faute (art. 1382 et 1383 du Code civil) est peu utilisé par les victimes des dommages environnementaux. **- En revanche, la jurisprudence a développé un régime de responsabilité sans faute,**

			fondé sur la théorie des troubles de voisinage, qui occupe une place de premier plan en matière d d'environnement. Cette théorie s'applique très souvent dans le cadre des nuisances sonores ou olfactives. En matière d'activités spécialement dangereuses pour l'environnement, il existe certains régimes spéciaux fondés sur la responsabilité pour risque assorti d'une obligation d'assurance. C'est le cas de la responsabilité civile résultant d'un accident nucléaire (loi du 30 octobre 1968) ou pour les dommages causés par le transport maritime d'hydrocarbures (article L. 218-1 et suivants du Code de l'environnement). D'autres textes renforcent la responsabilité comme en matière de déchets (article L 541-23 du Code de l'environnement) ou en matière de responsabilité sans faute pour travaux miniers (loi du 15 juillet 1994). - L'article L 110-1 du Code de l'environnement fait référence au principe pollueur payeur qui constitue un principe général du droit de l'environnement. Sur le fondement de ce principe les frais résultant des mesures de prévention, de réduction de la pollution et de lutte contre celle-ci doivent être supportés par le pollueur. La Charte de l'environnement a constitutionalisé ce principe en disposant que toute personne doit contribuer à la réparation des dommages qu'elle cause à l'environnement dans les conditions définies par la loi. La directive 2004/35sur la responsabilité environnementale en ce qui concerne la prévention et la réparation des dommages environnementaux rappelle ce principe en son article 1er selon lequel l'exploitant qui a causé un dommage environnemental ou une menace imminente d'un tel dommage doit en être tenu pour financièrement responsable. Cette directive institue un régime de responsabilité sans faute pour les dommages causés par des activités dangereuses relevant de la législation ICPE et eau. En revanche la responsabilité de l'exploitant pour des dommages causés aux espèces et habitats protégés n'est engagée que s'il a commis une faute ou une négligence.
Thème	Préjudice réparable	**Question**	Les dommages écologiques purs, par exemple la perte de biodiversité, sont-ils réparables en vertu de votre loi nationale ? Dans l'affirmative, qui peut intenter le recours ? Indiquer toutes dispositions pertinentes de la loi nationale.
		Réponse	**- En l'état du droit national, le dommage écologique ne peut, dans le cadre d'une action en responsabilité, ouvrir droit à réparation.** Ce dommage n'est intégré ni par le juge administratif ni par le juge judiciaire. **Toutefois, le droit des installations classées et celui de la domanialité publique en matière de contravention de grande voirie organisent sous certaines conditions la réhabilitation des sites dégradés.** - La directive européenne du 21 avril 2004 sur la responsabilité environnementale en phase de transposition en droit interne institue une obligation de réparation de trois types de dommages écologiques d'une certaine gravité : les dommages aux sols, les dommages à l'eau et les dommages aux espèces et habitats pour autant que ces espèces et habitats

			soient protégés au titre de la directive Oiseaux du 2 avril 1979 (oiseaux) et de la directive du 21 mai 1992 (habitats) qui ont fait l'objet de mesures de transposition aux termes des articles L. 411-1 à L.415-5 du Code de l'environnement.
Thème	Mesures de justice	**Question**	Indiquer si les types suivants de mesures de justice sont disponibles en cas de responsabilité à l'égard d'autrui pour dommage écologique. Elaborer sur les facilités et les difficultés éprouvées pour bénéficier de chaque type de remède. Mentionner tout particulièrement tout système d'assurance obligatoire de la responsabilité à l'égard d'autrui qui serait en place.
Item	Dommages intérêts	**Réponse**	**En matière de responsabilité civile, la réparation prend le plus souvent la forme de dommages et intérêts qui ont pour objet de compenser le préjudice subi, appréciés au jour où le juge statue.** Ils peuvent être alloués en capital ou dans certains cas sous forme de rente. Les intérêts moratoires ne sont dus que du jour où une décision de justice a constaté l'existence de la créance. **Dans le domaine de la responsabilité administrative, le préjudice n'est réparable que s'il est direct et certain.** La réparation peut viser soit un préjudice matériel soit un préjudice moral. La réparation a toujours lieu en argent. L'indemnité est accordée sous la forme d'un capital ou d'une rente, l'évaluation se faisant en principe à la date du dommage.
Item	Prescriptions opérationnelles (mesures imposées par le tribunal sur le défendeur affectant la conduite de ses activités en vue de réduire le préjudice à l'environnement)	**Réponse**	Saisi d'une requête par une victime ayant subi un préjudice environnemental, le Tribunal sur la base des éléments de droit et de fait est habilité à mettre en demeure de défendeur de faire cesser le préjudice sous peine d'astreintes.
Item	Remise en état de l'environnement	**Réponse**	- Dans le domaine de la législation sur les installations classées, **il appartient au Préfet au titre de sanctions administratives** de mettre en demeure l'exploitant en cours d'activité de respecter les conditions prescrites par l'autorisation d'exploitation qui lui a été délivrée. Si à l'expiration du délai fixé pour l'exécution, l'exploitant n'a pas obtempéré à cette injonction, le préfet peut prendre des mesures de consignation, faire procéder d'office à l'exécution des mesures ou suspendre le fonctionnement de l'installation. Le Préfet peut également prescrire à l'exploitant, en fin d'exploitation, toutes mesures visant à la remise en état du site. - Ces sanctions administratives peuvent être complétées par des sanctions pénales.
Thème	Régimes internationaux et régionaux de	**Question**	Spécifier tout système global, régional ou sous-régional de responsabilité et d'indemnisation relatif au dommage environnemental affectant les secteurs marin ou côtier qui aurait été adopté ou serait en vigueur dans votre pays.

	responsabilité et d'indemnisation		
		Réponse	Au niveau global : - Convention de Montréal pour l'unification de certaines règles relatives au transport aérien international du 28 mai 1999, - Convention de Paris sur la responsabilité civile dans le domaine de l'énergie nucléaire du 29 juillet 1960 complétée par la convention de Bruxelles du 31 janvier 1963 - Convention internationale du 27 novembre 1992 portant création d'un Fonds international d'indemnisation pour les dommages dus à la pollution par les hydrocarbures, - convention internationale de 1996 sur la responsabilité civile et l'indemnisation pour les dommages liés au transport par mer de substances nocives et potentiellement dangereuses. - convention internationale de 2001 sur la responsabilité civile pour les dommages dus à la pollution par les hydrocarbures de soute. Au niveau régional : - directive 2004/ 35/ CE du 21 avril 2004 sur la responsabilité environnementale en ce qui concerne la prévention et la réparation des dommages environnementaux
	Transposition des conventions internationales (ou traités internationaux) dans le droit interne	**Question**	Une mesure législative (loi du Parlement ou d'un quelconque organe législatif) est-elle requise pour rendre une convention internationale (ou un traité international) obligatoire vis-à-vis des tribunaux nationaux et des citoyens etc. de l'Etat ? Votre réponse à la question précédente serait-elle différente au regard des conventions internationales (ou traités internationaux) –à l'applicabilité directe ?
		Réponse	Oui.
Thème	Convenance des règles existantes	**Question**	A votre avis, les règles de responsabilité et d'indemnisation existantes sont-elles adéquates pour traiter des conséquences de dégradation de l'environnement dans les zones marines et côtières ?
		Réponse	Les mécanismes de responsabilité et d'indemnisation existants nous paraissent en l'état suffisamment adéquats compte tenu des dispositions existantes de droit international (Convention sur le droit de la mer) que des dispositions d'ordre interne.

7.2.1.4. Malta

Government office surveyed	**MEPA**

Issue	Sources of liability	**Question**	Indicate the provisions of your national law which set forth each of the following types of third-party liability, if any.
Instance	General civil liability	**Answer**	General Principles of Tort based on the provisions of the Civil Code.
Instance	General administrative liability (liability of State organs) (if different from general civil liability)	**Answer**	Administrative liability may also be claimed under the provisions of section 469A of Chapter 12 of the Laws of Malta.
Instance	Marine liability	**Answer**	As above plus specific laws based on International Treaties, Marine Discharges Directive and Habitats Directive.
Instance	Environmental liability	**Answer**	As above plus Environment Protection Act and Development Planning Act.
Issue	Basis of liability	**Question**	Indicate for each type of third-party liability whether liability is fault-based, strict or absolute and what exemptions from liability, if any, are provided for under national law.
Instance	General civil liability	**Answer**	Fault-based - Only real damages may be awarded for. Exemption e.g. force majeure and contributory negligence.
Instance	General administrative liability (liability of State organs) (if different from general civil liability)	**Answer**	Usual principles of judiciary review of administrative discretion which may lead to compensation and or remedial action.
Instance	Marine liability	**Answer**	As yet there is no case law on the matter, however since our laws of Tort are fault-based, one may assume that our Court may adopt this principle.
Instance	Environmental liability	**Answer**	As yet no case law on the matter, however since our laws of Tort are based on fault-base, one may assume that our Court may adopt this principle.

	liability		may assume that our Court may adopt this principle.
Issue	Compensable damage	**Question**	Is pure environmental damage, e.g. loss of biodiversity, compensable under your national law and, if so, who can sue for it? Indicate any relevant provisions of national law.
		Answer	Under special laws e.g. Habitats Directive, yes. The competent authority may sue.
Issue	Remedies	**Question**	Indicate whether the following types of remedies are available in the event of third-party liability concerning environmental harm. Elaborate on the facilities and difficulties encountered in taking advantage of each type of remedy. In particular, refer to any system of compulsory insurance for third-party liability in existence.
Instance	Damages	**Answer**	Yes
Instance	Operational prescriptions (measures imposed by the court on the defendant affecting the conduct of its activities and aiming at reducing environmental harm)	**Answer**	Possible but very unlikely.
Instance	Reinstatement of the environment	**Answer**	Yes
Issue	International and regional regimes of liability and compensation	**Question**	Specify any global, regional or sub-regional system of liability and compensation relating to environmental harm affecting marine and coastal areas that has been adopted or is in force in your country.
		Answer	Habitats Directive, Barcelona Convention.
Issue	Transformation of international	**Question**	Is a legislative instrument (Act of Parliament or of another legislative body) required to make an international convention (or treaty) binding on the domestic courts and on the citizens (etc.) of

	conventions (or treaties) into domestic law		the State? Would your answer to the foregoing question be different with regard to 'self-executing' international conventions (or treaties)?
		Answer	Act of Parliament, or in some cases a Regulation issued under the vires of a main act of Parliament would suffice. Obviously ED Regulations have a direct effect.
Issue	Adequacy of existing rules	**Question**	In your opinion, are the existing rules of liability and compensation adequate to deal with the consequences of environmental degradation in marine and coastal areas?
		Answer	Having no case law on the matter does not help in assessing the adequacy of these laws. However such laws have proved effective in the case of damage caused to land environment.

7.2.1.5. Morocco

Office chargé de remplir ce questionnaire			
Thème	Sources de responsabilité	**Question**	Indiquer les dispositions de votre loi nationale prévoyant chacun des types suivants de responsabilité à l'égard d'autrui, s'il en est.
Item	Responsabilité civile générale	**Réponse**	La responsabilité civile générale est réglementée par les dispositions du chapitre III relatif aux obligations qui résultent des délits et quasi-délits (les articles77à 106) du dahir du 12 août 1913 formant code des obligations et des contrats (B.O. du 12 septembre 1913). L'article 77 de ce dahir dispose de ce qui suit « tout fait quelconque de l'homme qui, sans l'autorité de la loi, cause sciemment et volontairement à autrui un dommage matériel ou moral, oblige son auteur à réparer ledit dommage, lorsqu'il est établi que ce fait en est la cause directe. Toute stipulation contraire est sans effet.». De même, l'article 78 prévoit que « chacun est responsable du dommage moral ou matériel qu'il a causé, non seulement par son fait, mais par sa faute, lorsqu'il est établi que cette faute en est la cause directe. Toute stipulation contraire est sans effet. La faute consiste, soit à omettre ce qu'on était tenu de faire, soit à faire ce dont on était tenu de s'abstenir, sans intention de causer un dommage. »
Item	Responsabilité administrative	**Réponse**	Il y a absence d'un texte spécifique régissant la responsabilité de l'administration au Maroc. Cependant, cette responsabilité se base sur les dispositions du dahir du 12 août 1913 formant

	générale (responsabilité des organes de l'Etat) (en cas de dissemblance d'avec la responsabilité civile générale)		code des obligations et des contrats (B.O. du 12 septembre 1913) notamment son article 79 qui dispose de ce qui suit : « l'Etat et les municipalités sont responsables des dommages causés directement par le fonctionnement de leur administrations et parles fautes de service de leurs agents ». Une jurisprudence s'est développée autour de cet article (79) dont je vous cite ci-après quelque exemple : **14-01-1993 / Arrêt N° 10** **Fondement de la responsabilité de l'Etat dans le cadre de l'article 79 du dahir des obligations et contrats :** L'Etat est responsable des dommages causés par le fonctionnement de ses administrations même si aucune faute n'a été commise, en se basant sur l'idée des risques résultant de l'utilisation de choses dangereuses comme la voiture ou autres. **16-01-1986 / Arrêt N° 15** **L'Etat - Faute de la victime - Responsabilité administrative** La responsabilité de l'Etat et de ses établissements publics pour les dommages causés par leurs objets, tel que le train, est régie par les dispositions de l'article 79 du dahir des obligations et contrats ; il prévoit la responsabilité de l'Etat pour tout dommage causé par la gestion de ses services, même en l'absence de faute. C'est la responsabilité sans faute. Le fait que la victime soit fautive, et qu'elle ait contribué à l'accident, ne remet pas en cause la responsabilité de l'Etat et de ses établissements pour l'accident, en application de l'article précité. La décision qui, en vertu du pouvoir discrétionnaire des juges de fond, n'a mis à la charge de l'Office National des Chemins de Fer que la moitié de la responsabilité, peut être soumise au contrôle de la cour suprême. **10-03-1988 / Arrêt n° 47** **-Responsabilité administrative** : O.N.C.F. - Voyageur blessé en passant d'un wagon à un autre - Faute de la victime non prouvée - Responsabilité de l'Office (oui) – Expertise - Aux termes de l'article 79 D.O.C., l'Etat est responsable des dommages causés par le fonctionnement de ses administrations, même si celles-ci ne commettent aucune faute.

			Le passager de l'O.N.C.F. blessé lors dune chute survenue alors qu'il passait d'un wagon à un autre n'a commis aucune faute susceptible d'exonérer l'Etat de cette responsabilité. - Selon l'article 63 C.P.C., l'expert doit inviter les parties à assister à l'expertise cinq jours au moins à l'avance par lettre recommandée avec accusé de réception. Doit être cassé l'arrêt qui se fonde sur un rapport d'expertise dans lequel rien n'établit que ces prescriptions avaient été respectées. **27-06-1996 / Arrêt n : 500** **Responsabilité de l'administration - Faute – Preuve** Pour écarter sa responsabilité pour faute quant aux dommages causés par des câbles électriques proches des habitations, l'administration est tenue de prouver le bon état de ces câbles et leur conformité aux normes de sécurité
Item	Responsabilité maritime	**Réponse**	La responsabilité maritime est réglementée par le Code de commerce maritime du 31 mars 1919 tel qu'il a été modifié et complété. En vertu de ce Code la responsabilité maritime est assumée selon les cas soit par le propriétaire du navire, soit par le capitaine du navire ou par l'armateur. (les articles 140 à 165 traitent entre autres de la responsabilité du capitaine ; les articles de 124 à 129 traitent de la responsabilité du capitaine, du propriétaire et de l'armateur selon les cas.) **Jurisprudence :** Le capitaine du navire est responsable ès qualité de représentant d'armateur non seulement des faits et fautes de l'équipage, mais encore de ceux ou de celles de ''de toute personne au service du navire''
Item	Responsabilité environnementale	**Réponse**	Dahir n° 1-03-59 du 10 rabii I 1424 (12 mai 2003) portant promulgation de la loi n° 11-03 relative à la protection et à la mise en valeur de l'environnement.
Thème	Base de la responsabilité	**Question**	Indiquer pour chaque type de responsabilité à l'égard d'autrui si la responsabilité est à base de faute, si elle est stricte ou si elle est absolue. Indiquer aussi quelles exonérations de responsabilité sont prévues le cas échéant en vertu de la loi nationale.
Item	Responsabilité civile générale	**Réponse**	La responsabilité civile est à la base de faute
Item	Responsabilité administrative	**Réponse**	La responsabilité administrative générale trouve son fondement principalement dans l'article 79 du dahir du 12 août 1913 formant code des obligations et des contrats qui en pose le principe.

	générale (responsabilité des organes de l'Etat) (en cas de dissemblance d'avec la responsabilité civile générale)		Une jurisprudence relative à cette responsabilité administrative s'est développée à la lumière de l'article 79 précité.
Item	Responsabilité maritime	**Réponse**	
Item	Responsabilité environnementale	**Réponse**	Cette responsabilité est prévue par la loi n° 11-03 relative à la protection et à la mise en valeur de l'environnement précitée qui instaure des dispositions prévoyant un régime de responsabilité objectif sans faute. Il s'agit de l'article 63 qui stipule « Est responsable, même en cas d'absence de preuve de faute, toute personne physique ou morale stockant, transportant ou utilisant des hydrocarbures ou des substances nocives et dangereuses, ou tout exploitant d'une installation classée, telle que définie par les textes pris en application de la présente loi, ayant causé un dommage corporel ou matériel directement ou indirectement lié à l'exercice des activités susmentionnées. »
Thème	Préjudice réparable	**Question**	Les dommages écologiques purs, par exemple la perte de biodiversité, sont-ils réparables en vertu de votre loi nationale ? Dans l'affirmative, qui peut intenter le recours ? Indiquer toutes dispositions pertinentes de la loi nationale.
		Réponse	
Thème	Mesures de justice	**Question**	Indiquer si les types suivants de mesures de justice sont disponibles en cas de responsabilité à l'égard d'autrui **pour dommage écologique**. Elaborer sur les facilités et les difficultés éprouvées pour bénéficier de chaque type de remède. Mentionner tout particulièrement tout système d'assurance obligatoire de la responsabilité à l'égard d'autrui qui serait en place.
Item	Dommages intérêts	**Réponse**	
Item	Prescriptions opérationnelles	**Réponse**	

	(mesures imposées par le tribunal sur le défendeur affectant la conduite de ses activités en vue de réduire le préjudice à l'environnement)		
Item	Remise en état de l'environnement	**Réponse**	la loi n° 11-03 relative à la protection et à la mise en valeur de l'environnement a consacré une section relative à la remise en état de l'environnement dont je cite les articles suivants : - L'article 69de la dite loi dispose que « Sous réserve des textes en vigueur et sans préjudice de l'application des sanctions pénales prévues par la législation en matière de réparation civile, l'administration peut imposer à tout auteur d'une infraction, ayant eu pour conséquence une dégradation de l'environnement, de remettre en l'état l'environnement lorsque cette remise en l'état est possible ». - Article 70 :L'administration peut imposer à tout exploitant exerçant une activité, ayant eu pour conséquence la dégradation de l'environnement, de remettre en l'état ce dernier même si la dégradation ne résulte pas d'une infraction aux dispositions de la présente loi et des textes pris pour son application. - Article 71 : Dans les cas prévus aux articles 69 et 70 ci-dessus, l'administration fixe dans chaque cas les objectifs de remise en l'état de l'environnement à atteindre et les dates d'exécution des opérations de mise en valeur de l'environnement. A l'issue des travaux, elle procède à un examen des lieux et prend une décision donnant quitus lorsque les travaux accomplis sont conformes à ses prescriptions. - Article 72 :Lorsqu'il n'est pas procédé à la remise en l'état de l'environnement dans les conditions fixées par l'article 71 ci-dessus et en cas d'absence de procédures spécifiques fixées par des dispositions législatives ou réglementaires, l'administration peut, après avoir mis en demeure la personne concernée par les mesures prises, exécuter lesdits travaux aux frais de la personne concernée.
Thème	Régimes internationaux et régionaux de responsabilité et	**Question**	Spécifier tout système global, régional ou sous-régional de responsabilité et d'indemnisation relatif au dommage environnemental affectant les secteurs marin ou côtier qui aurait été adopté ou serait en vigueur dans votre pays.

	d'indemnisation		
		Réponse	Notre pays fait partie des conventions ci-après : - la convention internationale de 1992 sur la responsabilité civile pour les dommages dus à la pollution **par les hydrocarbures** (Ratifiée par le Maroc le 28/06/2000) ; - la convention internationale de 1992 portant création d'un Fonds international d'indemnisation pour les dommages dus à la **pollution par les hydrocarbures** (Ratifiée par le Maroc le 28/06/2000) - La convention internationale de 2001 sur la responsabilité civile pour les dommages dus à la pollution par **les hydrocarbures de soute** (ratification en cours). - La convention internationale de 1996 sur la responsabilité civile et l'indemnisation pour les dommages liés au transport par mer de **substances nocives et potentiellement dangereuse**s (ratifiée par le Maroc le 29/ 01/2003) - Protocole de Bâle sur la responsabilité et l'indemnisation en cas de dommages résultant de mouvements transfrontières et de l'élimination de déchets dangereux
Thème	Transformation des conventions internationales (ou traités internationaux) dans le droit interne	**Question**	Une mesure législative (loi du Parlement ou d'un quelconque organe législatif) est-elle requise pour rendre une convention internationale (ou un traité international) obligatoire vis-à-vis des tribunaux nationaux et des citoyens etc. de l'Etat ? Votre réponse à la question précédente serait-elle différente au regard des conventions internationales (ou traités internationaux) –à l'applicabilité directe ?
		Réponse	Une fois qu'une convention internationale ou régionale est ratifiée, elle devient obligatoire vis-à-vis des tribunaux nationaux et des citoyens de l'Etat. Cependant, pour qu'une convention internationale ratifiée (ou un traité international) soit appliquée au niveau national nécessite souvent la mise en place des mesures législatives, réglementaires des normes techniques des organes de surveillance et de contrôle…
Thème	Convenance des règles existantes	**Question**	A votre avis, les règles de responsabilité et d'indemnisation existantes sont-elles adéquates pour traiter des conséquences de dégradation de l'environnement dans les zones marines et côtières ?

	Réponse	Les règles de responsabilité et d'indemnisation existantes réglementent d'une manière générale les conséquences de dégradation de l'environnement dans les zones marines et côtières notamment en ce qui concerne la pollution par les hydrocarbures, la pollution par les hydrocarbures de soute et les substances nocives et potentiellement dangereuses contenues dans les Conventions citées ci-dessus. Cependant, une insuffisance est remarquée quant à la responsabilité et à l'indemnisation des dommages dus à la pollution des zones marines et côtières par des sources de pollution d'origine terrestre.

7.2.2. EC System

The information gathered in this section of the report emanates from the responses provided by the Commission of the European Communities to the Questionnaire on the State of the Art of Systems of Liability and Compensation in Mediterranean Countries with Particular Reference to Environmental Damage in Marine and Coastal Areas.[396]

Government office surveyed		**Commission of the European Communities**	
General comment by the European Commission: even though the questionnaire specifically mentions environmental damage, it is understood, in light of the work which has been carried out so far on the subject under the auspices of the MAP, that personal injury, damage to goods and property (and even possibly economic losses) could be included. Liability regimes covering these aspects are thus duly mentioned in the answers to the questionnaire.			
Issue	Sources of liability	**Question**	Indicate the provisions of your national law which set forth each of the following types of third-party liability, if any.
Instance	General civil liability	**Answer**	At its present stage of development, there is no general (non-contractual) civil liability regime under Community law applying to damaging events caused by economic operators in the Member States. That said, there is a sector-based civil liability regime, namely that provided for by Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ L 210, 7.8.1985, p. 29). This regime could apply in the event of damage caused by (I) a

[396] Ibid.

			defective product (as defined in the Directive) but only in respect of (II) (a) damage caused by death or by personal injuries; (b) damage to, or destruction of, any item of property other than the defective product itself, with a lower threshold of 500 ECU, provided that the item of property: (i) is of a type ordinarily intended for private use or consumption, and (ii) was used by the injured person mainly for his own private use or consumption. The Directive is without prejudice to national provisions relating to non-material damage. Environmental damage is thus not covered.
Instance	General administrative liability (liability of State organs) (if different from general civil liability)	**Answer**	A distinction should be made according to the bodies the potential liability of which is considered: - As far as Community institutions and bodies are concerned, according to Article 288 of the Treaty establishing the European Community, in the case of non-contractual liability, the Community shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties. - Insofar as authorities and bodies (including public economic operators) are concerned, it results from the system inherent to the EC Treaty that Member States are liable if they cause damage to individuals as a result of breaches of Community law, whichever is the authority of the Member State whose act or omission is responsible for the breach.
Instance	Marine liability	**Answer**	Damage caused to protected natural habitats and species to be found in coastal and territorial waters of, as well as in the economic exclusive zone designated by, Member States of the European Community is covered by Directive 2004/35/EC (see below).
Instance	Environmental liability	**Answer**	The Community has adopted on 21 April 2004 Directive 2004/35/EC of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.4.2004, p. 56).
Issue	Basis of liability	**Question**	Indicate for each type of third-party liability whether liability is fault-based, strict or absolute and what exemptions from liability, if any, are provided for under national law.
Instance	General civil liability	**Answer**	N/A except in respect of product liability (see answer above). Product liability under Product Liability Directive is strict and the following exemptions are provided: the producer shall not be liable as a result of the Product Liability Directive if he proves: (a) that he did not put the product into circulation; or (b) that, having regard to the circumstances, it is probable that the defect which caused the

			damage did not exist at the time when the product was put into circulation by him or that this defect came into being afterwards; or (c) that the product was neither manufactured by him for sale or any form of distribution for economic purpose nor manufactured or distributed by him in the course of his business; or (d) that the defect is due to compliance of the product with mandatory regulations issued by the public authorities; or (e) that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of the defect to be discovered; or (f) in the case of a manufacturer of a component, that the defect is attributable to the design of the product in which the component has been fitted or to the instructions given by the manufacturer of the product. It is to be noted that each Member State may, by way of derogation, maintain or, subject to a specific Community procedure, provide in its legislation transposing the Product Liability Directive that the producer shall be liable even if he proves that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of a defect to be discovered.
Instance	General administrative liability (liability of State organs) (if different from general civil liability)	**Answer**	- Whether the EC can be held (non-contractually) liable depends on the satisfaction of a number of requirements relating to unlawfulness of the conduct of which the institutions are accused, the reality of the damage and the existence of a causal connection between that conduct and the damage in question. The conditions for holding the EC liable differ according to the nature of the conduct whose unlawfulness is alleged: in the field of administrative action, any infringement of law constitutes illegality which may give rise to liability on the part of the Community; in the field of legislative action, legislative measures involving choices of economic policy for the adoption of which the competent Community institution has a broad discretion can cause the Community to incur liability only if the competent Community institution manifestly and seriously disregarded a superior rule of law for the protection of individuals. - As to the conditions to be satisfied for a Member State to be required to make reparation for loss and damage caused to individuals as a result of breaches of Community law for which the State is responsible, the European Court of Justice has held that these are threefold: the rule of law infringed must be intended to confer rights on individuals; the breach must be sufficiently serious; and there must be a direct causal link between the breach of the obligation incumbent on the State and the loss or damage sustained by the injured parties.
Instance	Marine liability	**Answer**	See answer below.

Instance	Environmental liability	**Answer**	(I) The Environmental Liability Directive provides for two regimes of liability: (A) A strict liability regime in case of damage to land, water and protected species and natural habitats caused by activities listed in its Annex III. (B) A fault-based liability regime in case of damage to protected species and natural habitats caused by occupational activities other than those listed in its Annex III. Natural habitats and species to be found in coastal waters and the marine environment (territorial waters and EEZ – exclusive economic zone) are covered. (II) The Directive provides for a certain number of exemptions: (A) The Directive does not cover environmental damage or an imminent threat of such damage caused by: (a) an act of armed conflict, hostilities, civil war or insurrection; (b) a natural phenomenon of exceptional, inevitable and irresistible character. (B) An operator shall not be required to bear the cost of preventive or remedial actions taken pursuant to this Directive when he can prove that the environmental damage or imminent threat of such damage: (a) was caused by a third party and occurred despite the fact that appropriate safety measures were in place; or (b) resulted from compliance with a compulsory order or instruction emanating from a public authority other than an order or instruction consequent upon an emission or incident caused by the operator's own activities. (C) The Directive entitles the Member States to allow the operator not to bear the cost of remedial actions taken pursuant to this Directive where he demonstrates that he was not at fault or negligent and that the environmental damage was caused by: (a) an emission or event expressly authorised by, and fully in accordance with the conditions of, an authorisation conferred by or given under applicable national laws and regulations which implement those legislative measures adopted by the Community specified in Annex III, as applied at the date of the emission or event; (b) an emission or activity or any manner of using a product in the course of an activity which the operator demonstrates was not considered likely to cause environmental damage according to the state of scientific and technical knowledge at the time when the emission was released or the activity took place.
Issue	Compensable damage	**Question**	Is pure environmental damage, e.g. loss of biodiversity, compensable under your national law and, if so, who can sue for it? Indicate any relevant provisions of national law.

		Answer	The Environmental Liability Directive covers, *inter alia*, damage to protected species and natural habitats. The objective of the Directive is to prevent and remedy such damage. In case of remedying such damage, Annex II to the Directive sets out the rules and principles to be followed to ensure that the affected natural resources and services be remedied in kind (through reinstatement and similar types of restoration measures). The Directive excludes any compensation in the form of damages which would be paid to someone without any remedying measure being taken. Competent authorities designated by the Member States are the only bodies entitled to take action against the responsible operator, under the Directive. Interested third parties, including NGOs, are entitled to request the competent authorities to take action and to challenge before a court or any other independent and impartial public body the actions and omissions of the competent authorities under the Directive.
Issue	Remedies	**Question**	Indicate whether the following types of remedies are available in the event of third-party liability concerning environmental harm. Elaborate on the facilities and difficulties encountered in taking advantage of each type of remedy. In particular, refer to any system of compulsory insurance for third-party liability in existence.
Instance	Damages	**Answer**	- Available under the Product Liability Directive and the liability regime under Article 288 of the EC Treaty and the liability of Member States for breaches of Community law. No compulsory insurance for third-party liability presently exists. - Not available under the Environmental Liability Directive.
Instance	Operational prescriptions (measures imposed by the court on the defendant affecting the conduct of its activities and aiming at reducing environmental harm)	**Answer**	- Not available under the Product Liability Directive and the liability regime under Article 288 of the EC Treaty and the liability of Member States for breaches of Community law. - Available (and compulsory) under the Environmental Liability Directive insofar as they are necessary to prevent or minimize environmental damage. No compulsory insurance for third-party liability presently exists. On Article 14 of the Environmental Liability Directive, see the answer on “Reinstatement of the environment” below.
Instance	Reinstatement of the environment	**Answer**	- By way of introduction, it is to be noted that this question is not entirely unequivocal since “reinstatement of the environment” could cover both the situation in which the liable party is enjoined to undertake specific measures for reinstating the environment (which he will pay for) and the situation in which a monetary amount can be adjudicated to someone who has taken

			or is willing to take himself reinstatement measures and who seeks to recover the costs incurred or to be incurred from the liable party. The following comments will cover both situations: - Neither is available under the Product Liability Directive since the Directive does not cover economic losses and damage to goods and property used for professional purposes. - It does not seem that the judge could enjoin the liable party to act in a specific manner under the liability regime under Article 288 of the EC Treaty and the liability of Member States for breaches of Community law nor that either regime covers monetary compensation for reinstatement measures in respect of natural resources which are not appropriated. Conversely, there seems to be no obstacle of principle for monetary damages to include the costs of reinstatement measures taken by the aggrieved party/victim in respect of those natural resources which (s)he owns or has a proprietary interest in (Case, for instance, of the owner of a coastal holiday resort who has taken clean up measures of the resort – beaches for instance – after a pollution incident caused either by a Community body or a national authority in breach of Community environmental law had occurred.) - Both situations are covered by the Environmental Liability Directive (see also answer on "Compensable damage" above). No compulsory insurance for third-party liability presently exists. Article 14 of the Directive provides that: "*1. Member States shall take measures to encourage the development of financial security instruments and markets by the appropriate economic and financial operators, including financial mechanisms in case of insolvency, with the aim of enabling operators to use financial guarantees to cover their responsibilities under this Directive.* *2. The Commission, before 30 April 2010 shall present a report on the effectiveness of the Directive in terms of actual remediation of environmental damages, on the availability at reasonable costs and on conditions of insurance and other types of financial security for the activities covered by Annex III. The report shall also consider in relation to financial security the following aspects: a gradual approach, a ceiling for the financial guarantee and the exclusion of low-risk activities. In the light of that report, and of an extended impact assessment, including a cost-benefit analysis, the Commission shall, if appropriate, submit proposals for a system of harmonised mandatory financial security*."
Issue	International and regional regimes of liability and compensation	**Question**	Specify any global, regional or sub-regional system of liability and compensation relating to environmental harm affecting marine and coastal areas that has been adopted or is in force in your country.
		Answer	This question is understood as referring to international instruments establishing a liability and compensation regime and not to international agreements containing general provisions calling

			compensation regime and not to international agreements containing general provisions calling upon the Contracting Parties to cooperate with a view to developing such regimes. On the premise of that interpretation, the European Community does not seem to be a Contracting Party to any such agreements.
Issue	Transformation of international conventions (or treaties) into domestic law	**Question**	Is a legislative instrument (Act of Parliament or of another legislative body) required to make an international convention (or treaty) binding on the domestic courts and on the citizens (etc.) of the State? Would your answer to the foregoing question be different with regard to 'self-executing' international conventions (or treaties)?
		Answer	Provisions of international agreements concluded by the European Community form an integral part of the Community legal system, as from their entry into force. A provision in an agreement concluded by the Community with non-member countries is to be regarded as being directly applicable by the courts when, regard being had to its wording and the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure. That said, the usual practice of the Community institutions is, in principle, to enact internal legislation implementing the international agreement concerned before the Community ratifies the latter.
Issue	Adequacy of existing rules	**Question**	In your opinion, are the existing rules of liability and compensation adequate to deal with the consequences of environmental degradation in marine and coastal areas?
		Answer	The Environmental Liability Directive is to be implemented by the Member States of the European Community by 30 April 2007 at the latest. Until such time the Directive starts to be applied to actual instances of environmental damage, it will be difficult to assess the adequacy thereof; conversely, there is no reason why the Directive should be considered *a priori* as inadequate, in light of the political, legal and socio-economic choices made by the Community institutions when adopting the Directive.

7.2.3. Regional and Global Regimes

This section of the report is divided in two sub-sections containing descriptive charts on relevant regional and global regimes of liability and compensation.[397] Regimes are classified according to the organizations to which they belong. The order of organizations followed in the presentation is entirely neutral.

7.2.3.1. Regional Regimes

Regimes of liability and compensation adopted under the auspices of the EC, the Council of Europe, UNECE and OECD are described in that order herein below.

7.2.3.1.1. EC

7.2.3.1.1.1. Environmental Liability Directive

Full title	Directive 2004/35/EC on Environmental Liability with regard to the Prevention and Remedying of Environmental Damage
Date of adoption	21/4/2004
Short title	EC Environmental Liability Directive
Objective	To establish a framework of environmental liability based on the “polluter pays” principle, to prevent and remedy environmental damage (art. 1)
Implementation deadline	30/4/2007 (art. 19(1))
Activities covered	The following activities are covered: - occupational activities already governed by specific preventive EC legislation and enumerated in Annex III (art. 3(1)(a)) and - any other occupational activity *insofar as it causes damage or an imminent threat of damage to*

[397] Sections 7.2.3.1 & 7.2.3.2 below.

	protected species and natural habitats and provided the operator is at fault or negligent (art. 3(1)(b)), *except* incidents covered by the following liability and compensation international conventions and amendments thereto, which are in force in the Member State concerned (art. 4(2)): - International Convention on Civil Liability for Oil Pollution Damage, 1992; - International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992; - International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001; - International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996; - Convention on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels, 1989; and *except* nuclear risks or damage or imminent threat of damage caused by the activities covered by the Treaty establishing the European Atomic Energy Community or caused by an incident or activity in respect of which liability or compensation falls within the scope of any of the following international instruments, including any future amendments thereof (art. 4(4)): - Convention on Third Party Liability in the Field of Nuclear Energy, 1960 and Supplementary Convention, 1963; - Convention on Civil Liability for Nuclear Damage, 1963; - Convention on Supplementary Compensation for Nuclear Damage, 1997; - Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention, 1988; - Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, 1971
Geographical scope of application	The Directive applies on the “European territory of the Member States to which the Treaty applies” (arts. 1(1), Council Directive 79/409/EEC of 2/4/1979 on the Conservation of Wild Birds, & 2(1), Council Directive 92/43/EEC of 21/5/1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora, referred to by art. 2(3) of the Directive under consideration)
Liable party	The “operator” (arts. 5, 6 & 8), defined as any natural or legal, private or public person who operates or controls the occupational activity or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of such an activity has been delegated, including the

	holder of a permit or authorization for such an activity or the person registering or notifying such an activity (art. 2(6))
Basis of liability	Dual regime: - strict liability for “environmental damage” caused by any of the occupational activities listed in Annex III (art. 3(1)(a)) - fault-based liability for damage or the imminent threat of damage to protected species and natural habitats caused by a non-listed occupational activity (art. 3(1)(b))

Special exemptions from strict liability	- Damage or imminent threat of damage was caused by a third party and occurred despite the fact that appropriate safety measures were in place (art. 8(3)(a))
	- Damage or imminent threat of damage resulted from compliance with a compulsory order or instruction emanating from a public authority other than an order or instruction consequent upon an emission or incident caused by the operator’s own activities (art. 8(3)(b))
	- Where provided for by the law of the Member State, if the operator demonstrates that he was not at fault or negligent and that the environmental damage was caused by:
	  - an emission or event expressly authorized by, and fully in accordance with the conditions of, an authorization conferred by or given under applicable national laws and regulations which implement those legislative measures adopted by the Community specified in Annex III, as applied at the date of the emission or event (art. 8(4)(a)) or
	  - an emission or activity or any manner of using a product in the course of an activity which the operator demonstrates was not considered likely to cause environmental damage according to the state of scientific and technical knowledge at the time when the emission was released or the activity took place (art. 8(4)(b))

Judicial/administrative measures	- Award of damages (art. 8(1)) - Order to the operator to provide information (arts. 5(3)(a) & 6(2)(a)) - Order to the operator to take necessary preventive and remedial measures (arts. 5(3)(b) & (4) & 6(2)(b) & (c) & (3)) - Instructions to the operator on measures to be taken (arts. 5(3)(c) & 6(2)(b) & (d)) - Preventive or remedial measures proprio motu (arts. 5(3)(d) & (4), 6(2)(b) & (d) & (3))

Compensable damage	Costs of actions for the prevention and remedial of environmental damage (art. 8(1) & (2)), being damage to protected species and natural habitats (art. 2(1)(a)), water damage (art. 2(1)(b)) and land damage (art. 2(1)(c))
Compensation limitation	None, right of operators to limit their liability in accordance with maritime law not affected (art. 4(3))
Compulsory insurance or other financial security	None specifically set; however, Member States are to recover, inter alia, via security over property or other appropriate guarantees from the operator who has caused damage or a threat of damage, costs of preventive or remedial actions taken under the Directive (art. 8(2)) Member States to encourage the development of financial security instruments and markets by the appropriate economic and financial operators, including financial mechanisms in case of insolvency, with the aim of enabling operators to use financial guarantees to cover their responsibilities under the Directive (art. 14(1)) European Commission to report by 2010 on the effectiveness of the Directive in terms of actual remediation of environmental damage, on the availability at reasonable costs and on conditions of insurance and other types of financial security for the activities covered by Annex III (art. 14(2))
Limitation period	Cost recovery proceedings can be initiated by the competent authority within 5 years from the date on which preventive or remedial measures were completed or the liable operator, or third party, was identified, whichever is the later (art. 10) The Directive does not apply to damage if more than 30 years have passed since the emission, event or incident resulting in the damage occurred (art. 17)

Who can sue?	- The Member State's designated "competent authority" is the only party entitled to sue the operator for recovery of the costs of preventive and remedial action (art. 8(2))
	- Private parties do not have a right to sue the operator under the Directive (art. 3(3))
	- Natural or legal persons:
	  - affected or likely to be affected by damage covered by the Directive,
	  - having a sufficient interest in environmental decision making relating to the damage–non-governmental organizations promoting environmental protection and meeting any requirements under national law being deemed to have such sufficient interest–or, alternatively,
	  - alleging the impairment of a right, where administrative procedural law of a Member State

	requires this as a precondition–non-governmental organizations promoting environmental protection and meeting any requirements under national law being deemed to have rights capable of being impaired–, are entitled to submit to the Member State's designated competent authority any observations relating to instances of environmental damage or an imminent threat of such damage of which they are aware and to request the said authority to take action under the Directive (art. 12(1))
Access to information	The Member State's designated competent authority may require the operator to provide information on any damage or threat of damage (arts. 5(3)(a) & 6(2)(a))
Relationship with other liability and compensation rules	- This Directive does not prevent Member States from maintaining or adopting more stringent provisions in relation to the prevention and remedying of environmental damage, including the identification of additional activities to be subject to the prevention and remediation requirements of this Directive and the identification of additional responsible parties (art. 16(1)); - This Directive does not prevent Member States from adopting appropriate measures, such as the prohibition of double recovery of costs, in relation to situations where double recovery could occur as a result of concurrent action by a competent authority under this Directive and by a person whose property is affected by environmental damage (art. 16(2))

7.2.3.1.2. Council of Europe

7.2.3.1.2.1. Lugano Convention

Full title	Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment
Place and date of adoption	Lugano, 21/6/1993
Short title	Lugano Convention
Objective	To ensure adequate compensation for damage resulting from activities dangerous to the environment and provide for means of prevention and reinstatement (art. 1)
Date of entry into force	Not in force

Mediterranean Contracting States	None
Overall number of Contracting States	0
Number of additional Contracting States needed for entry into force	3

Activities covered	"Dangerous activities" (arts. 6(1) & 7(1)), defined as operations performed professionally and consisting of one or more of the following:
	- the production, handling, storage, use or discharge of one or more dangerous substances (defined in art. 2(2)) or any operation of a similar nature dealing with such substances (art. 2(1)(a)),
	- the production, culturing, handling, storage, use, destruction, disposal, release or any other operation dealing with one or more:
	  - genetically modified organisms (defined in art. 2(3)) which as a result of the properties of the organism, the genetic modification and the conditions under which the operation is exercised, pose a significant risk for man, the environment or property;
	  - micro-organisms (defined in art. 2(4)) which as a result of their properties and the conditions under which the operation is exercised pose a significant risk for man, the environment or property, such as those micro-organisms which are pathogenic or which produce toxins; (art. 2(1)(b)) or
	- the operation of an installation or site for the incineration, treatment, handling or recycling of waste, such as those installations or sites specified in Annex II, provided that the quantities involved pose a significant risk for man, the environment or property (art. 2(1)(c));
	- the operation of a site for the permanent deposit of waste (art. 2(1)(d)),
	but excluding:
	- carriage otherwise than via pipeline and carriage performed entirely in an installation or on a site inaccessible to the public where it is accessory to other activities and is an integral part thereof (art. 4(1)) and
	- damage caused by nuclear substances covered by specified instruments (art. 4(2))

Geographical scope of application	The Convention applies: - when the incident occurs in the territory of a Party regardless of where the damage is suffered (art. 3(a)); - when the incident occurs outside the territory of a Party and the conflict of laws rules lead to the application of the law in force for that territory (art. 3(b))
Application to areas outside national jurisdiction	Possible if the application of conflict of laws rules leads to the application of the law of the territory of a Party (art. 3(b))
Liable party	The “operator” (arts. 6 & 7), defined as the person who exercises the control of a dangerous activity (art. 2(5))
Basis of liability	Liability is strict for damage caused by any of the activities referred to in art. 2(1)(a) to (c) as a result of incidents (arts. 6(1) & 7(1))
Special exemptions from strict liability	- Compliance with a specific order or compulsory measure of a public authority (art. 8(c)) - Pollution at tolerable levels under local relevant circumstances (art. 8(d)) - Dangerous activity taken lawfully and reasonably in the interests of the person who suffered the damage (art. 8(e))

Judicial/administrative measures	- Award of damages
	- Prohibition of a dangerous activity (art. 18(1)(a))
	- Order to the operator to prevent an incident or damage (art. 18(1)(b) & (c))
	- Order to the operator to take measures of reinstatement (art. 18(1)(d))
	- Order related to access to information held by:
	  - a public authority (art. 14),
	  - a body with public responsibilities for the environment (art. 15) or
	  - the operator (art. 16)

Compensable damage	“Damage” (arts. 6(1) & 7(1)), meaning:

	- loss of life or personal injury (art. 2(7)(a)); - loss of or damage to property other than the operator's (art. 2(7)(b)); - loss or damage by impairment to the environment (art. 2(7)(c)); - costs of preventive measures and loss or damage caused thereby (art. 2(7)(d)), to the extent that the loss or damage referred to in art. 2(7)(a) to (c) arises out of or results from the hazardous properties of the dangerous substances, genetically modified organisms or micro-organisms or arises or results from waste (art. 2(7))
Compensation limitation	None
Compulsory insurance or other financial security	To be imposed on operators under internal law, where appropriate, taking due account of the risks of the activity (art. 12)
Limitation period	3 years from the date on which the claimant knew or ought reasonably to have known of the damage and of the identity of the operator (art. 17(1)), but in any case 30 years after the date of the incident which caused the damage (art. 17(2))

Who can sue?	- Whoever suffers damage can sue the liable operator and claim compensation
	- An association or foundation which according to its statutes aims at the protection of the environment can request:
	  - the prohibition of a dangerous activity (art. 18(1)(a)),
	  - an order to the operator to prevent an incident or damage (art. 18(1)(b) & (c)) or
	  - an order to the operator to take measures of reinstatement (art. 18(1)(d))

Access to information	- A person who suffered damage may request a court order requiring the operator to provide him with specific information insofar as this is necessary to establish a claim of compensation under the Convention (art. 16(1)) - Any person can have access to environmental information held by public authorities (art. 14) and bodies with public responsibilities for the environment (art. 15)
Relationship with other liability and compensation rules	- The Convention does not limit or derogate from any of the rights of the persons who have suffered the damage nor does it limit the provisions concerning the protection or reinstatement of the

compensation rules	environment which may be provided under the laws of any Party or under any other treaty to which it is a Party (art. 25(1)) - In their mutual relations, Parties which are members of the European Economic Community are to apply Community rules and are therefore not to apply the rules arising from this Convention except in so far as there is no Community rule governing the particular subject concerned (art. 25(2))

7.2.3.1.3. UNECE

7.2.3.1.3.1. Kiev Protocol

Full title	Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters
Place and date of adoption	Kiev, 21/3/2003
Short title	Kiev Protocol
Objective	To provide for a comprehensive regime for civil liability and for adequate and prompt compensation for damage caused by the transboundary effects of industrial accidents on transboundary waters (art. 1)
Date of entry into force	Not in force
Mediterranean Contracting States	None
Overall number of Contracting States	1
Number of additional Contracting States needed for entry into force	15
Activities covered	Transboundary effects of industrial accidents (art. 3(1)), where “industrial accident” is defined as an event resulting from an uncontrolled development in the course of a hazardous activity: - in an installation, including tailing dams, for example during manufacture, use, storage, handling or disposal;

	- during transportation on the site of a hazardous activity; or - during off-site transportation via pipelines (art. 2(2)(e)) and “hazardous activity” is defined as any activity in which one or more hazardous substances are present or may be present in quantities at or in excess of the threshold quantities listed in annex I and which is capable of causing transboundary effects on transboundary waters and their water uses in the event of an industrial accident (art. 2(2)(f))
Geographical scope of application	- The Protocol applies on transboundary waters (art. 3(1)), defined as any surface or ground waters which mark, cross or are located on boundaries between two or more States; wherever transboundary waters flow directly into the sea, these transboundary waters end at a straight line across their respective mouths between points on the low-water line of their banks (art. 1(1) Convention of the Protection and Use of Transboundary Watercourses and International Lakes, 1992, made applicable by art. 2(1) Protocol) - The Protocol applies only to damage suffered in a Party other than the Party where the industrial accident occurred (art. 3(2))
Application to areas outside national jurisdiction	No
Liable party	The liable party varies depending on the liability regime considered: - under the strict liability regime, the liable party is the “operator” (art. 4(1)), defined as any natural or legal person, including public authorities, in charge of an activity, e.g. supervising, planning to carry out or carrying out an activity (art. 1(e) Convention on the Transboundary Effects of Industrial Accidents, 1992, made applicable by art. 2(1)); - under the fault-based liability regime, any person is liable (art. 5); however, any person other than the operator acting for the sole purpose of taking response measures, provided that this person acted reasonably and in accordance with applicable domestic law, is not thereby subject to liability under the Protocol (art. 6(2))
Basis of liability	Dual: - strict liability for damage caused by an industrial accident (art. 4(1)) - fault-based liability (art. 5)

Special exemptions from strict liability	Damage was wholly the result of compliance with a compulsory measure of a public authority of the Party where the industrial accident occurred, despite there being in place appropriate safety measures (art. 4(2)(c))
Judicial/administrative measures	Award of damages
Compensable damage	"Damage" (art. 4(1)), meaning: - Loss of life or personal injury (art. 2(2)(d)(i)); - Loss of, or damage to, property other than property held by the person liable in accordance with the Protocol (art. 2(2)(d)(ii)); - Loss of income directly deriving from an impairment of a legally protected interest in any use of the transboundary waters for economic purposes, incurred as a result of impairment of the transboundary waters, taking into account savings and costs (art. 2(2)(d)(iii)); - The cost of measures of reinstatement of the impaired transboundary waters, limited to the costs of measures actually taken or to be undertaken (art. 2(2)(d)(iv)); - The cost of response measures, including any loss or damage caused by such measures, to the extent that the damage was caused by the transboundary effects of an industrial accident on transboundary waters (art. 2(2)(d)(v));
Compensation limitation	Only strict liability is limited as follows (art. 9(1)): - Category A hazardous activities: 10 million SDR; - Category B hazardous activities: 40 million SDR; - Category C hazardous activities: 40 million SDR; where categories of hazardous activities are defined in relation to the type of hazardous substances used and the quantities in which they are or may be present in comparison with predetermined threshold quantities (annex II, part I), such limits of liability to be reviewed by the Meeting of the Parties on a regular basis taking into account the risks of hazardous activities as well as the nature, quantity and properties of the hazardous substances that are present or may be present in such activities (art. 9(2))
Compulsory insurance or other financial security	- The operator must ensure that his strict liability for amounts not less than the following minimum limits for financial securities specified in part two of annex II remains covered by financial security such as insurance, bonds or other financial guarantees including financial mechanisms providing

	insurance, bonds or other financial guarantees including financial mechanisms providing compensation in the event of insolvency (art. 11(1)): - Category A hazardous activities: 2.5 million SDR; - Category B hazardous activities: 10 million SDR; - Category C hazardous activities: 10 million SDR; where categories of hazardous activities are defined in relation to the type of hazardous substances used and the quantities in which they are or may be present in comparison with predetermined threshold quantities (annex II, part II), such minimum limits of financial securities to be reviewed by the Meeting of the Parties on a regular basis taking into account the risks of hazardous activities as well as the nature, quantity and properties of the hazardous substances that are present or may be present in such activities (art. 11(2)) - Any claim under the Protocol may be asserted directly against any person providing the above financial cover (art. 11(3)), but Parties may exclude such a right to bring a direct action at the time of signature, ratification, approval of or accession to the Protocol (art. 11(4))
Limitation period	3 years from the date that the claimant knew or ought reasonably to have known of the damage and of the person liable (art. 10(2)), but not more than 15 years from the date of the industrial accident (art. 10(1))
Who can sue?	The person who suffers damage
Access to information	Without prejudice to existing international obligations, Parties to provide for access to information and access to justice accordingly, with due regard to the legitimate interest of the person holding the information, in order to promote the objective of the Protocol (art. 8(5))
Relationship with other liability and compensation rules	- All matters of substance or procedure regarding claims before the competent court which are not specifically regulated in the Protocol are to be governed by the law of that court, including any rules of such law relating to conflict of laws (art. 16(1)), provided that, at the request of the person who suffered the damage, all matters of substance regarding claims before the competent court are to be governed by the law of the Party where the industrial accident has occurred, as if the damage had been suffered in that Party (art. 16(2)); - The Protocol is without prejudice to any rights of persons who have suffered damage or to any measures for the protection or reinstatement of the environment that may be provided under

	applicable domestic law (art. 17); - Whenever the provisions of the Protocol and the provisions of a bilateral, multilateral or regional agreement apply to liability and compensation for damage caused by the transboundary effects of industrial accidents on transboundary waters, the Protocol is not to apply provided the other agreement is in force for the Parties concerned and had been opened for signature when the Protocol was opened for signature, even if the agreement was amended afterwards (art. 19)

7.2.3.1.4. OECD

OECD's Mediterranean membership consists of the European Community, France, Greece, Italy, Spain and Turkey.

7.2.3.1.4.1. Paris Convention

Full title	Convention on Third Party Liability in the Field of Nuclear Energy of the 29th July 1960
Place and date of adoption	Paris, 29/7/1960
Short title	Paris Convention
Objective	To ensure adequate and equitable compensation for persons who suffer damage caused by nuclear incidents (preamble)
Date of entry into force	1/4/1968
Mediterranean Contracting States	France, Greece, Italy, Slovenia, Spain, Turkey
Non-Contracting Mediterranean States	Albania, Algeria, Bosnia & Herzegovina, Croatia, Cyprus, Egypt, Israel, Lebanon, Libya, Malta, Monaco, Morocco, Serbia & Montenegro, Syria, Tunisia
Overall number of Contracting States	15 (as at 9/5/2005) (source: OECD Nuclear Energy Agency)

Amendments	Instrument	Place and date of adoption	Date of entry into force	Overall number of Contracting States	Mediterranean Contracting States
	Additional Protocol	Paris, 28/1/1964	1/4/1968	15 (as at 9/5/2005) (source: OECD Nuclear Energy Agency)	France, Greece, Italy, Slovenia, Spain, Turkey
	Protocol	Paris, 16/11/1982	7/10/1988	15 (as at 9/5/2005) (source: OECD Nuclear Energy Agency)	France, Greece, Italy, Slovenia, Spain, Turkey
	Protocol	Paris, 12/2/2004	Pending ratification, acceptance or approval by at least 5 Signatory States (art. 19(b) Paris Convention including 1964, 1982 and 1994 amendments)		
Is this Convention open for accession by non-Member or Associate countries of the OECD?	Yes (art. 21(b))				
Activities covered	Paris Convention including 1964 and 1982 amendments				

	- Operation of nuclear installations, meaning reactors other than those comprised in any means of transport; factories for the manufacture or processing of nuclear substances; factories for the separation of isotopes of nuclear fuel; factories for the reprocessing of irradiated nuclear fuel; facilities for the storage of nuclear substances other than storage incidental to the carriage of such substances; and such other installations in which there are nuclear fuel or radioactive products or waste as the Steering Committee for Nuclear Energy of the Organisation for Economic Co-Operation and Development will from time to time determine (arts. 3(a) & 1(a)(ii)) - Carriage of nuclear substances from or to nuclear installations (art. 4)
	Paris Convention including 1964, 1982 and 2004 amendments
	- Operation of nuclear installations, meaning reactors other than those comprised in any means of transport; factories for the manufacture or processing of nuclear substances; factories for the separation of isotopes of nuclear fuel; factories for the reprocessing of irradiated nuclear fuel; facilities for the storage of nuclear substances other than storage incidental to the carriage of such substances; installations for the disposal of nuclear substances; any such reactor, factory, facility or installation that is in the course of being decommissioned; and such other installations in which there are nuclear fuel or radioactive products or waste as the Steering Committee for Nuclear Energy of the Organisation for Economic Co-Operation and Development will from time to time determine (arts. 3(a) & 1(a)(ii)) - Carriage of nuclear substances from or to nuclear installations (art. 4)
Geographical scope of application	Paris Convention including 1964 and 1982 amendments
	- The Convention does not apply to nuclear incidents occurring in the territory of non-Contracting States or to damage suffered in such territory, unless otherwise provided by the legislation of the Contracting Party in whose territory the nuclear installation of the operator liable is situated (art. 2) - The Convention applies to the metropolitan territories of the Contracting Parties (art. 23(a))
	Paris Convention including 1964, 1982 and 2004 amendments

	- The Convention applies to nuclear damage suffered in the territory of, or in any maritime zones established in accordance with international law of, or, except in the territory of a non-Contracting State not mentioned under (ii) to (iv) of this paragraph, on board a ship or aircraft registered by,
	  - a Contracting Party (art. 2(a)(i));
	  - a non-Contracting State which, at the time of the nuclear incident, is a Contracting Party to the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 and any amendment thereto which is in force for that Party, and to the Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention of 21 September 1988, provided however, that the Contracting Party to the Paris Convention in whose territory the installation of the operator liable is situated is a Contracting Party to that Joint Protocol (art. 2(a)(ii));
	  - a non-Contracting State which, at the time of the nuclear incident, has no nuclear installation in its territory or in any maritime zones established by it in accordance with international law (art. 2(a)(iii)); or
	  - any other non-Contracting State which, at the time of the nuclear incident, has in force nuclear liability legislation which affords equivalent reciprocal benefits, and which is based on principles identical to those of this Convention, including, inter alia, liability without fault of the operator liable, exclusive liability of the operator or a provision to the same effect, exclusive jurisdiction of the competent court, equal treatment of all victims of a nuclear incident, recognition and enforcement of judgments, free transfer of compensation, interests and costs (art. 2(a)(iv))
	- A Contracting Party in whose territory the nuclear installation of the operator liable is situated may provide for a broader scope of application of the Convention under its legislation (art. 2(b))
	- The Convention applies to the metropolitan territories of the Contracting Parties (art. 23(a))

Application to areas outside national jurisdiction	N/A (art. 23(a))

Liable party	- The operator of a nuclear installation (arts. 3(a), 6(a) & 1(a)(vi))
	- In the case of carriage of nuclear substances, including storage incidental thereto, from or to nuclear installations:
	  - the liable party is the operator of such installation (art. 4(a) or (b))
	  - where provided for in the legislation of a Contracting Party, a carrier of nuclear substances may,

	at his request and with the consent of an operator of a nuclear installation situated in its territory, by decision of the competent public authority, be liable in accordance with this Convention in place of that operator (art. 4(d) Paris Convention including 1964 and 1982 amendments; art. 4(e) Paris Convention including 1964, 1982 and 1994 amendments)
Basis of liability	Paris Convention including 1964 and 1982 amendments
	Liability is absolute for damage caused: - by a nuclear incident in a nuclear installation or involving nuclear substances coming from such installation (arts. 3(a) & 1(a)(i)); or - by a nuclear incident outside a nuclear installation and involving nuclear substances in the course of carriage from or to such installation, including storage incidental thereto (art. 4(a) & (b))
	Paris Convention including 1964, 1982 and 2004 amendments
	Liability is absolute for nuclear damage caused: - by a nuclear incident in a nuclear installation or involving nuclear substances coming from such installation (arts. 3(a) & 1(a)(i)); or - by a nuclear incident outside a nuclear installation and involving nuclear substances in the course of carriage from or to such installation, including storage incidental thereto (art. 4(a) & (b))
Judicial/administrative measures	Award of damages
Compensable damage	Paris Convention including 1964 and 1982 amendments

	Damage (art. 3(a)), defined as:
	- damage to or loss of life of any person (art. 3(a)(i)); and
	- damage to or loss of any property other than
	  - the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located (art. 3(a)(ii)(1)); and
	  - any property on that same site which is used or to be used in connection with any such installation (art. 3(a)(ii)(2))

	Paris Convention including 1964, 1982 and 2004 amendments
	Nuclear damage (art. 3(a)), defined as: - loss of life or personal injury (art. 1(a)(vii)(1)); - loss of or damage to property (art. 1(a)(vii)(2)); and each of the following to the extent determined by the law of the competent court, - economic loss arising from loss or damage referred to in sub-paragraph 1 or 2 above insofar as not included in those sub-paragraphs, if incurred by a person entitled to claim in respect of such loss or damage (art. 1(a)(vii)(3)); - the costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in art. 1(a)(vii)(2) (art. 1(a)(vii)(4)); - loss of income deriving from a direct economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and insofar as not included in art. 1(a)(vii)(2) (art. 1(a)(vii)(5)); - the costs of preventive measures, and further loss or damage caused by such measures (art. 1(a)(vii)(6)), in the case of art. 1(a)(vii)(1) to (5), to the extent that the loss or damage arises out of or results from ionizing radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of nuclear substances coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter (art. 1(a)(vii) in fine); but compensation does not extend to: - damage to the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located (art. 3(a)(i)); and - damage to any property on that same site which is used or to be used in connection with any such installation (art. 3(a)(ii))
Compensation limitation	Paris Convention including 1964 and 1982 amendments

	- Compensation is limited to 15 million SDR per operator in respect of damage caused by a nuclear incident (art. 7(b) in limine), however:
	  - any Contracting Party, taking into account the possibilities for the operator of obtaining the compulsory insurance or other financial security, may establish by legislation a greater or lesser amount (art. 7(b)(i));
	  - any Contracting Party, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount (art. 7(b)(ii)),
	  provided that in no event will any amounts so established be less than 5 million SDR (art. 7(b) in fine);
	- A Contracting Party may subject the transit of nuclear substances through its territory to the condition that the maximum amount of liability of the foreign operator concerned be increased, if it considers that such amount does not adequately cover the risks of a nuclear incident in the course of the transit: provided that the maximum amount thus increased does not exceed the maximum amount of liability of operators of nuclear installations situated in its territory (art. 7(e))
	- Any Contracting Party may take such measures as it deems necessary to provide for an increase in the amount of compensation specified in this Convention (art. 15(a))

	Paris Convention including 1964, 1982 and 2004 amendments

	- The liability of the operator in respect of nuclear damage caused by any one nuclear incident will not be less than €700 million (art. 7(a)); however a Contracting Party may:
	  - having regard to the nature of the nuclear installation involved and to the likely consequences of a nuclear incident originating therefrom, establish a lower amount of liability for that installation, provided that in no event will any amount so established be less than €70 million (art. 7(a)(i)); and
	  - having regard to the nature of the nuclear substances involved and to the likely consequences of a nuclear incident originating therefrom, establish a lower amount of liability for the carriage of nuclear substances, provided that in no event will any amount so established be less than €80 million (art. 7(a)(ii))
	- A Contracting Party may subject the transit of nuclear substances through its territory to the condition that the maximum amount of liability of the foreign operator concerned be increased, if it considers that such amount does not adequately cover the risks of a nuclear incident in the course of the transit: provided that the maximum amount thus increased is not to exceed the maximum amount of liability of operators of nuclear installations situated in its territory (art. 7(e))
	- Any Contracting Party may take such measures as it deems necessary to provide for an increase in the amount of compensation specified in this Convention (art. 15(a))

Compulsory insurance or other financial security	Paris Convention including 1964 and 1982 amendments
	- To cover the liability under this Convention, the operator is required to have and maintain insurance or other financial security of the amount established pursuant to art. 7 (art. 10(a)) - National law may provide that the right to compensation for damage caused by a nuclear incident can be exercised directly against the insurer or other financial guarantor furnishing the required security (art. 6(a))
	Paris Convention including 1964, 1982 and 2004 amendments

	- To cover the liability under this Convention, the operator is required to have and maintain insurance or other financial security of the amount established pursuant to art. 7(a) or (b) (art. 10(a)) - Where the liability of the operator is not limited in amount, the Contracting Party within whose territory the nuclear installation of the liable operator is situated will establish a limit upon the financial security of the operator liable, provided that any limit so established will not be less than the amount referred to in art. 7(a) or (b) (art. 10(b)) - The Contracting Party within whose territory the nuclear installation of the liable operator is situated will ensure the payment of claims for compensation for nuclear damage which have been established against the operator by providing the necessary funds to the extent that the insurance or other financial security is not available or sufficient to satisfy such claims, up to an amount not less than the amount referred to in art. 7(a) (art. 10(c)) - National law may provide that the right to compensation for damage caused by a nuclear incident can be exercised directly against the insurer or other financial guarantor furnishing the required security (art. 6(a))
Limitation period	Paris Convention including 1964 and 1982 amendments

	- The right of compensation under this Convention will be extinguished if an action is not brought within 10 years from the date of the nuclear incident; however, national legislation may establish a period longer than 10 years if measures have been taken by the Contracting Party in whose territory the nuclear installation of the operator liable is situated to cover the liability of that operator in respect of any actions for compensation begun after the expiry of the period of 10 years and during such longer period (art. 8(a)) - In the case of damage caused by a nuclear incident involving nuclear fuel or radioactive products or waste which, at the time of the incident have been stolen, lost, jettisoned or abandoned and have not yet been recovered, the period established pursuant to art. 8(a) is to be computed from the date of that nuclear incident, but the period is in no case to exceed 20 years from the date of the theft, loss, jettison or abandonment (art. 8(b)) - National legislation may establish a period of not less than 2 years for the extinction of the right or as a period of limitation either from the date at which the person suffering damage has knowledge or from the date at which he ought reasonably to have known of both the damage and the operator liable: provided that the period established pursuant to art. 8(a) and (b) is not to be exceeded (art. 8(c)) - Unless national law provides to the contrary, any person suffering damage caused by a nuclear incident who has brought an action for compensation within the period provided for in art. 8 may amend his claim in respect of any aggravation of the damage after the expiry of such period provided that final judgment has not been entered by the competent court (art. 8(e))
	Paris Convention including 1964, 1982 and 2004 amendments

	- The right of compensation under this Convention is subject to prescription or extinction if an action is not brought,
	  - with respect to loss of life and personal injury, within 30 years from the date of the nuclear incident (art. 8(a)(i));
	  - with respect to other nuclear damage, within 10 years from the date of the nuclear incident (art. 8(a)(ii));
	  national legislation may, however, establish a period longer than that set out in art. 8(a)(i) or (ii) if measures have been taken by the Contracting Party within whose territory the nuclear installation of the operator liable is situated to cover the liability of that operator in respect of any actions for compensation begun after the expiry of the period set out in art. 8(a)(i) or (ii) and during such longer period (art. 8(b));
	- National legislation may establish a period of not less than 3 years for the prescription or extinction of rights of compensation under the Convention, determined from the date at which the person suffering nuclear damage had knowledge, or from the date at which that person ought reasonably to have known of both the nuclear damage and the operator liable, provided that the periods established pursuant to art. 8(a) and (b) are not exceeded;
	- Unless national law provides to the contrary, any person suffering nuclear damage caused by a nuclear incident who has brought an action for compensation within the period provided for in art. 8 may amend his claim in respect of any aggravation of the nuclear damage after the expiry of such period, provided that final judgment has not been entered by the competent court (art. 8(f))

Who can sue?	Paris Convention including 1964 and 1982 amendments

	- The person who suffers damage - Any person who has paid compensation in respect of damage caused by a nuclear incident under any international agreement in the field of transport in force or open for signature, ratification or accession at the date of this Convention or under any legislation of a non-Contracting State will, up to the amount which he has paid, acquire by subrogation the rights under this Convention of the person suffering damage whom he has so compensated (art. 6(d)) - Any person who has his principal place of business in the territory of a Contracting Party or who is the servant of such a person and who has paid compensation in respect of damage caused by a nuclear incident occurring in the territory of a non-Contracting State or in respect of damage suffered in such territory will, up to the amount which he has paid, acquire the rights which the person so compensated would have had against the operator but for the provisions of art. 2 (art. 6(e))
	Paris Convention including 1964, 1982 and 2004 amendments
	- The person who suffers damage - Any person who has paid compensation in respect of damage caused by a nuclear incident under any international agreement in the field of transport in force or open for signature, ratification or accession at the date of this Convention or under any legislation of a non-Contracting State will, up to the amount which he has paid, acquire by subrogation the rights under this Convention of the person suffering damage whom he has so compensated (art. 6(d)) - Any State may bring an action on behalf of persons who have suffered nuclear damage, who are nationals of that State or have their domicile or residence in its territory, and who have consented thereto (art. 13(g)(i)) - Any person may bring an action to enforce rights under this Convention acquired by subrogation or assignment (art. 13(g)(ii))
Access to information	N/A
Relationship with other liability and compensation rules	N/A

7.2.3.1.4.2. Brussels Supplementary Convention

Full title	Convention of the 31st January 1963 Supplementary to the Paris Convention of the 29th July 1960 on Third Party Liability in the Field of Nuclear Energy				
Place and date of adoption	Brussels, 31/1/1963				
Short title	Brussels Supplementary Convention				
Objective	To supplement the measures provided in the Convention on Third Party Liability in the Field of Nuclear Energy of the 29th July 1960 (referred to as 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 (preamble)				
Date of entry into force	4/12/1974				
Mediterranean Contracting States	France, Italy, Slovenia, Spain				
Non-Contracting Mediterranean States	Albania, Algeria, Bosnia & Herzegovina, Croatia, Cyprus, Egypt, Greece, Israel, Lebanon, Libya, Malta, Monaco, Morocco, Serbia & Montenegro, Syria, Tunisia, Turkey				
Overall number of Contracting States	12 (as at 9/5/2005) (source: OECD Nuclear Energy Agency)				
Amendments	Instrument	Place and date of adoption	Date of entry into force	Overall number of Contracting States	Mediterranean Contracting States
	Additional Protocol	Paris, 28/1/1964	1/4/1968	12 (as at 9/5/2005) (source: OECD Nuclear Energy Agency)	France, Italy, Slovenia, Spain
	Protocol	Paris, 16/11/1982	7/10/1988	12 (as at 9/5/2005) (source: OECD Nuclear Energy Agency)	France, Italy, Slovenia, Spain

	Protocol	Paris, 12/2/2004	Pending ratification, acceptance or approval by at least 6 States (art. 20(c) Brussels Convention as amended)		
Is this Convention open for accession by non-Member or Associate countries of the OECD?	Yes (art. 19; art. 21(b) Paris Convention)				
Liability and compensation tools	Insurance or other financial security, public funds				
Activities covered	Brussels Convention including 1964 and 1982 amendments				
	Operation of and carriage of nuclear substances from or to nuclear installations used for peaceful purposes appearing on a list established and kept up to date, where “nuclear installation” means reactors other than those comprised in any means of transport; factories for the manufacture or processing of nuclear substances; factories for the separation of isotopes of nuclear fuel; factories for the reprocessing of irradiated nuclear fuel; facilities for the storage of nuclear substances other than storage incidental to the carriage of such substances; and such other installations in which there are nuclear fuel or radioactive products or waste as the Steering Committee for Nuclear Energy of the OECD will from time to time determine (arts. 1, 2(a)(i) & 13; arts. 3(a), 4 & 1(a)(ii) Paris Convention)				
	Brussels Convention including 1964, 1982 and 2004 amendments				

	Operation of and carriage of nuclear substances from or to nuclear installations used for peaceful purposes appearing on a list established and kept up to date, where “nuclear installation” means reactors other than those comprised in any means of transport; factories for the manufacture or processing of nuclear substances; factories for the separation of isotopes of nuclear fuel; factories for the reprocessing of irradiated nuclear fuel; facilities for the storage of nuclear substances other than storage incidental to the carriage of such substances; and such other installations in which there are nuclear fuel or radioactive products or waste as the Steering Committee for Nuclear Energy of the OECD will from time to time determine (arts. 1, 2(a) & 13; arts. 3(a), 4 & 1(a)(ii) Paris Convention)
Geographical scope of application	Brussels Convention including 1964 and 1982 amendments

	- The system of the Convention applies to damage caused by nuclear incidents, other than those occurring entirely in the territory of a State which is not a Party to the Convention:
	  - for which an operator of a nuclear installation, used for peaceful purposes, situated in the territory of a Contracting Party to the Convention (referred to as a “Contracting Party”) is liable under the Paris Convention (art. 2(a)(i)); and
	  - suffered
	  - in the territory of a Contracting Party (art. 2(a)(ii)(1)); or
	  - on or over the high seas on board a ship or aircraft registered in the territory of a Contracting Party (art. 2(a)(ii)(2)); or
	  - on or over the high seas by a national of a Contracting Party, provided that, in the case of damage to a ship or an aircraft, the ship or aircraft is registered in the territory of a Contracting Party (art. 2(a)(ii)(3))
	- The Convention applies to the metropolitan territories of the Contracting Parties (art. 24(a))

	Brussels Convention including 1964, 1982 and 2004 amendments

	- The system of this Convention applies to nuclear damage for which an operator of a nuclear installation, used for peaceful purposes, situated in the territory of a Contracting Party to this Convention, is liable under the Paris Convention, and which is suffered:
	  - in the territory of a Contracting Party (art. 2(a)(i)); or
	  - in or above maritime areas beyond the territorial sea of a Contracting Party
	  - on board or by a ship flying the flag of a Contracting Party, or on board or by an aircraft registered in the territory of a Contracting Party, or on or by an artificial island, installation or structure under the jurisdiction of a Contracting Party, or
	  - by a national of a Contracting Party,
	  excluding damage suffered in or above the territorial sea of a State not Party to this Convention (art. 2(a)(ii)); or
	  - in or above the exclusive economic zone of a Contracting Party or on the continental shelf of a Contracting Party in connection with the exploitation or the exploration of the natural resources of that exclusive economic zone or continental shelf (art. 2(a)(iii))
	- The Convention applies to the metropolitan territories of the Contracting Parties (art. 24(a))

Application to areas outside national jurisdiction	Brussels Convention including 1964 and 1982 amendments

	The system of the Convention applies to damage caused by nuclear incidents, other than those occurring entirely in the territory of a State which is not a Party to the Convention:
	- for which an operator of a nuclear installation, used for peaceful purposes, situated in the territory of a Contracting Party to the Convention (referred to as a “Contracting Party”) is liable under the Paris Convention (art. 2(a)(i)); and
	- suffered
	  - on or over the high seas on board a ship or aircraft registered in the territory of a Contracting Party (art. 2(a)(ii)(2)); or
	  - on or over the high seas by a national of a Contracting Party, provided that, in the case of damage to a ship or an aircraft, the ship or aircraft is registered in the territory of a Contracting Party (art. 2(a)(ii)(3))

	Brussels Convention including 1964, 1982 and 2004 amendments
	The system of this Convention applies to nuclear damage for which an operator of a nuclear installation, used for peaceful purposes, situated in the territory of a Contracting Party to this Convention, is liable under the Paris Convention, and which is suffered in or above maritime areas beyond the territorial sea of a Contracting Party: - on board or by a ship flying the flag of a Contracting Party, or on board or by an aircraft registered in the territory of a Contracting Party, or on or by an artificial island, installation or structure under the jurisdiction of a Contracting Party, or - by a national of a Contracting Party, excluding damage suffered in or above the territorial sea of a State not Party to this Convention (art. 2(a)(ii))
Compensation tiers and limitation	Brussels Convention including 1964 and 1982 amendments

	- 300 million SDR in respect of damage per incident (art. 3(a)), provided as follows:
	  - up to an amount of at least 5 million SDR, out of funds provided by insurance or other financial security, such amount to be established by the legislation of the Contracting Party in whose territory the nuclear installation of the operator liable is situated (1st tier) (art. 3(b)(i));
	  - between this amount and 175 million SDR, out of public funds to be made available by the Contracting Party in whose territory the nuclear installation of the operator liable is situated (2nd tier) (art. 3(b)(ii));
	  - between 175 and 300 million SDR, out of public funds to be made available by the Contracting Parties according to the formula for contributions specified in art. 12 (3rd tier) (art. 3(b)(iii))
	- Each Contracting Party must either:
	  - establish the maximum liability of the operator, pursuant to art. 7 of the Paris Convention, at 300 million SDR, and provide that such liability will be covered by all the funds referred to in art. 3(b) (art. 3(c)(i)); or
	  - establish the maximum liability of the operator at an amount at least equal to that established pursuant to art. 3(b)(i) and provide that, in excess of such amount and up to 300 million SDR, the public funds referred to in art. 3(b)(ii) and (iii) will be made available by some means other than as cover for the liability of the operator, provided that the rules of substance and procedure laid down in this Convention are not thereby affected (art. 3(c)(ii))

	Brussels Convention including 1964, 1982 and 2004 amendments

	- €1.5 billion in respect of nuclear damage per nuclear incident (art. 3(a)), provided as follows:
	  - up to an amount of at least €700 million, out of funds provided by insurance or other financial security or out of public funds provided pursuant to art. 10(c) of the Paris Convention, such amount to be established under the legislation of the Contracting Party in whose territory the nuclear installation of the operator liable is situated, and to be distributed, up to €700 million, in accordance with the Paris Convention (1st tier) (art. 3(b)(i));
	  - between the amount referred to in art. 3(b)(i) and €1.2 billion, out of public funds to be made available by the Contracting Party in whose territory the nuclear installation of the operator liable is situated (2nd tier) (art. 3(b)(ii));
	  - between €1.2 billion and €1.5 billion, out of public funds to be made available by the Contracting Parties according to the formula for contributions referred to in art. 12, subject to such amount being increased in accordance with the mechanism referred to in art. 12bis (3rd tier) (art. 3(b)(iii))
	- Each Contracting Party must either:
	  - establish under its legislation that the liability of the operator will not be less than the amount referred to in art. 3(a), and provide that such liability will be covered by all the funds referred to in art. 3(b) (art. 3(c)(i)); or
	  - establish under its legislation the liability of the operator at an amount at least equal to that established pursuant to art. 3(b)(i) of this Convention or art. 7(b) of the Paris Convention, and provide that, in excess of such amount and up to the amount referred to in art. 3(a) of this Convention, the public funds referred to in art. 3(b)(i), (ii) and (iii) of this Convention will be made available by some means other than as cover for the liability of the operator, provided that the rules of substance and procedure laid down in this Convention are not thereby affected (art. 3(c)(ii))

Procurement of funds	Brussels Convention including 1964 and 1982 amendments

	- The system of disbursements by which the public funds required under art. 3(b)(ii) and (iii) are to be made available will be that of the Contracting Party whose courts have jurisdiction (art. 9(a))
	- If the courts having jurisdiction are those of a Contracting Party other than the Contracting Party in whose territory the nuclear installation of the operator liable is situated, the public funds required under art. 3(b)(ii) will be made available by the first-named Contracting Party. The Contracting Party in whose territory the nuclear installation of the operator liable is situated will reimburse to the other Contracting Party the sums paid (art. 11(a))
	- The formula for contributions according to which the Contracting Parties will make available the public funds referred to in art. 3(b)(iii) will be determined as follows:
	  - as to 50%, on the basis of the ratio between the gross national product at current prices of each Contracting Party and the total of the gross national products at current prices of all Contracting Parties as shown by the official statistics published by the OECD for the year preceding the year in which the nuclear incident occurs (art. 12(a)(i));
	  - as to 50%, on the basis of the ratio between the thermal power of the reactors situated in the territory of each Contracting Party and the total thermal power of the reactors situated in the territories of all the Contracting Parties, provided that a reactor will only be taken into consideration for the purposes of this calculation as from the date when it first reaches criticality (art. 12(a)(ii))

	Brussels Convention including 1964, 1982 and 2004 amendments

	- The system of payment of public funds made available pursuant to this Convention will be that of the Contracting Party whose courts have jurisdiction (art. 9(a))
	- If the courts having jurisdiction are those of a Contracting Party other than the Contracting Party in whose territory the nuclear installation of the operator liable is situated, the public funds required under art. 3(b)(ii) will be made available by the first-named Contracting Party. The Contracting Party in whose territory the nuclear installation of the operator liable is situated will reimburse to the other Contracting Party the sums paid (art. 11(a))
	- The formula for contributions according to which the Contracting Parties will make available the public funds referred to in art. 3(b)(iii) will be determined as follows:
	  - as to 35%, on the basis of the ratio between the gross national product at current prices of each Contracting Party and the total of the gross national products at current prices of all Contracting Parties as shown by the official statistics published by the OECD for the year preceding the year in which the nuclear incident occurs (art. 12(a)(i));
	  - as to 65%, on the basis of the ratio between the thermal power of the reactors situated in the territory of each Contracting Party and the total thermal power of the reactors situated in the territories of all the Contracting Parties, provided that for the purposes of this calculation a reactor will only be taken into consideration as from the date when it first reaches criticality (art. 12(a)(ii))

Triggering of the obligation to compensate	Brussels Convention including 1964 and 1982 amendments
	The obligation of the operator to pay compensation out of public funds made available pursuant to art. 3(b)(ii) and (iii) will only be enforceable against the operator as and when such funds are in fact made available (art. 3(d))
	Brussels Convention including 1964, 1982 and 2004 amendments
	The obligation of the operator to pay compensation out of public funds made available pursuant to art. 3(b)(ii) and (iii) will only be enforceable against the operator as and when such funds are in fact made available (art. 3(d))
Judicial/administrative measures	Award of damages and/or compensation
Compensable damage	Brussels Convention including 1964 and 1982 amendments

	Damage (arts. 2(a) in limine & 1), defined as:
	- damage to or loss of life of any person (art. 3(a)(i) Paris Convention); and
	- damage to or loss of any property other than
	  - the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located (art. 3(a)(ii)(1) Paris Convention); and
	  - any property on that same site which is used or to be used in connection with any such installation (art. 3(a)(ii)(2) Paris Convention)

	Brussels Convention including 1964, 1982 and 2004 amendments

	Nuclear damage (arts. 2(a) in limine & 1), defined as: - loss of life or personal injury (art. 1(a)(vii)(1) Paris Convention); - loss of or damage to property (art. 1(a)(vii)(2) Paris Convention); and each of the following to the extent determined by the law of the competent court, - economic loss arising from loss or damage referred to in sub-paragraph 1 or 2 above insofar as not included in those sub-paragraphs, if incurred by a person entitled to claim in respect of such loss or damage (art. 1(a)(vii)(3) Paris Convention); - the costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in art. 1(a)(vii)(2) of the Paris Convention (art. 1(a)(vii)(4) Paris Convention); - loss of income deriving from a direct economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and insofar as not included in art. 1(a)(vii)(2) of the Paris Convention (art. 1(a)(vii)(5) Paris Convention); - the costs of preventive measures, and further loss or damage caused by such measures (art. 1(a)(vii)(6) Paris Convention), in the case of art. 1(a)(vii)(1) to (5) of the Paris Convention, to the extent that the loss or damage arises out of or results from ionizing radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of nuclear substances coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter (art. 1(a)(vii) in fine Paris Convention); but compensation does not extend to: - damage to the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located (art. 3(a)(i) Paris Convention); and - damage to any property on that same site which is used or to be used in connection with any such installation (art. 3(a)(ii) Paris Convention)
Compulsory insurance or other financial security	Brussels Convention including 1964 and 1982 amendments

financial security	- A Contracting Party may require the operator to have and maintain insurance or other financial security in accordance with the first tier set forth in art. 3(b)(i) (arts. 1 & 14(a); art. 10(a) Paris Convention) - National law may provide that the right to compensation for damage caused by a nuclear incident can be exercised directly against the insurer or other financial guarantor furnishing the required security (arts. 1 & 14(a); art. 6(a) Paris Convention)
	Brussels Convention including 1964, 1982 and 2004 amendments
	- A Contracting Party may require the operator to have and maintain insurance or other financial security in accordance with the first tier set forth in art. 3(b)(i) (arts. 1 & 14(a); art. 10(a) Paris Convention) - National law may provide that the right to compensation for damage caused by a nuclear incident can be exercised directly against the insurer or other financial guarantor furnishing the required security (arts. 1 & 14(a); art. 6(a) Paris Convention)
Limitation period	Brussels Convention including 1964 and 1982 amendments
	- 10 years from the date of the nuclear incident (art. 6, 1st sentence) - In the case of damage caused by a nuclear incident involving nuclear fuel or radioactive products or waste which, at the time of the incident have been stolen, lost, jettisoned, or abandoned and have not yet been recovered, 20 years from the date of the theft, loss, jettison or abandonment (art. 6, 2nd sentence) - Unless national law provides to the contrary, any person suffering damage caused by a nuclear incident who has brought an action for compensation within the period provided for in art. 8 of the Paris Convention may amend his claim in respect of any aggravation of the damage after the expiry of such period provided that final judgment has not been entered by the competent court (art. 6 in fine; art. 8(e) Paris Convention) - National legislation may establish a period of prescription of 3 years either from the date at which the person suffering damage has knowledge or from the date at which he ought reasonably to have known of both the damage and the operator liable provided that the period established pursuant to art. 8(a) and (b) of the Paris Convention is not to be exceeded (art. 7; art. 8(c) Paris Convention)

	Brussels Convention including 1964, 1982 and 2004 amendments
	- 30 years from the date of the nuclear incident in the case of loss of life or personal injury (art. 6, 1st sentence in limine) - 10 years from the date of the nuclear incident in the case of all other nuclear damage (art. 6, 1st sentence in fine) - Unless national law provides to the contrary, any person suffering damage caused by a nuclear incident who has brought an action for compensation within the period provided for in art. 8 of the Paris Convention may amend his claim in respect of any aggravation of the damage after the expiry of such period provided that final judgment has not been entered by the competent court (art. 6 in fine; art. 8(f) Paris Convention) - National legislation may establish a period of prescription of at least 3 years either from the date at which the person suffering damage has knowledge or from the date at which he ought reasonably to have known of both the damage and the operator liable provided that the period established pursuant to art. 8(a) and (b) of the Paris Convention is not to be exceeded (art. 7; art. 8(d) Paris Convention)
Who can sue?	Brussels Convention including 1964 and 1982 amendments
	- The person who suffers damage - Any person who has paid compensation in respect of damage caused by a nuclear incident under any international agreement in the field of transport in force or open for signature, ratification or accession at the date of the Paris Convention or under any legislation of a non-Contracting State will, up to the amount which he has paid, acquire by subrogation the rights under this Convention of the person suffering damage whom he has so compensated (art. 1; art. 6(d) Paris Convention) - Any person who has his principal place of business in the territory of a Contracting Party or who is the servant of such a person and who has paid compensation in respect of damage caused by a nuclear incident occurring in the territory of a non-Contracting State will, up to the amount which he has paid, acquire the rights which the person so compensated would have had against the operator but for the provisions of art. 2 of the Paris Convention (art. 1; art. 6(e) Paris Convention)
	Brussels Convention including 1964, 1982 and 2004 amendments

	- The person who suffers damage - Any person who has paid compensation in respect of damage caused by a nuclear incident under any international agreement in the field of transport in force or open for signature, ratification or accession at the date of the Paris Convention or under any legislation of a non-Contracting State will, up to the amount which he has paid, acquire by subrogation the rights under this Convention of the person suffering damage whom he has so compensated (art. 1; art. 6(d) Paris Convention)
Access to information	N/A
Relationship with other liability and compensation rules	- The system instituted by this Convention is supplementary to that of the Paris Convention, will be subject to the provisions of the Paris Convention, and will be applied in accordance with articles of this Convention (art. 1) - No State may become or continue to be a Contracting Party to this Convention unless it is a Contracting Party to the Paris Convention (art. 19) - Any Contracting Party may conclude an agreement with a State which is not a Party to this Convention concerning compensation out of public funds for damage caused by a nuclear incident (art. 15(a)); to the extent that the conditions for payment of compensation under any such agreement are not more favorable than those which result from the measures adopted by the Contracting Party concerned for the application of the Paris Convention and of this Convention, the amount of damage caused by a nuclear incident covered by this Convention and for which compensation is payable by virtue of such an agreement may be taken into consideration, where the proviso to art. 8 applies, in calculating the total amount of damage caused by that incident (art. 15(b)); the provisions of art. 15(a) and (b) will in no case affect the obligations under art. 3(b)(ii) and (iii) of those Contracting Parties which have not given their consent to such agreement (art. 15(c))

7.2.3.2. Global Regimes

Global regimes of liability and compensation depicted herein relate, in turn, to UNEP, IMO and IAEA.

7.2.3.2.1. UNEP

7.2.3.2.1.1. Basel Protocol

Full title	Basel Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal
Place and date of adoption	Basel, 10/12/1999
Short title	Basel Protocol
Objective	By implementing art. 12 of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989, to provide for a comprehensive regime for liability and for adequate and prompt compensation for damage resulting from the transboundary movement of hazardous wastes and other wastes and their disposal including illegal traffic in those wastes (preamble & art. 1)
Date of entry into force	Not in force
Mediterranean Contracting States	Syria
Overall number of Contracting States	5
Number of additional Contracting States needed for entry into force	15
Activities covered	Movement and disposal of hazardous wastes and other wastes, including illegal traffic (arts. 3(1) & 2(1) & (2)(b))
Geographical scope of application	The Protocol applies only to damage suffered in an area under the national jurisdiction of a Contracting Party arising from an incident (arts. 3(3)(a) & 2(2)(h))
Application to areas outside national jurisdiction	Yes but only in relation to the following types of damage (art. 3(3)(c)): - loss of life or personal injury; - loss of or damage to property other than property held by the person liable in accordance with this

	Protocol; - the costs of preventive measures, including any loss or damage caused by such measures, to the extent that the damage arises out of or results from hazardous properties of the wastes involved in the transboundary movement and disposal of hazardous wastes and other wastes subject to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989
Liable party	- Successively and depending on the case, the party held strictly liable for damage is the notifier, the exporter, the importer or the disposer (art. 4) - In any case, any person will be held liable for damage caused or contributed to by his lack of compliance with the provisions implementing the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989 or by his wrongful intentional, reckless or negligent acts or omissions (art. 5)
Basis of liability	- Insofar as the notifier, the exporter, the importer and the disposer are concerned, liability for damage is strict (art. 4) - Fault-based liability can be invoked against any person for damage caused or contributed to by his lack of compliance with the provisions implementing the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989 or by his wrongful intentional, reckless or negligent acts or omissions (art. 5)
Special exemptions from strict liability	Compliance with a compulsory measure of a public authority of the State where the damage occurred (art. 4(5)(c))
Judicial/administrative measures	Left to national law (arts. 19 & 20(1))
Compensable damage	“Damage” (arts. 4 & 5), meaning: - loss of life or personal injury (art. 2(2)(c)(i)); - loss of or damage to property other than property held by the person liable in accordance with this Protocol (art. 2(2)(c)(ii)); - loss of income directly deriving from an economic interest in any use of the environment, incurred as a result of impairment of the environment, taking into account savings and costs (art. 2(2)(c)(iii)); - the costs of measures of reinstatement of the impaired environment, limited to the costs of measures

	actually taken or to be undertaken (art. 2(2)(c)(iv)); and - the costs of preventive measures, including any loss or damage caused by such measures, to the extent that the damage arises out of or results from hazardous properties of the wastes involved in the transboundary movement and disposal of hazardous wastes and other wastes subject to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989 (art. 2(2)(c)(v))
Compensation limitation	Financial limits for the liability under art. 4 are to be determined by domestic law (art. 12(1)), but must: - for the notifier, exporter or importer, for any one incident, be not less than: - 1 million SDR for shipments up ton and including 5 tons; - 2 million SDR for shipments exceeding 5 tons, up to and including 25 tons; - 4 million SDR for shipments exceeding 25 tons, up to and including 50 tons; - 6 million SDR for shipments exceeding 50 tons, up to and including to 1,000 tons; - 10 million SDR for shipments exceeding 1,000 tons, up to and including 10,000 tons; - plus an additional 1,000 SDR for each additional ton up to a maximum of 30 million SDR; - for the disposer, for any one incident, be not less than 2 million SDR for any one incident
Compulsory insurance or other financial security	- The persons liable under art. 4 must establish and maintain during the period of the time limit of liability, insurance, bonds or other financial guarantees covering their liability under art. 4 for amounts not less than the minimum limits specified in paragraph 2 of Annex B (art. 14(1)) - Any claim under the Protocol may be asserted directly against any person providing insurance, bonds or other financial guarantees (art. 14(4))
Limitation period	Claims must be brought within 5 years from the date the claimant knew or ought reasonably to have known of the damage provided, but in any case within 10 years from the date of the incident (art. 13(1) & (2))
Who can sue?	Left to national law (arts. 19 & 20(1))
Access to information	N/A

Relationship with other liability and compensation rules	- The Protocol does not apply to damage due to an incident occurring during a transboundary movement of hazardous wastes and other wastes and their disposal pursuant to a notified bilateral, multilateral or regional agreement or arrangement if the damage occurred in an area under the national jurisdiction of any of the Parties to the agreement or arrangement and there exists a liability and compensation regime, which is in force and is applicable to the damage resulting from such a transboundary movement or disposal provided it fully meets, or exceeds the objective of the Protocol by providing a high level of protection to persons who have suffered damage (art. 3(7)) - Whenever the provisions of this Protocol and the provisions of a bilateral, multilateral or regional agreement apply to liability and compensation for damage caused by an incident arising during the same portion of a transboundary movement, the Protocol will not apply provided the other agreement is in force for the Party or Parties concerned and had been opened for signature when the Protocol was opened for signature, even if the agreement was amended afterwards (art. 11)

7.2.3.2.2. IMO

7.2.3.2.2.1. CLC ’92

Full title	International Convention on Civil Liability for Oil Pollution Damage, 1992
Place and date of adoption	London, 27/11/1992
Short title	CLC ’92
Objective	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 (preamble)
Date of entry into force	30/5/1996
Mediterranean Contracting States	Algeria, Croatia, Cyprus, Egypt, France, Greece, Israel, Italy, Lebanon, Malta, Monaco, Morocco, Slovenia, Spain, Syria, Tunisia, Turkey
Non-Contracting Mediterranean States	Albania, Bosnia & Herzegovina, Libya, Serbia & Montenegro

Overall number of Contracting States	107 Contracting States (as at 31/3/2005) representing 93.61% of world tonnage (as at 31/12/2003) (source: IMO)
Activities covered	Operation of a ship carrying oil (art. III(1)), where: - "ship" is defined as any sea-going vessel and seaborne craft of any type whatsoever *constructed or adapted for the carriage of oil in bulk as cargo*, provided that a ship capable of carrying oil and other cargoes will be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard (art. I(1)); and - "oil" is defined as any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship (art. I(5))

Geographical scope of application	The Convention applies exclusively:
	- to pollution damage caused:
	  - in the territory, including the territorial sea, of a Contracting State, and
	  - in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;
	- to preventive measures, wherever taken, to prevent or minimize such damage (art. II)

Application to areas outside national jurisdiction	Yes but only in respect of preventive measures to prevent or minimize pollution damage caused in the territory, including the territorial sea, of a Contracting State, and in the exclusive economic zone or equivalent area of a Contracting State (art. II(b))
Liable party	The owner of the ship (arts. III(1) & I(3))
Basis of liability	Liability is strict for pollution damage caused by the ship as a result of an incident (art. III(1)), where "incident" is defined as any occurrence, or series of occurrences having the same origin, which causes pollution damage or creates a grave and imminent threat of causing such damage (art. I(8))
Special exemptions from strict	The damage was wholly caused by the negligence or other wrongful act of any Government or other

liability	authority responsible for the maintenance of lights or other navigational aids in the exercise of that function (art. III(2)(c))
Judicial/administrative measures	Award of damages
Compensable damage	Pollution damage (art. III(1)), defined as: - loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment will be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken (art. I(6)(a)); - the costs of preventive measures and further loss or damage caused by preventive measures (art. I(6)(b))
Compensation limitation	- 4.51 million SDR for a ship not exceeding 5,000 GT and 631 SDR for each additional unit of GT provided, however, that this aggregate amount will not in any event exceed 89.77 million SDR (art. V(1)) - Compensation limits are subject to tacit acceptance procedure for amendment (art. XII ter, incorporating art. 15 Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969)
Compulsory insurance or other financial security	- The owner of a ship registered in a Contracting State and carrying more than 2,000 tons of oil in bulk as cargo is required to maintain insurance or other financial security, such as the guarantee of a bank or a certificate delivered by an international compensation fund, in the sums fixed by applying the limits of liability prescribed in art. V(1) to cover his liability for pollution damage under this Convention (art. VII(1)); a certificate that insurance or other financial security is in force in accordance with the provisions of this Convention is to be issued to each ship after the appropriate authority of a Contracting State has determined that the requirements of the Convention have been complied with (art. VII(2)); a Contracting State is not to permit a ship under its flag to which the requirement of compulsory insurance or other financial security applies to trade unless a certificate has been issued (art. VII(10)); each Contracting State is to ensure, under its national legislation, that insurance or other security to the extent specified in this Convention is in force in respect of any ship, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an off-shore terminal in its territorial sea, if the ship actually carries more than 2,000 tons of oil in bulk as cargo (art. VII(11)) - Any claim for compensation for pollution damage may be brought directly against the insurer or other

	person providing financial security for the owner's liability for pollution damage (art. VII(8))
Limitation period	3 years from the date when the damage occurred, but not later than 6 years from the date of the incident which caused the damage (art. VIII)
Who can sue?	No provision on who can sue; presumably only the person who suffers pollution damage
Access to information	N/A
Relationship with other liability and compensation rules	- The Convention is to supersede any international conventions in force or open for signature, ratification or accession at the date on which the Convention is opened for signature, but only to the extent that such conventions would be in conflict with it; however, the obligations of Contracting States to non-Contracting States arising under such international conventions are not to be affected (art. XII) - Special rules are provided for in the case of a State which at the time of an incident is a Party both to the present Convention and to the International Convention on Civil Liability for Oil Pollution Damage, 1969 (art. XII bis)

7.2.3.2.2.2. Fund Convention ’92

Full title	International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992
Place and date of adoption	London, 27/11/1992
Short title	Fund Convention ’92
Objective	To provide for a compensation system supplementary to the CLC ’92 and consisting of the setting up of a fund constituted from the contributions of the oil cargo interests with a view to ensuring that full compensation will be available to victims of oil pollution incidents (preamble & art. 2(1))
Date of entry into force	30/5/1996
Mediterranean Contracting States	Algeria, Croatia, Cyprus, France, Greece, Israel, Italy, Malta, Monaco, Morocco, Slovenia, Spain, Tunisia, Turkey

	Tunisia, Turkey
Non-Contracting Mediterranean States	Albania, Bosnia & Herzegovina, Egypt, Lebanon, Libya, Serbia & Montenegro, Syria
Overall number of Contracting States	94 (as at 31/3/2005) (source: IMO)
Liability and compensation tool	Interstate fund
Activities covered	Operation of a ship carrying oil (art. 2(1)(a), incorporating art. III(1) CLC '92), where: - "ship" is defined as any sea-going vessel and seaborne craft of any type whatsoever *constructed or adapted for the carriage of oil in bulk as cargo*, provided that a ship capable of carrying oil and other cargoes will be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard (art. 1(2), incorporating art. I(1) CLC '92); and - "oil" is defined as any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship (art. 1(2), incorporating art. 2(1)(a) CLC '92)

Geographical scope of application	The Convention applies exclusively:
	- to pollution damage caused:
	  - in the territory, including the territorial sea, of a Contracting State, and
	  - in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;
	- to preventive measures, wherever taken, to prevent or minimize such damage (art. 3)

Application to areas outside national jurisdiction	Yes but only in respect of preventive measures to prevent or minimize pollution damage caused in the territory, including the territorial sea, of a Contracting State, and in the exclusive economic zone or equivalent area of a Contracting State (art. 3(b))

Fund's official name	International Oil Pollution Compensation Fund 1992 (art. 2)
Fund's short name	IOPC Fund '92

Fund's constitution and maintenance	- The IOPC Fund '92 is to be maintained via annual contributions to be made in respect of each Contracting State by any person who, in the reference calendar year, has received in total quantities exceeding 150,000 tons:
	  - in the ports or terminal installations in the territory of that State contributing oil carried by sea to such ports or terminal installations (art. 10(1)(a)); and
	  - in any installations situated in the territory of that Contracting State contributing oil which has been carried by sea and discharged in a port or terminal installation of a non-Contracting State, provided that contributing oil will only be taken into account on first receipt in a Contracting State after its discharge in that non-Contracting State (art. 10(1)(b))
	- The amount of annual contributions is assessed annually by the Assembly of the Supplementary Fund on the basis of an estimate in the form of a budget of expenditure and income (art. 12)

Triggering of the obligation to compensate	The IOPC Fund '92 is to pay compensation 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 CLC '92, - because no liability for the damage arises under the CLC '92 (art. 4(1)(a)); - because the owner liable for the damage under the CLC '92 is financially incapable of meeting his obligations in full and any compulsory financial security that may be provided under art. VII of that Convention does not cover or is insufficient to satisfy the claims for compensation for the damage; an owner being treated as financially incapable of meeting his obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under the CLC '92 after having taken all reasonable steps to pursue the legal remedies available to him (art. 4(1)(b)); - because the damage exceeds the owner's liability under the CLC '92 as limited pursuant to art. V(1) of that Convention or under the terms of any other international convention in force or open for signature, ratification or accession at the date of this Convention (art. 4(1)(c))
Special exonerations from the obligation to compensate	None

Judicial/administrative measures	Award of compensation
Compensable damage	Pollution damage (art. 4(1)), defined as: - loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment will be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken (art. 1(2), incorporating art. I(6)(a) CLC '92); - the costs of preventive measures and further loss or damage caused by preventive measures (art. 1(2), incorporating art. I(6)(b) CLC '92); - expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize pollution damage (art. 4(1) in fine)
Compensation limitation	- 203 million SDR (ca. US$304.5 million as at 28/4/2005) per single incident including the amount actually paid under the CLC '92 (art. 4(4)(a)) provided that the aggregate amount of compensation payable by the IOPC Fund '92 for pollution damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character is not to exceed 203 million SDR (ca. US$304.5 million as at 28/4/2005) (art. 4(4)(b)) - 300,740,000 SDR per single incident including the amount actually paid under the CLC '92 with respect to any incident occurring during any period when there are three Parties to the Fund Convention '92 in respect of which the combined relevant quantity of contributing oil received by persons in the territories of such Parties, during the preceding calendar year, equaled or exceeded 600 million tons (art. 4(4)(c)) - Compensation limits are subject to tacit acceptance procedure for amendment (art. 33 Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 18 December 1971)
Limitation period	3 years from the date when the damage occurred, but not later than 6 years from the date of the incident which caused the damage (art. 6)
Who can sue?	No provision on who can sue; presumably only the person who suffers pollution damage
Access to information	N/A

Relationship with other liability and compensation rules	The Fund Convention ’92 may be ratified, accepted, approved or acceded to only by States which have ratified, accepted, approved or acceded to the CLC ’92 (art. 36 quinquies, incorporating art. 28(4) Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 18 December 1971)

7.2.3.2.2.3. Supplementary Fund Protocol

Full title	Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971
Place and date of adoption	London, 16/5/2003
Short title	Supplementary Fund Protocol
Objective	To provide for a compensation system supplementary to the CLC ’92 and the Fund Convention ’92 with a view to ensuring that victims of oil pollution damage are compensated in full for their loss or damage and to alleviating the difficulties faced by victims in cases where there is a risk that the amount of compensation available under those Conventions will be insufficient to pay established claims in full and that as a consequence the IOPC Fund ’92 has decided provisionally that it will pay only a proportion of any established claim (preamble & art. 2(1))
Date of entry into force	3/3/2005 (source: IMO)
Mediterranean Contracting States	France, Spain
Non-Contracting Mediterranean States	Albania, Algeria, Bosnia & Herzegovina, Croatia, Cyprus, Egypt, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Morocco, Serbia & Montenegro, Slovenia, Syria, Tunisia, Turkey
Overall number of Contracting States	9 (as at 31/3/2005) (source: IMO)
Activities covered	Operation of a ship carrying oil (art. 4(1), incorporating art. III(1) CLC ’92), where: - “ship” is defined as any sea-going vessel and seaborne craft of any type whatsoever *constructed or adapted for the carriage of oil in bulk as cargo*, provided that a ship capable of carrying oil and other

	cargoes will be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard (art. 1(6), incorporating art. I(1) CLC '92); and - "oil" is defined as any persistent hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil, whether carried on board a ship as cargo or in the bunkers of such a ship (art. 1(6), incorporating art. 2(1)(a) CLC '92)
Geographical scope of application	The Convention applies exclusively: - to pollution damage caused: - in the territory, including the territorial sea, of a Contracting State (art. 3(a)(i)), and - in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured (art. 3(a)(ii)); - to preventive measures, wherever taken, to prevent or minimize such damage (art. 3(b))
Application to areas outside national jurisdiction	Yes but only in respect of preventive measures to prevent or minimize pollution damage caused in the territory, including the territorial sea, of a Contracting State, and in the exclusive economic zone or equivalent area of a Contracting State (art. 3(b))
Fund's official name	International Oil Pollution Compensation Supplementary Fund, 2003 (art. 2(1))
Fund's short name	IOPC Supplementary Fund
Fund's constitution and maintenance	- The IOPC Supplementary Fund is to be constituted and maintained via annual contributions to be made in respect of each Contracting State by any person who, in the reference calendar year, has received in total quantities exceeding 150,000 tons: - in the ports or terminal installations in the territory of that State contributing oil carried by sea to such ports or terminal installations (art. 10(1)(a)); and - in any installations situated in the territory of that Contracting State contributing oil which has been carried by sea and discharged in a port or terminal installation of a non-Contracting State, provided that contributing oil will only be taken into account on first receipt in a Contracting State

	after its discharge in that non-Contracting State (art. 10(1)(b)) - The amount of annual contributions is assessed annually by the Assembly of the Supplementary Fund on the basis of an estimate in the form of a budget of expenditure and income (art. 11) - There will be deemed to be a minimum receipt of 1 million tons of contributing oil in each Contracting State. When the aggregate quantity of contributing oil received in a Contracting State is less than 1 million tons, the Contracting State is to assume the obligations that would be incumbent under this Protocol on any person who would be liable to contribute to the Supplementary Fund in respect of oil received within the territory of that State in so far as no liable person exists for the aggregated quantity of oil received (art. 14)
Triggering of the obligation to compensate	- The IOPC Supplementary Fund is to pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for an established claim for such damage under the terms of the Fund Convention ’92, because the total damage exceeds, or there is a risk that it will exceed, the applicable limit of compensation laid down in art. 4(4) of the Fund Convention ’92 in respect of any one incident (art. 4(1)) - The IOPC Supplementary Fund is to pay compensation when the Assembly of the IOPC Fund ’92 has considered that the total amount of the established claims exceeds, or there is a risk that the total amount of established claims will exceed the aggregate amount of compensation available under art. 4(4) of the Fund Convention ’92 and that as a consequence the Assembly of the IOPC Fund ’92 has decided provisionally or finally that payments will only be made for a proportion of any established claim. The Assembly of the Supplementary Fund is then to decide whether and to what extent the Supplementary Fund will pay the proportion of any established claim not paid under the CLC ’92 and the Fund Convention ’92 (art. 5)
Special exonerations from the obligation to compensate	None
Judicial/administrative measures	Award of compensation
Compensable damage	Pollution damage (art. 4(1)), defined as: - loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment will be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken (art. 1(6),

	incorporating art. I(6)(a) CLC ’92); - the costs of preventive measures and further loss or damage caused by preventive measures (art. 1(6), incorporating art. I(6)(b) CLC ’92)
Compensation limitation	- 750 million SDR (ca. US$1.1 billion) including the amount of compensation actually paid under the CLC ’92 and Fund Convention ’92 (art. 4(2)(a)) - Compensation limits are subject to tacit acceptance procedure for amendment (arts. 24 & 25)
Limitation period	3 years from the date when the damage occurred, but not later than 6 years from the date of the incident which caused the damage (art. 6)
Who can sue?	The person who suffers pollution damage and any party subrogated in his rights or having a right of recourse against the Supplementary Fund, including a Contracting State or agency thereof which has paid compensation for pollution damage in accordance with provisions of national law (art. 9(4))
Access to information	N/A
Relationship with other liability and compensation rules	Only Contracting States to the 1992 Fund Convention may become Contracting States to this Protocol (art. 19(3))

7.2.3.2.2.4. Bunkers Convention

Full title	International Convention on Civil Liability for Bunker Oil Pollution Damage
Place and date of adoption	London, 23/3/2001
Short title	Bunkers Convention
Objective	To complement the existing international rules on liability and compensation for ship-generated oil pollution damage resulting from the escape or discharge of bunker oil (preamble)
Date of entry into force	Not in force (as at 31/3/2005) (source: IMO)

Mediterranean Contracting States	Cyprus, Slovenia, Spain
Non-Contracting Mediterranean States	Albania, Algeria, Bosnia & Herzegovina, Croatia, Egypt, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Morocco, Serbia & Montenegro, Syria, Tunisia, Turkey
Overall number of Contracting States	6 Contracting States (as at 31/3/2005) representing 4.09% of world tonnage (as at 31/12/2003) (source: IMO)
Minimum number of Contracting States needed for entry into force	18 States, including 5 States each with ships whose combined gross tonnage is not less than 1 million (art. 14(1))
Activities covered	Carriage on board a ship of bunker oil for operation or propulsion purposes (arts. 3(1) & 1(5)), where “ship” means any seagoing vessel and seaborne craft, of any type whatsoever (art. 1(1))

Geographical scope of application	The Convention applies exclusively:
	- to pollution damage caused:
	  - in the territory, including the territorial sea, of a State Party (art. 2(a)(i)), and
	  - in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a State Party has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured (art. 2(a)(ii));
	- to preventive measures, wherever taken, to prevent or minimize such damage (art. 2(b))

Application to areas outside national jurisdiction	Yes but only in respect of preventive measures to prevent or minimize pollution damage caused in the territory, including the territorial sea, of a State Party, and in the exclusive economic zone or equivalent area of a State Party (art. 2(b))
Liable party	The shipowner at the time of an incident (art. 3(1)), where “shipowner” means the owner, including the registered owner, bareboat charterer, manager and operator of the ship (art. 1(3))
Basis of liability	Liability is strict for pollution damage caused by any bunker oil on board or originating from the ship (art. 3(1))

Special exemptions from strict liability	The damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function (art. 3(3)(c))
Judicial/administrative measures	Award of damages
Compensable damage	Pollution damage (art. 3(1)), defined as: - loss or damage caused outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment is be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken (art. 1(9)(a)); - the costs of preventive measures and further loss or damage caused by preventive measures (art. 1(9)(b))
Compensation limitation	This Convention does not affect the right of the shipowner and the person or persons providing insurance or other financial security to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976 (see recapitulative chart … and section… above), as amended (art. 6)
Compulsory insurance or other financial security	- The registered owner of a ship having a gross tonnage greater than 1000 registered in a State Party is required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the liability of the registered owner for pollution damage in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases, not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as amended (art. 7(1)) - Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the registered owner's liability for pollution damage (art. 7(10))
Limitation period	3 years from the date when the damage occurred, but not later than 6 years from the date of the incident which caused the damage (art. 8)
Who can sue?	No provision on who can sue; presumably only the person who suffers pollution damage
Access to information	N/A

Relationship with other liability and compensation rules	- This Convention does not apply to pollution damage as defined in the CLC '92, whether or not compensation is payable in respect of it under that Convention (art. 4(1)) - This Convention supersedes any Convention in force or open for signature, ratification or accession at the date on which this Convention is opened for signature, but only to the extent that such Convention would be in conflict with it; however, nothing in this article affects the obligations of States Parties to States not party to this Convention arising under such Convention (art. 11)

7.2.3.2.2.5. HNS Convention

Full title	International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea
Place and date of adoption	London, 3/5/1996
Short title	HNS Convention
Objective	To ensure that adequate, prompt and effective compensation is available to persons who suffer damage caused by incidents in connection with the carriage by sea of hazardous and noxious substances (preamble)
Date of entry into force	Not in force (as at 31/3/2005) (source: IMO)
Mediterranean Contracting States	Cyprus, Morocco, Slovenia
Non-Contracting Mediterranean States	Albania, Algeria, Bosnia & Herzegovina, Croatia, Egypt, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Serbia & Montenegro, Spain, Syria, Tunisia, Turkey
Overall number of Contracting States	8 Contracting States representing 5.37% of world tonnage (as at 31/12/2003) (source: IMO)
Conditions for entry into force	- 12 Contracting States, including 4 States each with not less than 2 million units of gross tonnage (art. 64(1)(a)) - Specified minimum quantities of contributing cargo to have been received in ports or terminals of

	Contracting States (art. 64(1)(b))
Liability and compensation tools	Private liability, interstate fund

Activities covered	Operation of a ship carrying hazardous and noxious substances by sea (art. 4(1)), where:
	- "ship" means any seagoing vessel and seaborne craft, of any type whatsoever (art. 1(1)); and
	- "hazardous and noxious substances" (HNS) means:
	  - any of the following substances, materials and articles carried on board a ship as cargo:
	  - oils carried in bulk listed in appendix I of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended (art. 1(5)(a)(i));
	  - noxious liquid substances carried in bulk referred to in appendix II of Annex II to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended, and those substances and mixtures provisionally categorized as falling in pollution category A, B, C or D in accordance with regulation 3(4) of the said Annex II (art. 1(5)(a)(ii));
	  - dangerous liquid substances carried in bulk listed in Chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, 1983, as amended, and the dangerous products for which the preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.3 of the Code (art. 1(5)(a)(iii));
	  - dangerous, hazardous and harmful substances, materials and articles in packaged form covered by the International Maritime Dangerous Goods Code, as amended (art. 1(5)(a)(iv));
	  - liquefied gases as listed in Chapter 19 of the International Code for the Construction and Equipment of Ships carrying Liquefied Gases in Bulk, 1983, as amended, and the products for which preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code (art. 1(5)(a)(v));
	  - liquid substances carried in bulk with a flashpoint not exceeding 60deg.C (measured by a closed cup test) (art. 1(5)(a)(vi));
	  - solid bulk materials possessing chemical hazards covered by appendix B of the Code of Safe

	Practice for Solid Bulk Cargoes, as amended, to the extent that these substances are also subject to the provisions of the International Maritime Dangerous Goods Code when carried in packaged form (art. 1(5)(a)(vii)); and - residues from the previous carriage in bulk of substances referred to in art. 1(5)(a)(i) to (iii) and (v) to (vii) (art. 1(5)(b))
Geographical scope of application	The Convention applies exclusively: - to any damage caused in the territory, including the territorial sea, of a State Party (art. 3(a)); - to damage by contamination of the environment caused in the exclusive economic zone of a State Party, established in accordance with international law, or, if a State Party has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured (art. 3(b)); - to damage, other than damage by contamination of the environment, caused outside the territory, including the territorial sea, of any State, if this damage has been caused by a substance carried on board a ship registered in a State Party or, in the case of an unregistered ship, on board a ship entitled to fly the flag of a State Party (art. 3(c)); and - to preventive measures, wherever taken (art. 3(d))
Application to areas outside national jurisdiction	Yes but only in respect of: - to damage, other than damage by contamination of the environment, caused outside the territory, including the territorial sea, of any State, if this damage has been caused by a substance carried on board a ship registered in a State Party or, in the case of an unregistered ship, on board a ship entitled to fly the flag of a State Party (art. 3(c)); and - to preventive measures, wherever taken (art. 3(d))
1st tier: private liability	
Liable party	Under the Convention's first of a two-tier system of liability and compensation, the liable party is the owner (art. 7(1)), defined as the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship provided that, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "owner" means

	such company (art. 1(3))
Basis of liability	Liability is strict for damage caused by any hazardous and noxious substances in connection with their carriage by sea on board the ship (art. 7(1))

Special exemptions from strict liability	- The damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function (art. 7(2)(c))
	- The failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped either:
	  - has caused the damage, wholly or partly (art. 7(2)(d)(i)); or
	  - has led the owner not to obtain insurance in accordance with the Convention (art. 7(2)(d)(ii))

Judicial/administrative measures	Award of damages
Compensation limitation	- For a ship not exceeding 2,000 GT, 10 million SDR (art. 9(1)(a)) - For a ship with a tonnage in excess of 2,000 GT, in addition to the amount mentioned in art. 9(1)(a), 1,500 SDR for each unit of GT from 2,001 to 50,000 GT and 360 SDR for each unit of GT in excess of 50,000 units of tonnage provided, however, that this aggregate amount does not in any event exceed 100 million SDR (art. 9(1)(b)) - Compensation limits are subject to tacit acceptance procedure for amendment (art. 48)
Compulsory insurance or other financial security	- The owner of a ship registered in a State Party and actually carrying hazardous and noxious substances is required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, in the sums fixed by applying the limits of liability prescribed in art. 9(1) to cover liability for damage under the Convention (art. 12(1)) - Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the owner's liability for pollution damage (art. art. 12(8))
2nd tier: interstate fund	
Fund's official name	International Hazardous and Noxious Substances Fund (art. 13(1))

Fund's short name	HNS Fund
Fund's constitution and maintenance	- The HNS Fund is to have one general account (art. 16(1)) and three separate accounts for oil (art. 16(2)(a)), liquefied natural gas (LNG) (art. 16(2)(b)) and liquefied petroleum gas (LPG) (art. 16(2)(c)) - The general account is to be available to compensate damage caused by hazardous and noxious substances covered by that account, and a separate account is to be available to compensate damage caused by a hazardous and noxious substance covered by that account (art. 16(4) in fine) - There are to be initial contributions and, as required, annual contributions to the HNS Fund (art. 16(3)) - Contributions are payable by receivers of threshold quantities of contributing cargo in ports or terminals of State Parties (arts. 18(1) & 19(1)) - Annual contributions to the general account and to each separate account are to be levied only as required to make payments by the account in question (art. 17(1)) - The amount of annual contributions is to be determined by the HNS Fund's Assembly (art. 17(3))
Triggering of the obligation to compensate	The HNS Fund is to pay compensation to any person suffering damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of Chapter II: - because no liability for the damage arises in accordance with the first tier of liability and compensation above (art. 14(1)(a)); - because the owner liable for the damage in accordance with the first tier of liability and compensation above is financially incapable of meeting the obligations under this Convention in full and any financial security that may be provided does not cover or is insufficient to satisfy the claims for compensation for damage; an owner being treated as financially incapable of meeting these obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due in accordance with the first tier of liability and compensation above after having taken all reasonable steps to pursue the available legal remedies(art. 14(1)(b)); - because the damage exceeds the owner's liability arising under the first tier of liability and compensation above (art. 14(1)(c))
Special exonerations from the obligation to compensate	None

obligation to compensate	
Judicial/administrative measures	Award of compensation
Compensation limitation	- The total sum of the amount of compensation payable by the HNS Fund and any amount actually paid under the first tier of liability and compensation above is not to exceed 250 million SDR (art. 14(5)(a)) but in the case of damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character, the aggregate amount of compensation payable by the HNS Fund is not to exceed 250 million SDR (art. 14(5)(b)) - Compensation limits are subject to tacit acceptance procedure for amendment (art. 48)
Compensable damage	Damage (arts. 7(1) & 13(1)(a)), defined as: - loss of life or personal injury on board or outside the ship carrying the hazardous and noxious substances caused by those substances (art. 1(6)(a)); - loss of or damage to property outside the ship carrying the hazardous and noxious substances caused by those substances (art. 1(6)(b)); - loss or damage by contamination of the environment caused by the hazardous and noxious substances, provided that compensation for impairment of the environment other than loss of profit from such impairment will be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken (art. 1(6)(c)); - the costs of preventive measures and further loss or damage caused by preventive measures (art. 1(6)(d))
Limitation period	3 years from the date when the person suffering the damage knew or ought reasonably to have known of the damage and of the identity of the owner (art. 37(1) & (2)), but not later than 10 years from the date of the incident which caused the damage (art. 37(c))
Who can sue?	The person who suffers pollution damage and any party subrogated in his rights or having a right of recourse against the HNS Fund, including a Contracting State or agency thereof which has paid compensation for damage in accordance with provisions of national law (art. 41(3))
Access to information	N/A

Relationship with other liability and compensation rules	The Convention does not apply to: - claims arising out of any contract for the carriage of goods and passengers (art. 4(1)) - pollution damage as defined in the CLC '69, as amended, whether or not compensation is payable in respect of it under that Convention or (4(3)(a)); nor - damage caused by a radioactive material of class 7 either in the International Maritime Dangerous Goods Code, as amended, or in appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended (art. 4(3)(b))

7.2.3.2.2.6. Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, 1971

Full title	Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material
Place and date of adoption	Brussels, 17/12/1971
Objective	To ensure that, in line with the Paris Convention of the 29th July 1960 on Third Party Liability in the Field of Nuclear Energy and its Additional Protocol of the 28th January 1964 and the Vienna Convention of the 21st May 1963 on Civil Liability for Nuclear Damage, the operator of a nuclear installation will be exclusively liable for damage caused by a nuclear incident occurring in the course of maritime carriage of nuclear material (preamble)
Date of entry into force	15/7/1975
Mediterranean Contracting States	France, Italy, Spain
Non-Contracting Mediterranean States	Albania, Algeria, Bosnia & Herzegovina, Croatia, Cyprus, Egypt, Greece, Israel, Lebanon, Libya, Malta, Monaco, Morocco, Serbia & Montenegro, Slovenia, Syria, Tunisia, Turkey
Overall number of Contracting States	17 (as at 31/3/2005) (source: IMO)
Main provisions	- Any person who by virtue of an international convention or national law applicable in the field of maritime transport might be held liable for damage caused by a nuclear incident is exonerated from

	such liability: - if the operator of a nuclear installation is liable for such damage under either the Paris or the Vienna Convention (art. 1(a)), or - if the operator of a nuclear installation is liable for such damage by virtue of a national law governing the liability for such damage, provided that such law is in all respects as favorable to persons who may suffer damage as either the Paris or the Vienna Convention (art. 1(b)) - The exoneration provided for in art. 1 also applies in respect of damage caused by a nuclear incident: - to the nuclear installation itself or to any property on the site of that installation which is used or to be used in connection with that installation (art. 2(1)(a)), or - to the means of transport upon which the nuclear material involved was at the time of the nuclear incident (art. 2(1)(b)), for which the operator of the nuclear installation is not liable because his liability for such damage has been excluded pursuant to the provisions of either the Paris or the Vienna Convention, or, in cases referred to in art. 1(b), by equivalent provisions of the national law referred to therein (art. 2(1) in fine)
Relationship with other liability and compensation rules	No provision of the present Convention affects the liability of the operator of a nuclear ship in respect of damage caused by a nuclear incident involving the nuclear fuel of or radioactive products or waste produced in such ship (art. 3)

7.2.3.2.3. IAEA

7.2.3.2.3.1. Vienna Convention

Full title	Vienna Convention on Civil Liability for Nuclear Damage
Place and date of adoption	Vienna, 21/3/1963
Short title	Vienna Convention
Objective	To establish minimum standards to provide financial protection against damage resulting from certain peaceful uses of nuclear energy (preamble)

<table>
<tr><td>Date of entry into force</td><td colspan="6">12/11/1977</td></tr>
<tr><td>Mediterranean Contracting States</td><td colspan="6">Bosnia & Herzegovina, Croatia, Egypt, Lebanon, Serbia & Montenegro</td></tr>
<tr><td>Non-Contracting Mediterranean States</td><td colspan="6">Albania, Algeria, Cyprus, France, Greece, Israel, Italy, Libya, Malta, Monaco, Morocco, Slovenia, Spain, Syria, Tunisia, Turkey</td></tr>
<tr><td>Overall number of Contracting States</td><td colspan="6">32 (as at 18/5/2005) (source: IAEA)</td></tr>
<tr><td rowspan="2">Amendments</td><td>Instrument</td><td>Place and date of adoption</td><td>Date of entry into force</td><td>Overall number of Contracting States</td><td>Mediterranean Contracting States</td><td>Name of original instrument as amended</td></tr>
<tr><td>Protocol</td><td>Vienna, 12/9/1997</td><td>4/10/2003</td><td>5</td><td>Morocco</td><td>1997 Vienna Convention on Civil Liability for Nuclear Damage</td></tr>
<tr><td rowspan="3">Activities covered</td><td colspan="6">Original Vienna Convention</td></tr>
<tr><td colspan="6">Operation of nuclear installations (art. II(1)), meaning:
- any nuclear reactor other than one with which a means of sea or air transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose (art. I(1)(j)(i));
- any factory using nuclear fuel for the production of nuclear material, or any factory for the processing of nuclear material, including any factory for the re-processing of irradiated nuclear fuel (art. I(1)(j)(ii)); and
- any facility where nuclear material is stored, other than storage incidental to the carriage of such material (art. I(1)(j)(iii))</td></tr>
<tr><td colspan="6">1997 Vienna Convention</td></tr>
</table>

	Operation of nuclear installations (art. II(1)) used for peaceful purposes (art. IB), where “nuclear installation” means: - any nuclear reactor other than one with which a means of sea or air transport is equipped for use as a source of power, whether for propulsion thereof or for any other purpose (art. I(1)(j)(i)); - any factory using nuclear fuel for the production of nuclear material, or any factory for the processing of nuclear material, including any factory for the re-processing of irradiated nuclear fuel (art. I(1)(j)(ii)); - any facility where nuclear material is stored, other than storage incidental to the carriage of such material (art. I(1)(j)(iii)); and - such other installations in which there are nuclear fuel or radioactive products or waste as the Board of Governors of the IAEA determine from time to time (art. I(1)(j)(iv))
Geographical scope of application	Original Vienna Convention
	The Convention applies to nuclear installations located in the territory of Contracting Parties or operated under the authority of Contracting Parties (arts. II(1) & I(1)(d))
	1997 Vienna Convention

	- This Convention applies to nuclear damage wherever suffered (art. IA(1))
	- However, the legislation of the Installation State may exclude from the application of this Convention damage suffered:
	  - in the territory of a non-Contracting State (art. IA(2)(a)); or
	  - in any maritime zones established by a non-Contracting State in accordance with the international law of the sea (art. IA(2)(b))
	- An exclusion pursuant to art. IA(2) may apply only in respect of a non-Contracting State which at the time of the incident:
	  - has a nuclear installation in its territory or in any maritime zones established by it in accordance with the international law of the sea (art. IA(3)(a)); and
	  - does not afford equivalent reciprocal benefits (art. IA(3)(b))
	- Any exclusion pursuant to art. IA(2)(b) does not extend to damage on board or to a ship or an aircraft (art. IA(4))

Application to areas outside national jurisdiction	Original Vienna Convention
	Yes (arts. II(1), I(1)(d) & XI(2))
	1997 Vienna Convention
	Yes (arts. II(1), I(1)(d), IA & XI(2))
Liable party	- The operator of a nuclear installation is liable for nuclear damage upon proof that such damage has been caused by a nuclear incident (art. II(1)), where “operator” means the person designated or recognized by the Installation State as the operator of that installation (art. I(1)(c)) - The Installation State may provide by legislation that, in accordance with such terms as may be specified therein, a carrier of nuclear material or a person handling radioactive waste may, at his request and with the consent of the operator concerned, be designated or recognized as operator in the place of that operator in respect of such nuclear material or radioactive waste respectively. In this case such carrier or such person will be considered, for all the purposes of this Convention, as an operator of a nuclear installation situated within the territory of that State (art. II(2))

Basis of liability	Original Vienna Convention
	Liability of the operator for nuclear damage is absolute (art. IV(1)) upon proof that such damage has been caused by a nuclear incident: - in his nuclear installation (art. II(1)(a)); or - involving nuclear material coming from or originating in his nuclear installation (art. II(1)(b)); or - involving nuclear material sent to his nuclear installation (art. II(1)(c))
	1997 Vienna Convention
	Liability of the operator for nuclear damage is absolute (art. IV(1)) upon proof that such damage has been caused by a nuclear incident: - in his nuclear installation (art. II(1)(a)); or - involving nuclear material coming from or originating in his nuclear installation (art. II(1)(b)); or - involving nuclear material sent to his nuclear installation (art. II(1)(c))
Judicial/administrative measures	Award of damages and/or compensation
Compensable damage	Original Vienna Convention

	- Nuclear damage (art. II(1)), defined as:
	  - loss of life, any personal injury or any loss of, or damage to, property which arises out of or results from the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation (art. I(1)(k)(i));
	  - any other loss or damage so arising or resulting if and to the extent that the law of the competent court so provides (art. I(1)(k)(ii)); and
	  - if the law of the Installation State so provides, loss of life, any personal injury or any loss of, or damage to, property which arises out of or results from other ionizing radiation emitted by any other source of radiation inside a nuclear installation (art. I(1)(k)(iii))
	- However, the operator is not liable under this Convention for nuclear damage:
	  - to the nuclear installation itself or to any property on the site of that installation which is used or to be used in connection with that installation (art. IV(5)(a)); or
	  - to the means of transport upon which the nuclear material involved was at the time of the nuclear incident (art. IV(5)(b))

	1997 Vienna Convention

	- Nuclear damage (art. II(1)), defined as:
	  - loss of life or personal injury (art. I(1)(k)(i));
	  - loss of or damage to property (art. I(1)(k)(ii));
	  and each of the following to the extent determined by the law of the competent court,
	  - economic loss arising from loss or damage referred to in art. I(1)(k)(i) or I(1)(k)(ii) above insofar as not included in those sub-paragraphs, if incurred by a person entitled to claim in respect of such loss or damage (art. I(1)(k)(iii));
	  - the costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in art. art. I(1)(k)(ii) (art. I(1)(k)(iv));
	  - loss of income deriving from a direct economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and insofar as not included in art. I(1)(k)(ii) (art. I(1)(k)(v));
	  - the costs of preventive measures, and further loss or damage caused by such measures (art. I(1)(k)(vi));
	  - any other economic loss, other than any caused by the impairment of the environment, if permitted by the general law on civil liability of the competent court (art. I(1)(k)(vii));
	  in the case of art. I(1)(k)(i) to (v) and (vi), to the extent that the loss or damage arises out of or results from ionizing radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of nuclear material coming from, originating in, or sent to, a nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter (art. I(1)(k) in fine)
	- However, the operator is not be liable under this Convention for nuclear damage:
	  - to the nuclear installation itself and any other nuclear installation, including a nuclear installation under construction, on the site where that installation is located (art. IV(5)(a)); and
	  - to any property on that same site which is used or to be used in connection with any such installation (art. IV(5)(b))

Compensation tiers and limitation	Original Vienna Convention

	The liability of the operator may be limited by the Installation State to not less than US$5 million for any one nuclear incident (art. V(1))
	1997 Vienna Convention

	- The liability of the operator may be limited by the Installation State for any one nuclear incident, either:
	  - to not less than 300 million SDRs (art. V(1)(a)); or
	  - to not less than 150 million SDRs provided that in excess of that amount and up to at least 300 million SDRs public funds are made available by that State to compensate nuclear damage (art. V(1)(b)); or
	  - for a maximum of 15 years from the date of entry into force of this Protocol, to a transitional amount of not less than 100 million SDRs in respect of a nuclear incident occurring within that period. An amount lower than 100 million SDRs may be established, provided that public funds are made available by that State to compensate nuclear damage between that lesser amount and 100 million SDRs (art. V(1)(c))
	- Notwithstanding art. V(1), the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of liability of the operator, provided that in no event is any amount so established less than 5 million SDRs, and provided that the Installation State ensures that public funds are made available up to the amount established pursuant to art. V(1) (art. V(2))

Procurement of funds	Original Vienna Convention
	N/A
	1997 Vienna Convention
	If the courts having jurisdiction are those of a Contracting Party other than the Installation State, the public funds required under art. V(1)(b) and (c) and under art. VII(1), as well as interest and costs awarded by a court, may be made available by the first-named Contracting Party. The Installation State will reimburse to the other Contracting Party any such sums paid (art. VC(1))

Compulsory insurance or other financial security	Original Vienna Convention
	- The operator is required to maintain insurance or other financial security covering his liability for nuclear damage in such amount, of such type and in such terms as the Installation State will specify. The Installation State will ensure the payment of claims for compensation for nuclear damage which have been established against the operator by providing the necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, but not in excess of the limit, if any, established pursuant to art. V. Where the liability of the operator is unlimited, the Installation State may establish a limit of the financial security of the operator liable, provided that such limit is not lower than 300 million SDRs. The Installation State must ensure the payment of claims for compensation for nuclear damage which have been established against the operator to the extent that the yield of the financial security is inadequate to satisfy such claims, but not in excess of the amount of the financial security to be provided under this paragraph (art. VII(1)(a)) - Notwithstanding art. VII(1)(a), where the liability of the operator is unlimited, the Installation State, having regard to the nature of the nuclear installation or the nuclear substances involved and to the likely consequences of an incident originating therefrom, may establish a lower amount of financial security of the operator, provided that in no event will any amount so established be less than 5 million SDRs, and provided that the Installation State ensures the payment of claims for compensation for nuclear damage which have been established against the operator by providing necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, and up to the limit provided pursuant to art. VII(1)(a) (art. VII(1)(b)) - Direct action lies against the person furnishing financial security, if the law of the competent court so provides (art. II(7))
	1997 Vienna Convention
	- The operator is required to maintain insurance or other financial security covering his liability for nuclear damage in such amount, of such type and in such terms as the Installation State will specify. The Installation State will ensure the payment of claims for compensation for nuclear damage which have been established against the operator by providing the necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, but not in excess of the limit, if any, established pursuant to art. V (art. VII(1)) - Direct action lies against the person furnishing financial security, if the law of the competent court so provides (art. II(7))

Limitation period	Original Vienna Convention
	- Rights of compensation under this Convention are extinguished if an action is not brought within 10 years from the date of the nuclear incident. If, however, under the law of the Installation State the liability of the operator is covered by insurance or other financial security or by State funds for a period longer than ten years, the law of the competent court may provide that rights of compensation against the operator will only be extinguished after a period which may be longer than 10 years, but will not be longer than the period for which his liability is so covered under the law of the Installation State (art. VI(1)) - Where nuclear damage is caused by a nuclear incident involving nuclear material which at the time of the nuclear incident was stolen, lost, jettisoned or abandoned, the period established pursuant to art. VI(1) will be computed from the date of that nuclear incident, but the period will in no case exceed a period of 20 years from the date of the theft, loss, jettison or abandonment (art. VI(2)) - The law of the competent court may establish a period of extinction or prescription of not less than 3 years from the date on which the person suffering nuclear damage had knowledge or should have had knowledge of the damage and of the operator liable for the damage, provided that the period established pursuant to art. VI(1) and (2) is not exceeded (art. VI(3))
	1997 Vienna Convention

	- Rights of compensation under this Convention are extinguished if an action is not brought within:
	  - with respect to loss of life and personal injury, 30 years from the date of the nuclear incident (art. VI(1)(a)(i));
	  - with respect to other damage, 10 years from the date of the nuclear incident (art. VI(1)(a)(ii))
	- Rights of compensation under the Convention are subject to prescription or extinction, as provided by the law of the competent court, if an action is not brought within 3 years from the date on which the person suffering damage had knowledge or ought reasonably to have had knowledge of the damage and of the operator liable for the damage, provided that the periods established pursuant to art. VI(1)(a) and (b) are not be exceeded (art. VI(3))

Special categories of persons entitled to sue	Original Vienna Convention
	The person who suffers nuclear damage

	1997 Vienna Convention
	- The person who suffers nuclear damage - Any State may bring an action on behalf of persons who have suffered nuclear damage, who are nationals of that State or have their domicile or residence in its territory, and who have consented thereto (art. XIA(a))
Access to information	N/A
Relationship with other liability and compensation rules	- This Convention is without prejudice to the application of any international convention in the field of transport in force or open for signature, ratification or accession at the date on which this Convention is opened for signature (art. II(5)) - No person is entitled to recover compensation under this Convention to the extent that he has recovered compensation in respect of the same nuclear damage under another international convention on civil liability in the field of nuclear energy (art. XVI) - This Convention does not, as between the parties to them, affect the application of any international agreements or international conventions on civil liability in the field of nuclear energy in force, or open for signature, ratification or accession at the date on which this Convention is opened for signature (art. XVII)

7.2.3.2.3.2. Joint Protocol

Full title	Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention
Place and date of adoption	Vienna, 21/9/1988
Short title	Joint Protocol
Objective	To establish a link between the Vienna Convention and the Paris Convention by mutually extending the benefit of the special regime of civil liability for nuclear damage set forth under each Convention and to eliminate conflicts arising from the simultaneous applications of both Conventions to a nuclear incident (preamble)

Date of entry into force	27/4/1992
Mediterranean Contracting States	Croatia, Egypt, Greece, Italy, Slovenia
Non-Contracting Mediterranean States	Albania, Algeria, Bosnia & Herzegovina, Cyprus, France, Israel, Lebanon, Libya, Malta, Monaco, Morocco, Serbia & Montenegro, Spain, Syria, Tunisia, Turkey
Overall number of Contracting States	24 (as at 18/5/2005) (source: IAEA)
Activities covered	As per the Paris and Vienna Conventions
Main provisions	- The operator of a nuclear installation situated in the territory of a Party to the Vienna Convention is liable in accordance with that Convention for nuclear damage suffered in the territory of a Party to both the Paris Convention and this Protocol (art. II) - The operator of a nuclear installation situated in the territory of a Party to the Paris Convention is liable in accordance with that Convention for nuclear damage suffered in the territory of a Party to both the Vienna Convention and this Protocol (art. II) - Either the Vienna Convention or the Paris Convention applies to a nuclear incident to the exclusion of the other (art. III(1)) - In the case of a nuclear incident occurring in a nuclear installation, the applicable Convention is that to which the State is a Party within whose territory that installation is situated (art. III(2)) - In the case of a nuclear incident outside a nuclear installation and involving nuclear material in the course of carriage, the applicable Convention is that to which the State is a Party within whose territory the nuclear installation is situated whose operator is liable pursuant to either art. II(1)(b) and (c) of the Vienna Convention or art. 4(a) and (b) of the Paris Convention (art. III(3))

7.2.3.2.3.3. Convention on Supplementary Compensation for Nuclear Damage

Full title	Convention on Supplementary Compensation for Nuclear Damage

Place and date of adoption	Vienna, 12/9/1997
Objective	To establish a worldwide liability regime to supplement and enhance the measures provided in the Vienna Convention on Civil Liability for Nuclear Damage and the Paris Convention on Third Party Liability in the Field of Nuclear Energy as well as in national legislation on compensation for nuclear damage consistent with the principles of these Conventions with a view to increasing the amount of compensation for nuclear damage (preamble & art. II(1))
Date of entry into force	Not in force
Mediterranean Contracting States	Morocco
Non-Contracting Mediterranean States	Albania, Algeria, Bosnia & Herzegovina, Croatia, Cyprus, Egypt, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Serbia & Montenegro, Slovenia, Spain, Syria, Tunisia, Turkey
Overall number of Contracting States	3 (as at 9/5/2005) (source: IAEA)
Conditions for entry into force	5 Contracting States with a minimum of 400,000 units of installed nuclear capacity (art. XX(1))
Liability and compensation tools	Private liability, insurance or other financial security, public funds
Activities covered	The system of this Convention applies to nuclear damage for which an operator of a nuclear installation used for peaceful purposes situated in the territory of a Contracting Party is liable under either the Vienna Convention or the Paris Convention or national law that complies with the provisions of the Annex to this Convention (art. II(2))

Geographical scope of application	- The system of this Convention applies to nuclear damage for which an operator of a nuclear installation used for peaceful purposes situated in the territory of a Contracting Party is liable under either the Vienna Convention or the Paris Convention or national law that complies with the provisions of the Annex to this Convention (art. II(2))
	- The funds provided for under art. III(1)(b) apply to nuclear damage which is suffered:
	  - in the territory of a Contracting Party (art. V(1)(a)); or
	  - in or above maritime areas beyond the territorial sea of a Contracting Party:

	- on board or by a ship flying the flag of a Contracting Party, or on board or by an aircraft registered in the territory of a Contracting Party, or on or by an artificial island, installation or structure under the jurisdiction of a Contracting Party; or - by a national of a Contracting Party; excluding damage suffered in or above the territorial sea of a State not Party to this Convention (art. V(1)(b)); or - in or above the exclusive economic zone of a Contracting Party or on the continental shelf of a Contracting Party in connection with the exploitation or the exploration of the natural resources of that exclusive economic zone or continental shelf (art. V(1)(c))
Application to areas outside national jurisdiction	Yes (art. V(1)(b))
Compensation tiers and limitation	- Compensation in respect of nuclear damage per nuclear incident will be ensured by the following means: - the Installation State will ensure the availability of 300 million SDRs or a greater amount that it may have specified to the Depositary at any time prior to the nuclear incident (art. III(1)(a)(i) in limine); - beyond the amount made available under art. III(1)(a), the Contracting Parties will make available public funds according to the formula specified in art. IV (art. III(1)(b)) - The compensation amounts referred to in art. III(1)(a) and (b) are subject to a simplified procedure of amendment (art. XXV(1))
Procurement of funds	- The formula for contributions according to which the Contracting Parties will make available the public funds referred to in art. III(1)(b) will be determined as follows: - the amount which will be the product of the installed nuclear capacity of that Contracting Party multiplied by 300 SDRs per unit of installed capacity (art. IV(1)(a)(i)); and - the amount determined by applying the ratio between the United Nations rate of assessment for that Contracting Party as assessed for the year preceding the year in which the nuclear incident occurs, and the total of such rates for all Contracting Parties to 10% of the sum of the amounts calculated for all Contracting Parties under art. IV(1)(a)(i) (art. IV(1)(a)(ii)) - Subject to art. IV(1)(c), the contribution of each Contracting Party will be the sum of the amounts

	referred to in art. IV(1)(a)(i) and (ii), provided that States on the minimum United Nations rate of assessment with no nuclear reactors will not be required to make contributions (art. IV(1)(b)) - The maximum contribution which may be charged per nuclear incident to any Contracting Party, other than the Installation State, pursuant to art. IV(1)(b) will not exceed its specified percentage of the total of contributions of all Contracting Parties determined pursuant to art. IV(1)(b) (art. IV(1)(c))
Triggering of the obligation to compensate	If the nuclear damage to be compensated does not require the total amount under art. III(1)(b), the contributions will be reduced proportionally (art. III(3))
Judicial/administrative measures	Award of damages and/or compensation
Compensable damage	Nuclear damage (arts. II(2) & III(1)), defined as: - loss of life or personal injury (art. I(f)(i)); - loss of or damage to property (art. I(f)(ii)); and each of the following to the extent determined by the law of the competent court, - economic loss arising from loss or damage referred to in art. I(f)(i) or (ii) insofar as not included in those sub-paragraphs, if incurred by a person entitled to claim in respect of such loss or damage (art. I(f)(iii)); - the costs of measures of reinstatement of impaired environment, unless such impairment is insignificant, if such measures are actually taken or to be taken, and insofar as not included in art. I(f)(ii) (art. I(f)(iv)); - loss of income deriving from a direct economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and insofar as not included in art. I(f)(i) (art. I(f)(v)); - the costs of preventive measures, and further loss or damage caused by such measures (art. I(f)(vi))); - any other economic loss, other than any caused by the impairment of the environment, if permitted by the general law on civil liability of the competent court (art. I(f)(vii)), in the case of art. I(f)(i) to (v) and (vii), to the extent that the loss or damage arises out of or results from ionizing radiation emitted by any source of radiation inside a nuclear installation, or emitted from nuclear fuel or radioactive products or waste in, or of nuclear substances coming from, originating in, or sent to, a

	nuclear installation, whether so arising from the radioactive properties of such matter, or from a combination of radioactive properties with toxic, explosive or other hazardous properties of such matter (art. I(f) in fine)
Compulsory insurance or other financial security	As per the Vienna and Paris Conventions (art. XII(2))
Limitation period	As per the Vienna or Paris Convention
Special categories of persons entitled to sue	N/A
Access to information	N/A
Relationship with other liability and compensation rules	- Nothing in this Convention prevents any Contracting Party from making provisions outside the scope of the Vienna or the Paris Convention and of this Convention, provided that such provision does not involve any further obligation on the part of the other Contracting Parties, and provided that damage in a Contracting Party having no nuclear installations within its territory is not excluded from such further compensation on any grounds of lack of reciprocity (art. XII(2)) - Nothing in this Convention prevents Contracting Parties from entering into regional or other agreements with the purpose of implementing their obligations under art. III(1)(a) or providing additional funds for the compensation of nuclear damage, provided that this does not involve any further obligation under this Convention for the other Contracting Parties (art. XII(3)(a))

8. Report on Consultations

Consultations carried out for the purpose of this study were effected mainly via questionnaires addressed to MAP National Focal Points, the European Commission as well as a list of socio-economic actors.[398] Two questionnaires were used, one serving as a general consultation platform and another dealing with insurance aspects. Answers given by respondents on the returned questionnaires were bundled and are being presented herein below in two "expanded" questionnaires.

8.1. General Consultation

General Consultation Questionnaire (with Bundled Answers)

Respondents	**NFPs: Bosnia & Herzegovina (B&H), Croatia (HR), France (F), Malta (MT), Morocco (MO)** **Socio-economic actors: Enda Maghreb (EM), Environmental Perception (EP), International Juridical Organization for Environment and Development (IJOED), International Marine Centre (IMC Fondazione ONLUS), International Ocean Institute (IOI), Prof. Mohamed Hichem Kara/Laboratoire Bioressources marines (LAB), Medcities, UNADEP/UNASD**			
Issue	**Premise or consensus (based on working documents)**	**We agree**	**We disagree**	**Comments**
Advisability of an ad hoc liability and compensation regime	1) There is a need to create in the Mediterranean Sea Area and under the framework of the Barcelona Convention an ad hoc liability and compensation regime to deal with the consequences of environmental degradation but without prejudice to existing international systems of liability and compensation.	B&H, HR, MT, MO, EM, EP, IJOED, IMC, IOI, LAB, Medcities, UNADEP/UNASD	F ("Non avec réserve")	B&H: Any binding legal instrument should not be more stringent then other existing international in order to have this issue harmonized, so the future steps need to be taken would be more visible to implement. F: Les conclusions du Groupe d'experts d'avril 2003 ont mis en évidence le fait qu'un éventuel instrument juridique en matière de responsabilité et de réparation ne devrait couvrir que les activités non réglementées au plan international et prendre par ailleurs en considération la

[398] See section 12.4 ("List of Parties Consulted") below.

				directive communautaire 2004/35/CE du 21 avril 2004 sur la responsabilité environnementale en ce qui concerne la prévention et la réparation des dommages environnementaux. MO: Nous sommes d'accord de créer dans la région de la mer Méditerranée et dans **le cadre de la Convention de Barcelone** un régime de responsabilité et d'indemnisation ad hoc pour traiter des conséquences de dégradation écologique, mais sans préjudice aux systèmes internationaux de responsabilité et d'indemnisation existants, et ce vu la spécificité de la Mer Méditerranée qui est une mer semi fermée, fragile et exposée aux déférents types de pollution. EP: If under Mediterranean Sea Area, land agricultural etc activities are also included then probably "Mediterranean Area" is more suitable. EC communiqué and directives should also be taken into account. IJOED: Member states must always be entitled to make (or keep) their environmental liability laws more stringent than the provisions of the ad hoc liability and compensation regime. National governments much prevent a weakening of existing national laws on environmental liability through the direct or indirect effects of the ad hoc regime. It is important that an ad hoc regime be implemented at the soonest (the EU Member States must implement the EU Directive on environment liability within 3 years after the Directive has

				entered into force, i.e. by 30 April 2007). To facilitate implementation of an ad hoc regime, legal assistance should be made available to Contracting Parties that request such assistance. IMC: If the existing international tools are too soft to discourage degraders, we advise creating a regime “with prejudice.” LAB: This type of regime exists probably in some Mediterranean States. It is important to provide technological and financial support to help some States to normalize their installations. Medcities: The agreement should be based also on the national laws and regulations on emissions to the sea. Following adoption as an international agreement, a period of adaptation has to be ordered to each State. The period should be sufficient to allow States to adapt laws, regulations and infrastructures. So a minimum of 15 years would be needed before applying the international convention. The EU should include in MEDA a line of financial support to third Mediterranean countries for investments in depuration systems and other significant actions. UNADEP/UNASD: However, I believe that it would be difficult to implement the system especially in the less developed countries whereby the gap between the law and the actual situation is tremendous.

Form of prospective regime	2) It is best to formulate the prospective new regime in the form of a binding legal instrument, as opposed to a voluntary or “soft law” instrument.	B&H, MO, EM, EP, IJOED, IMC, IOI, LAB, Medcities, UNADEP/UNASD	HR, F, MT	F: Il est prématuré de privilégier le format d’un éventuel instrument juridique avant d’avoir défini avec précision le champ d’application. L’expérience montre (cf. protocole Biosécurité) qu’il est préférable de procéder par étapes. On pourrait ainsi imaginer que dans une première phase, des lignes directrices soient arrêtées pat le COP que les Etats Parties pourraient transcrire dans leur droit national. Ce n’est qu’à l’issue d’une évaluation de cette période, qu’un instrument juridique contraignant pourrait éventuellement être envisage. MO: Il est souhaitable que le nouveau régime prend la forme d’un protocole lié à la Convention de Barcelone ayant un caractère contraignant et obligatoire. UNADEP/UNASD: Even, with binding regimes you have to look for effective instruments to implement the law and then supervise its implementation.

	3) The prospective regime should be submitted for approval by Contracting Parties in the same way as a new treaty or protocol, i.e. requiring in most States approval by the State legislative assembly or Parliament.	B&H, F, MT, MO, EM, EP, IJOED, IMC, IOI, LAB, Medcities, UNADEP/UNASD		F: Cela est un préalable. Toutefois, l'examen, la réflexion et la définition d'un éventuel régime de responsabilité et de réparation à caractère juridique contraignant ou non devraient être confiés à un groupe d'experts désigné par la COP qui se serait chargé dans le cadre d'un mandat de proposer des propositions dans un délai déterminé. UNADEP/UNASD: However, one needs marketing tools to form pressure groups to pass such laws within the Parliament Houses.
Relationship with other regimes	4) The prospective regime should avoid conflict with existing international regimes of liability and compensation relating to certain types of environmental degradation, notably IMO conventions dealing with ship-source pollution damage.	B&H, HR, F, MT, MO, EM, IJOED, IOI, LAB, Medcities, UNADEP/UNASD	EP, IMC	B&H: Same comment as for the first issue. F: Il est impératif d'éviter de doublonner avec les régimes juridiques internationaux existants. MO: Lors de l'élaboration dudit régime, il est évident de prendre en compte toutes les Conventions internationales en la matière. EP: Supplementary to existing international regimes. IOI: But should be fully merged with and/or in line with established conventions. UNADEP/UNASD: It should be complementary to other regimes and its application should go in parallel with the applications of others.

Geographical scope of application of the prospective regime	5) The prospective regime should extend to the high seas.	HR, MO, EP, IJOED, IMC, IOI, LAB, UNADEP /UNASD	B&H, F, Medcities	F: Un éventuel régime de responsabilité entrerait en conflit avec l'article 87 §1 de la convention des Nations Unies sur le droit de la Mer du 10 décembre 1982qui définit déjà un régime juridique applicable en haute mer. MT: To include all of Mediterranean Sea and Coast. MO: Le champ d'application dudit régime doit, en principe, couvrir le champ d'application de la Convention de Barcelone. EM: Il faut d'abord réussir à appliquer le régime au niveau des zones côtières et l'étendre dans une seconde phase. IJOED: Avoid that ships empty/wash their cisterns (ballast water) which eventually arrives to coastal areas. UNADEP/UNASD: However, it would be too hard for the less developed countries to control the High seas.

	6) The prospective regime should extend to the coastal area.	B&H, HR, MO, EM, EP, IJOED, IMC, IOI, LAB, Medcities, UNADEP/UNASD	F, IOI	B&H: This is additional reason for harmonization with other regimes in order to be able to spread implementation on wider areas that have impact downstream on coastal areas. F: La zone côtière relève du champ d'application des réglementations nationales. MT: To include all of Mediterranean Sea and coast. IOI: National legislation should be able to take care of this.
Type of damage to be covered under the prospective regime	7) The prospective regime should extend to economic loss, e.g. loss of business.	B&H, HR, F ("Oui sous réserve"), MT, MO, EM, EP, IJOED, IOI, LAB, UNADEP/UNASD	IMC	EM: A condition de bien définir les responsabilités de chacun. LAB: Include the effect on fisheries and off-shore aquaculture.

	8) The prospective regime should extend to pure environmental damage, e.g. loss of biodiversity.	B&H, F ("Oui sous réserve"), MT, MO, EM, EP, IMC, IOI, LAB, Medcities, UNADEP/UNASD	HR	F: Difficile d'évaluer le dommage écologique pur. Risque de doublonnage avec d'autres conventions comme celle relative à la biodiversité. MO: Le régime éventuel devrait s'étendre uniquement aux dommages écologiques si ce régime sera lié à la Convention de Barcelone qui constitue la Convention mère pour le système juridique de Barcelone. IOI: This should have a higher priority than (7).
Type of activities to be covered under the prospective regime	9) The prospective regime should extend to land-based activities of all types. *If you agree, skip proposit-ion #10.*	B&H, HR, MT, IJOED, IMC, LAB, Medcities	F, IOI	F: Il apparaît difficile d'envisager d'étendre un éventuel régime de responsabilité et de réparation à d'autres domaines qui ne sont pas spécifiquement visées par la convention de Barcelone et ses Protocoles qui procèdent par champ d'application thématique. IMC: At least, to activities causing degradation of the sea and coast.
	(Skip if you agree with proposition #9) 10) The prospective regime should extend to:			
	a) agricultural activities,	MO, EP, LAB		

	b) urban activities,	MO, EP, LAB		
	c) land-based manufacturing activities;	MO, EP, LAB		
	d) terrestrial transport activities in the coastal area.	MO, EP, LAB		
	11) The prospective regime should extend to:			IJOED: It should extend to operators of all “occupational activities” which also refers to economic activities and “undertakings”.
	a) aquaculture activities;	B&H, HR, MT, MO, EM, EP, IJOED, IMC, IOI, LAB, Medcities, UNADEP/UNASD		

	b) offshore mineral activities;	B&H, HR, MT, MO, EM, EP, IJOED, IMC, IOI, LAB, Medcities, UNADEP/UNASD	F	F: Le risque principal de ce type d'activité est celui de l'explosion sans que cela entraîne une pollution consécutive du milieu marin. La mise en place d'un régime de responsabilité nécessiterait l'affirmation de zones sous juridiction.
	c) dumping activities at sea;	B&H, HR, MT, MO, EM, EP, IJOED, IMC, IOI, LAB, Medcities, UNADEP/UNASD		F: La mise en place d'un régime de responsabilité n'apparaît pas nécessaire dès lors qu'il appartient désormais aux autorités nationales de sanctionner l'immersion non autorisée et d'autoriser les immersions qui ne présentent pas de danger. IOI: As well as illegal dumping.
	d) leisure activities at sea.	B&H, HR, MT, MO, EM, EP, IJOED, IMC, IOI, LAB, Medcities, UNADEP/UNASD	F	EM: Oui dans la mesure ou cela affecte les revenus de certains acteurs économiques.

Type of incident to be covered under the prospective regime	12) The prospective regime should extend to continuous phenomena, e.g. continuous pollution, and not merely sudden incidents, e.g. explosion, accidental spillage.	B&H, MT, MO, EM, EP, IJOED, IMC, IOI, LAB, Medcities, UNADEP/UNASD	HR, F	F: Problème de l'établissement du lien de causalité entre la pollution continue et l'auteur du dommage. Un régime de responsabilité suppose l'existence d'un lien de causalité entre le dommage et le pollueur. . dans ces conditions, la responsabilité ne constitue pas un instrument adapté aux pollutions à caractère étendu et diffus pour lesquelles il est impossible d'établir un lien entre les incidences environnementales négatives et l'acte ou l'omission de certains acteurs individuels. Cf. article 4.5 de la directive 2004/35 CE sur la responsabilité environnementale. LAB: Include the effect on mean and long term of overfishing on biological resources.
Liable party	13) Given the extent of potential damage, liability under the prospective regime should be split up in multiple tiers:			

	a) the person who is in control of the damaging activity (referred to as “the operator”) should bear the first tier of liability, subject to compulsory insurance;	HR, F, MT, MO, EM, EP, IJOED, IOI, LAB, Medcities, UNADEP/UNASD	IMC	F: Principe de l’application du pollueur payeur. (cf. article 1er de la directive 2004/ 35 sur la responsabilité environnementale. Défavorable à l’établissement d’un régime d’assurance obligatoire (cf. article 14 de la directive 2004/ 35 sur la responsabilité environnementale). IJOED: Any person (including juridical person) who operates or controls the occupational activity or to whom decisive economic power over the technical functioning of the activity has been delegated. The operator must prevent or remedy the environmental damage, as appropriate and/or bear the costs if the relevant preventive or remedial actions – subject to certain exceptions. IOI: The objective should be clearly identified. Is it an individual who is in charge of the ship or installation or the Company to which they belong? Medcities: It would be better to use the terms “the juridical person” and “the party responsible” rather than “in control” or “the operator”.

	b) a special fund, designated as the Mediterranean Inter-State Compensation Fund, and contributed to by the Contracting Parties, should bear the second tier of liability;	MO, EP, IJOED, IOI, LAB, Medcities, UNADEP/UNASD	F, EM, IMC	HR: Contribution should be made by industry, etc., not by Contracting Parties. F: Dans le cas ou l'exploitant auteur du dommage est insolvable ou ne peut être identifié, l'Etat peut discrétionnairement prendre les mesures de réparation nécessaires aux frais de celui-ci. MT: No opinion as yet. EM: Le fonds compense ou prend le relais en dernier recours. Cela peur éviter un désengagement de certains Etats.
	c) the Mediterranean Contracting State under whose jurisdiction the damaging activity was carried out should bear the third tier of liability.	MO, IJOED, IOI, LAB, Medcities, UNADEP/UNASD	HR, F, MT, EM, EP, IMC	F: La responsabilité subsidiaire de l'Etat contractant ne peut être que facultative et discrétionnaire (cf. .articles 5.4 et 6.3 de la directive 2004/35 sur la responsabilité environnementale). EM: En 2ème, les Etats doivent avant tout être responsabilisés au maximum sur le contrôle des exploitants relevant de leur juridiction. IOI: This priority should be given second rank and only after this Compensation Fund. LAB: Not concerned when damage occurs in international waters.

	Alternatively, the operator should have unlimited liability and his liability should, in the event of failure to pay, be supplemented by the Mediterranean Inter-State Compensation Fund and the State's residual liability.	B&H, MO, IMC, UNADEP /UNASD	HR, F, MT, EM, IOI, LAB, Medcities	B&H: This alternative approach is the principle usually in practice. "Chain "of respond is shorter to be possible to implement efficiently. LAB: compulsory insurance can pay for and cover the liability.
Standard of liability	14) The standard of liability under the prospective regime should be strict; in other words, the victim should not be required to prove fault or negligence on the part of the liable party, but simply the occurrence of damage caused by a covered activity.	HR, F, MO, EM, EP, IJOED, IMC, LAB, Medcities	MT, UNADEP /UNASD	B&H: This is very sensitive issue that must be together with previous issue discussed regarding all aspects and possible consequences. F: L'institution d'un régime de responsabilité sans faute ou objective est une garantie d'indemnisation pour la victime à qui incombe le simple établissement d'un lien de causalité entre le dommage et le fait générateur. EM: Qui et comment déterminer « le coupable » ? IJOED: Operators are liable for a specific type of environmental damage. Operators of a specified list of dangerous activities (should be included as an annex of the ad hoc regime) have strict liability in relation to the entire range of environmental damage – subject to mitigating factors. However, an operator of an un-listed activity that causes biodiversity damage will be liable only if the operator has been at fault.

Who can sue?	15) The following interests should be allowed to bring actions for compensation in respect of pure environmental damage, e.g. loss of biodiversity:			
	a) the State;	B&H, F, MO, EM, EP, IJOED, IMC, IOI, LAB, Medcities, UNADEP/UNASD	MT	IJOED: State at all levels (from national down to local authorities). Medcities: The State at National and Local levels, including the local authorities.
	b) environmental non-governmental organizations.	EM, EP, IJOED, IOI, LAB, Medcities, UNADEP/UNASD	B&H, HR, F, MT, MO, IMC	EM: Sous réserve qu'elles agissent par rapport à un préjudice causé dans leur zone d'intervention. IJOED: Affected individuals and environmental NGOs should have the right to request the competent authority to take action in cases of environmental damage and to be informed about the authority's decision in such a request. NGOs should have the right to bring judicial review proceedings. NGOs should have the right to bring action in court against operators in cases of imminent threat of environmental damage. IMC: NGOs should denounce damage and control the realization of due compensation.

Time for suit	16) Actions for compensation should be barred three years after the date on which the claimant knew or ought reasonably to have known of the damage and of the identity of the operator and, in any case, thirty years after the date of the incident.	B&H, HR, F (“Oui sous reserve”), MT, MO, EM, IJOED, LAB	EP, IMC, Medcities, UNADEP/UNASD	F: Le délai est variable. La directive responsabilité environnementale prévoit un délai de 5 ans en matière de procédure de recouvrement de coûts auprès de l’exploitant. En revanche le délai de prescription de 30 ans est identique (cf. article 17 de la directive). EP: Thirty years. LAB: Five years in the two cases. Medcities: Just the first part of the statement. UNADEP/UNASD: I would rather say 10years after the date.
Additional comments	Please state any other comments you may wish to bring to the subject.	F: Il convient de souligner le fait qu’il n’est pas envisageable au regard de l’application des dispositions nationales en vigueur en matière de réparation du dommage, d’avoir plusieurs régimes régionaux de responsabilité sur des domaines identiques. La France métropolitaine, ainsi d'ailleurs que d'autres parties à la convention de Barcelone, n'a pas qu'une façade maritime La création d’un régime de responsabilité qui serait spécifiquement dédié au bassin méditerranéen générerait une confusion juridique et serait par ailleurs parfaitement non –opérationnel. IJOED: Very much will depend upon how the Contracting Parties implement the ad hoc regime into their national laws. UNADEP/UNASD: The system should mention clearly its term modes of implementation. So, we do suggest that the system be case specific and detailed. If it is meant to operate. Such detailed and clear system is supposed to eliminate any potential misinterpretations and thus minimize litigation. In addition, a special regional court is to be formed to look into the potential arising litigation. Moreover, UNEP-MAP should consider creating an inter monitoring body to supervise the new regime’s application. This		

		could be achieved through reinforcing local NGOs legally and technically.

8.2. Consultation on Insurance Aspects

Questionnaire on Insurance Aspects (with Bundled Answers)

Respondents	**NFPs: Bosnia & Herzegovina, EC, France, Malta**	
Issue	**Question**	**Answer**
Insurability of scheme	1) Is the prospective regime insurable under current market conditions?	Croatia: Under the current national legal regime liability and compensation for environmental damage is not covered. What is in certain cases insured are the appliances and gadgets used for the cleaning of the pollution. CEC: The following comments are based on the experience gained on the occasion of the consideration and adoption of Directive 2004/35/EC of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.4.2004, p. 56) (which only covers damage to the environment; personal injury, damage to

		goods and property and economic losses are not covered): - Damage to biodiversity is hardly covered for the time being (at least in Europe). - The insurance industry will need time to develop the appropriate products. - A clear legal framework, setting out, as precisely as possible, the parameters according to which any damage will be valued and remedied, is a prerequisite. - In addition, the feasibility and affordability of insurance products will also depend and be influenced by other key features of the liability regime, such as: the definition of damage; which exemptions are available; whether liability is proportional or joint and several; etc. - The insurance industry believes that compulsory insurance is counter-productive insofar as i) it does not make insurable what is not and ii) it could lead to higher premiums than would be the case under the normal operation of the market. <u>France:</u> Il n'est pas garanti que le régime soit assurable compte tenu à ce stade de l'imprécision sur les activités couvertes et le type de dommages envisagés. S'agissant des dommages à la biodiversité, il n'existe pas à l'heure actuelle de produit couvrant ce risque. On rappellera que, consciente de ce problème, la directive responsabilité environnementale, s'est abstenue de mettre en place un régime d'assurance obligatoire. <u>Malta:</u> Not as yet under local market conditions but via broker or by insurance re-arrangements. Cover from foreign agencies may also be possible.
Which markets?	2) Indicate whether cover could be obtained locally, regionally and/or internationally	<u>Bosnia & Herzegovina:</u> The insurance sector is conservative in every respect (functionally,

	internationally.	organizationally and technologically) and is predominantly local. Croatia: Cover can be obtained by insurance companies for the appliances and gadgets used for the cleaning of the pollution. EC: As indicated under 1), the experience available in respect of the Environmental Liability Directive is that insurance coverage of environmental damage (in particular, damage to biodiversity) is presently very limited. As mentioned once by a representative of the European insurance industry, "*the market is still in its infancy*". As to which coverage is actually available "locally, regionally and/or internationally" and under which conditions, it is believed that the insurance industry and professional experts in the field are better placed to provide this information. France: La couverture dépend de la répartition du risque ; plus le risque est « commun », plus la couverture peut être trouvée sur place. Dès lors qu'il n'y a pas de possibilité de répartition du risque, il n'y a pas de couverture possible. Il ne semble pas que les activités envisagées, immersion, off shore, se prêtent à cette répartition étant le fait de quelques acteurs. En matière d'off shore l'alternative au défaut du marché est la mutualisation entre professionnels au sein d'accords du type OPOL. Malta: Not locally (unless via reinsurance) but internationally and regionally.
Limit of cover	3) What in your opinion should be the limit of cover?	France: Il ne peut y avoir de réponse monolithique à cette question, la capacité du marché (si marché il y a) dépend du type de dommage,

		de la fréquence des accidents…. Malta: Liability is always limited to a certain amount; however losses must be quantified and commensurate to reflect exposure vis-à-vis operations and magnitude of exposure.

Additional comments	4) Please state any other comments you may wish to bring to the subject.	Bosnia & Herzegovina:
		
		Since 1992, the local insurance system has undergone a rebuilding process. The system is commercially irrational and contrary to modern flows in developed countries. In mid-2003, the country had 18 registered insurance companies. The Srpska Republic had 10 registered insurance companies. Only one company deals with reinsurance. The atmosphere where this branch operates can be defined by a few basic characteristics:
		
		- High unemployment (39%);
		- Excessive external debt;
		- US$1.44 billion external trade deficit;
		- Underdeveloped private sector (the share of the private sector in GDP is only around 35%);
		- Undeveloped capital market.
		
		The structure of totally accomplished premiums in Bosnia & Herzegovina is as follows:
		
		- Life insurance – 9.32%;
		- Non-life insurance – 90.68% of which:
		  - Motor vehicle – 67.39%;
		  - Accidents and health – 9.70%;
		  - Fire and other dangers – 12,66%;
		  - Remainder (marine, air transport, credits) – 10.25%.
		
		With an annual revenue over 300 million marks, insurance

		companies in Bosnia & Herzegovina, apart from banks, are the strongest financial players. Insurance companies own and co-own significant real estate and companies in the country, as well as banks. However, the insurance market is far from arranged. Laws exist, but they are seldom followed. Some insurance companies are registered thanks to fictive capital and the money which is collected from different premiums is spent or washed through various suspicious investments. Foreign and domestic uncollected damages are constantly increasing, and there is already a question of debt in millions. Unfair competition is bound to lead to problems in the operation of all companies. Regulations which relate to insurance are on entity level. They are not harmonized and do not allow an insurance company which is registered in one entity to work in the other. Insurance activity does not meet international standards given that the national market which is small and economically weak. The current competition in the insurance market is unfair and breaches good professional and economic behavior. The perception of insurance as a need, e.g. personal economic interest of protection of every subject, remains at a relatively low level. The insurance market is not integrated due to its division between two entities (Federation of Bosnia & Herzegovina and Republic Srpska). Deficiency of staff who are familiar with the technique and economy of insurance. Absence of new products in insurance. Absence of control from the competent authorities.

9. Re-Assessment of Previous Work and Elaboration of Recommendations

In the light of both the exposition of the law and the outcome of consultations made, we come now to the reconsideration of earlier work done under the auspices of MAP for the development of a prospective liability and compensation regime. This section is structured in line with the general consultation questionnaire and should be read jointly with the comments received thereon.[399]

9.1. Rationale for a Prospective Regime

All the respondents to the questionnaire and almost all other consultees met for the purpose of this study seem to agree that there is a need to create in the Mediterranean Sea Area and under the framework of the Barcelona Convention an ad hoc liability and compensation regime to deal with the consequences of environmental degradation. In itself, this means that a perception has so far been confirmed that current gaps or inadequacies in the rules of liability and compensation call for intervention.

It should be said that there is nothing in principle standing in the face of the adoption of a regime of the type under reflection, in view of the piece-meal development of environmental law.[400]

Building on previous activities, we would therefore fully endorse further action and reflection by the Contracting Parties through the MAP Secretariat towards 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.

9.2. Formal Aspects – Nature of Instrument

Both meetings of experts at Brijuni and Athens have favored the adoption of a binding law instrument such as a protocol to the Barcelona Convention. Such a protocol would have to be submitted for approval by the Parliaments or equivalent bodies of Contracting Parties. We have found in the course of our consultations that, on the one hand, respondent Contracting Parties were generally divided on the issue while socio-economic actors all supported the adoption of a protocol. On the other hand, there seems to be unanimity to have any regime to be developed ultimately submitted to Parliamentary debate. This can probably be explained by the perceived importance of the prospective regime and the desire of respondents to see it undergo the democratic forms of scrutiny prior to its adoption.

According to one NFP, it is however premature to favor a specific form for the prospective legal instrument before having defined exactly its scope of application. It is better to proceed in steps, for instance by having the “COP” issuing guidelines which State Parties could then transcribe into their national law. Only following assessment of such a period, should a binding legal instrument be envisaged. This approach would open the door to various options and would seem to match the flexibility reflected in art. 16 of the Barcelona Convention, 1995 as well as facilitate the work by keeping the door open to all possibilities.

It is recommended therefore that work proceeds step-by-step and that no preconceived format for the above-mentioned rules and procedures be singled out at this stage, but that all options with respect to the nature of the ultimate instrument be kept open, including but not limited to a protocol or an annex to the Barcelona Convention, a model law, a code of conduct, uniform principles, guidelines and/or recommendations, be kept open.

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[399] See section 8.1 above.

[400] See for instance EC Directive, preamble, par. (29).

9.3. Relationship with Other Regimes

The preparatory document submitted by the MAP Secretariat ahead of the Brijuni meeting envisaged that the prospective regime could actually overlap with "international agreements or arrangements in which the Contracting Parties participate as parties."[401] It proposed, however, to deal with the potential conflict by allowing victims to benefit from the more generous regime of liability and compensation. The meeting's report does not contain the trace of how the discussion, if any, ensued on this particular point and what direction it may have taken.

At the Athens meeting, participating legal experts agreed on the other hand that the prospective regime should cover "all the activities not already regulated at an international level." An example given of the latter was maritime transport covered by IMO conventions.[402]

Be that as it may, there is, in our opinion and, as concurred in by most of the questionnaire respondents, wisdom in ensuring *that the prospective regime should be compatible with existing international, regional and, where applicable, European Community regimes of liability and compensation relating to specified types of environmental degradation, notably IMO conventions dealing with ship-source pollution damage, taking into consideration current trends and developments*.

9.4. Geographical Scope of Application

The Brijuni meeting concluded that the new regime should cover the high seas. Our consultations have shown that a majority of consultees would agree with this view, especially that the Barcelona Convention, 1995 already covers the high seas. It is noteworthy that a number of regimes analyzed above are applicable on the high seas. Thus, there would not seem to be a legal impediment to such an extension although the matter deserves further investigation. Yet, there is a perceived difficulty to control activities on the high seas, particularly by the less developed countries. One commentator suggested that the regime prospective regime should first be implemented in the coastal zone before being extend further out at sea.

In this regard, application in the coastal area seems to attract wider consensus from respondents. The argument that such an area is already covered by the Barcelona Convention is reiterated.

We therefore recommend that the prospective regime should in principle cover the Mediterranean Sea Area, as determined by the Barcelona Convention and its Protocols.

9.5. "Damage"

The definition of "damage" should be consistent with the obligations of the Contracting Parties under the Barcelona Convention.[403]

9.5.1. Types of Damage to be Covered

Participants in the Brijuni meeting considered that the definition of "damage" should include damage to persons and property, damage caused by impairment of the marine and coastal

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[401] UNEP(OCA)/MED WG.117/4, annex III, p. 18, par. IX(1)(2).

[402] UNEP(DEC)/MED WG.230/2, p. 5, par. 32.

[403] UNEP(OCA)/MED WG.117/4, annex III, p. 1, par. II(1)

environment of the Mediterranean (so-called "environmental damage") and the cost of (reasonable) preventive measures, including further loss or damage caused by the preventive measures.

According to Prof. Scovazzi, it is important to clarify the damage to be covered (any kind of damage or specific kinds of damage such as damage related to dumping, seabed pollution and land-based pollution).[404] This issue could more conveniently be dealt with under the heading "Activities."[405]

We conclude that the definition of compensable damage should be further considered.

9.5.2. Assessment

There was consensus at the Brijuni meeting that damage caused by impairment of the marine and coastal environment should be assessed on the basis of the cost of reinstatement measures. More generally, according to Prof. Scovazzi, it is important to clarify which criteria are to be used for the assessment of the damage (Athens meeting report, p. 3, par. 20). Given the limitations of time and space, this study did not go into current judicial practices and procedures used by major international compensation funds in the assessment of damage. We recommend, however, that along the path of the formulation of a prospective regime an investigation of such practices and procedures is carried out so that lessons may be drawn by the Mediterranean Contracting Parties.

It is accordingly our recommendation that, as far as assessment of compensable damage is concerned, the matter be looked into in more detail in forthcoming actions.

9.6. "Activities"

The MAP Secretariat preparatory document submitted at the Brijuni meeting suggested that the definition of "damage" should "indicate the nature of the activities that fall within the scope of the liability and compensation regime in the Barcelona Convention system." It was recommended by the Secretariat that the definition should include "all professional operations dealing with dangerous substances and materials, wastes, non-indigenous or genetically modified species, or having a harmful effect on the biological diversity or the specially protected areas in the Mediterranean.".[406] There was a majority view at the meeting that the Mediterranean liability regime should be limited to dangerous activities which should be specifically listed.[407] Points of disagreement emanating from the Brijuni meeting included inclusion or not of land-based pollution.

At the Athens meeting, three types of activities were identified as noteworthy of inclusion, i.e. operation of offshore installations, dumping and land-based pollution.[408] As far as damage to biodiversity was concerned, the discussion at the Athens meeting identified two possible approaches.[409]

By and large, consultees were of the view that all land-based activities deserved to be included under the regime and that aquaculture, offshore mineral activities, dumping as well as leisure activities at sea should be covered.

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[404] UNEP(DEC)/MED WG.230/2, p. 3, par. 20.

[405] See section 9.6 below.

[406] UNEP(OCA)MED WG.117/4, annex III, p. 1-2, par. II(2)(d).

[407] Ibid. p. 5, par. 31.

[408] UNEP(DEC)/MED WG.230/2, p. 4, par. 29.

[409] Ibid. p. 4, par. 30.

Reverting to the four activities singled out by the Athens meeting participants, the following comments are apposite:

- As far as land-based activities are concerned, it is noteworthy that the LBS Protocol includes a long list of activities in its annex. A proposal that we would envisage is that Mediterranean States should prioritize activities that they wish to cover under the prospective liability and compensation regime. Prioritization could be done on the basis of the criteria already included in the annex to the Protocol, but States could also set priorities on the basis of their own situation. The MAP Secretariat could help Mediterranean States in prioritizing land-based activities to be covered. A source of inspiration in this endeavor could be the 2003 Protocol on Liability and Compensation adopted under the framework of the Helsinki Convention and specifically its annex. Standards could thus be developed regarding toxic substances and threshold quantities as a pre-requisite to the triggering of liability provisions.
- As far as offshore activities are concerned, this is not a pressing area for intervention especially that the industry is to a considerable extent already observing its own codes of ethics and other forms of self-regulation. Reference is also made to OPOL, an agreement entered into between offshore concerns, which should be distinguished from the international convention of the same name adopted in London in 1977 and which never entered into force. A measure of control should however be ensured so that industry does not fall under certain standards.
- The issue of biodiversity would best be tackled in a way similar to that obtaining under the EC Directive on Environmental Liability, which sets forth state-of-the-art standards on the matter.
- Dumping is a an activity falling largely outside international conventions when it comes to private liability and compensation. An opportunity arises within the framework of the Barcelona Convention to include it within any prospective regime to be developed.

We therefore recommend further consideration of which activities should be covered and, in particular, whether priority should be given to land-based and offshore activities, dumping and activities attaining biodiversity.

9.7. "Incident"

According to the MEDU Secretariat proposal, damage may result from three kinds of incidents, i.e. a sudden occurrence, a continuous occurrence or a series of occurrences with the same origin.[410]

This matter should be further considered.

9.8. "Operator"

The MAP Secretariat's preparatory document suggested a definition of the "operator" who would bear the primary liability under the prospective regime.[411] The definition was accepted by participants at the Brijuni meeting.[412]

According to Prof. Scovazzi, it is important to clarify how to identify the polluter in the event that land-based pollution is included in the regime (Athens meeting report).

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[410] UNEP(OCA)MED WG.117/4, annex III, p. 3, par. II(3)(e).

[411] Ibid. annex III, p. 3, par. II(3)(f).

[412] Ibid. p. 5, par. 30.

Various definitions have been gathered in our analysis of regimes in place and there should be no difficulty to come up with a satisfactory provision on the issue. *The definition of the liable party or parties should be considered further.*

9.9. Multiple Tier Liability and Compensation

9.9.1. Operator

9.9.1.1. Standard of Liability

There was a general view at the Brijuni meeting supporting the MAP Secretariat's proposal of a strict liability system.[413] Exceptionally, the Secretariat document suggested the creation of absolute liability.[414]

Liability would be triggered once damage is causally linked to an incident, as these terms are ultimately defined under the prospective regime.[415]

The matter should be further considered.

9.9.1.2. Exemptions of Liability

Previous discussions raised the breadth of scope of these exemptions and the defense of "act of terrorism". No opinion can as yet be formed on these matters which *would be best analyzed in relation to the activities to be included under the prospective regime*.

9.9.1.3. Limitation of Liability

This issue remained undecided following the Brijuni meeting.

Limitation of liability should be further considered.

9.9.1.4. Compulsory Financial and Security Scheme

Compulsory insurance or other systems of financial security, capacity of the insurance market, financial limits or caps of insurance, direct action: these are all matters which should be further considered.

9.9.2. Mediterranean Inter-State Compensation Fund

This issue remained undecided following the Brijuni meeting.

According to Prof. Scovazzi, it is important to clarify the role of the complementary Fund in providing but also receiving compensation.

It is premature to suggest or even conjecture whether an international fund could be usefully resorted to under the prospective regime. *This issue should be considered further.*

9.9.3. State Residual Liability

This issue remained undecided following the Brijuni meeting. It does not seem that there is much substance to move forward on this ground. Public funds are allocated for

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[413] Ibid. p. 5, pars. 32-33.

[414] Ibid. annex III, section III, p. 5-8.

[415] Ibid. annex III, p. 2, par. II(2).

compensation purposes in nuclear liability instances. *We would however suggest further consideration the issue of State residual liability.*

9.10. Actions for Compensation or Who Can Sue?

As far as environmental damage is concerned, participants at the Brijuni meeting were of the view that the State could be considered as a trustee of the general interest for the protection of the Mediterranean marine environment (p. 4, par. 27). Points of disagreement emanating from the Brijuni meeting included the role to be attributed to NGOs.

According to Prof. Scovazzi, it is important to clarify how to determine the victims when pollution occurs on the high seas.

In the course of our consultations, it was noticed that all respondents supported right of suit by the State whereas NFPs were generally against NGO's being given the right to claim. Socio-economic actors were understandably favorable to the role of NGO's.

In any case, further consideration should be given to the issue of the right of suit.

9.11. Further Work

It is fair to say that the breadth of the subject is quite extensive and that further preparatory work should be carried out, ideally as a follow-up to this study, which had to be limited in terms of output and timeframe. A more in-depth study should go into the following matters:

- The reasons for the non-ratification of certain international and regional instruments;
- The process which led to the adoption of the EC Environmental Liability Directive, more specifically the debates within the European Parliament: such a study would provide MAP with an insight into the concerns of EU Member States and the limits of the Mediterranean exercise;
- Filling the gaps in the understanding of the national laws of Mediterranean States: given the immense task involved and the limited resources available, it was not possible to gather a full and comprehensive picture of the national laws and ancillary judicial practices in place.

10. Compilation of Recommendations

To recap, we would recommend:

- *That, building on previous activities, action and reflection continue within the MAP framework towards 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;*
- *That the prospective regime should be compatible with existing international, regional and, where applicable, European Community regimes of liability and compensation relating to specified types of environmental degradation, notably IMO conventions dealing with ship-source pollution damage, taking into consideration current trends and developments;*
- *That work proceeds step-by-step and that no preconceived format for the above-mentioned rules and procedures be singled out at this stage, but that all options with respect to the nature of the ultimate instrument, including but not limited to a protocol or an annex to the Barcelona Convention, a model law, a code of conduct, uniform principles, guidelines and/or recommendations, be kept open;*
- *That the prospective regime should in principle cover the Mediterranean Sea Area, as determined by the Barcelona Convention and its Protocols;*
- *That an open-ended working group of legal and technical experts is set up with the mandate of considering and making recommendations on the various issues relating to the formulation and adoption of the above-mentioned rules and procedures, including but not limited to the following issues:*
    - *The choice of the legal instrument to be adopted; The scope of the instrument and particulary the definition of activities to be covered and, in particular, whether priority should be given to land-based and offshore activities, dumping and activities attaining biodiversity;*
    - *The definition and nature of compensable damage;*
    - *The assessment of compensable damage;*
    - *The definition of incidents to be covered;*
    - *The definition of the liable party or parties;*
    - *The standard of liability, including, where applicable, exemptions from liability;*
    - *The channelling of liability (causation issues);*
    - *Limitations on liability;*
    - *Mechanism of financial security;*
    - *The setting up of an interstate compensation fund, whether based on contributions from States or industry;*
    - *State liability;*
    - *Standing/ right to bring claims;*
- *That, pending the outcome of the working group's activities, Contracting Parties strive to implement article 16 of the Barcelona Convention as far as possible.*

11. Bibliography

11.1. Monographs

Prieur, Michel, *Droit de l'environnement*, 4th ed., Paris, Dalloz, 2001

11.2. Articles

Bouraoui, Soukeïna, "Du droit méditerranéen de l'environnement comme dialogue entre l'Europe et le monde arabe?" in Michel Prieur & Claude Lambrechts (eds.), *Mankind and the Environment* (Paris: Frison-Roche, 1998), p. 225

Charpentier, Jean, "L'humanité: un patrimoine, mais pas de personnalité juridique," in Michel Prieur & Claude Lambrechts (eds.), *Mankind and the Environment* (Paris: Frison-Roche, 1998), p. 17

Smets, Henri, "Examen critique du principe pollueur-payeur," in Michel Prieur & Claude Lambrechts (eds.), *Mankind and the Environment* (Paris: Frison-Roche, 1998), p. 79

Wiederkehr, George, "Dommage écologique et responsabilité civile," in Michel Prieur & Claude Lambrechts (eds.), *Mankind and the Environment* (Paris: Frison-Roche, 1998), p. 513

12. Appendices

12.1. Terms of Reference (Extract)

TERMS OF REFERENCE TO PREPARE A FEASIBILITY STUDY FOR SUBMISSION TO THE MEETING OF THE CONTRACTING PARTIES IN 2005 COVERING THE LEGAL, ECONOMIC, FINANCIAL AND SOCIAL ASPECTS OF A LIABILITY AND COMPENSATION REGIME

Introduction

At their 13th meeting, the Contracting Parties to the Barcelona Convention requested the Secretariat to prepare a feasibility study for submission to the Meeting of the Contracting Parties in 2005 covering the legal, economic, financial and social aspects of a liability and compensation regime based on the organization of a participatory process with the Contracting Parties and socio-economic actors and with a view to avoiding overlapping with any other liability and compensation regime.

Tasks to be achieved by the expert

In view of preparing the above feasibility study, the consultant will carry out the following tasks:

1. Review the proposals set forth in the report of the experts meeting on Environmental Liability, held in Athens in 2003, (attached as annex to these ToRs) and if appropriate revalidate them in line with recent developments such as the adoption of the new EU directive on Environmental Liability, or any other relevant one.
2. Assess the state of the art of the national systems of the Mediterranean countries related to liability and compensation with a particular emphasis on environmental liability in marine and coastal areas.
3. Assess the state of the art of the global or regional agreements or regimes related to liability and compensation, which might affect the Mediterranean sea and its coastal area.
4. Analyse the economic situation of the respective economic actors that might be affected by establishing such a regime (in conformity with a possible list of activities to be covered by such a regime, see point 1).
5. Analyse the insurance market situation in the Mediterranean countries (both developing and developed) or worldwide, their interest and capacity in participating in any possible liability scheme for environmental damage.
6. Analyse insurance coverage issues, financial limit of liabilities and financial sector limit for the liability for ecological or biodiversity damages.
7. Consult the opinion of social and economic actors on such issues and make an overall assessment of the economical and social impact that a possible regional liability and compensation regime might have, if established in the Mediterranean.
8. Participate in the meeting/s organised by the Secretariat on that topic and assist the Secretariat in preparing the rapport of the meeting/s.
9. **On the basis of the above assessment, come out with recommendations for each of the following options.**

- Use international legal instruments in force which are of relevance to liability for environmental damage in the Mediterranean sea and its coastal area;
- Evaluate the relevant agreements already in force and consider whether they should be amended to address questions of civil liability **for environmental damage in marine and coastal area in the Mediterranean.**
- Promote the entry into force of existing international agreements containing provisions, which, inter-alia cover civil liability **for environmental damage in marine and coastal area** and identify the reasons why they have not yet entered into force. In this regard, the possibility of amendments or adjustments to these agreements might be considered;
- Develop a new legal instrument providing for civil liability inter alia **for environmental damage in marine and coastal area under the Barcelona** Convention. If it is the case, develop the main elements or a skeleton for such a legal instrument of regime justifying the needs.
- Develop a code of conduct, guidelines and recommendations concerning liability, inter alia for damage resulting from. If it is the case, develop the main elements for such an instrument. […]

12.2. Methodology Report (with Adaptations) (Extracts)

Report on Methodology

17 September 2004

In pursuance of the terms of reference, this methodology report sets out the methodology which will be followed for carrying out the feasibility study and the other duties required from the Consultant. The report includes a proposed list of the activities to be undertaken by the Consultant.[416] It also outlines travel abroad deemed necessary and justifies the same.[417] A provisional calendar for the execution of the work is also provided herein.[418]

In a nutshell, methodology is the orderly work plan aimed at reaching objectives. The methodology report attempts to explain briefly the proposed execution of the work by answering the following key questions: How? When? From where? From whom? […]

12.2.1. List of Activities

In setting forth the list of activities to be undertaken by the Consultant, we have attempted to match as closely as possible the terms of reference.

By and large, the work involved combines research, information gathering, consultation, data analysis and formulation of the way forward. Participation in MAP meetings and seconding of the Secretariat in preparing meeting reports are additional duties required under the terms of reference.

The description of duties includes a cross-reference to the corresponding sections of the feasibility study […] It is important to note that the outline is still in draft form and is likely to undergo certain alterations as the work progresses.

Finally, the reader should refer to the calendar included at the end of this report[419] for a preview of the suggested chronology of the execution of the relevant task.

12.2.1.1. Review and Revalidation of Previous Work

Task #1 of the terms of reference requires perusal and review of the April 2003 Athens experts meeting proposals, but this also requires perusal of previous MEDU reports on the subject, including the Brijuni September 1997 meeting report. It will be important to compile a list of the working documents already gathered and to complete the set. The MAP Secretariat may conveniently provide the Consultant with previous documents it holds on hand or the Consultant may collect the same during the proposed visit to MAP.

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[416] See section 12.2.1 (“List of Activities”) below.

[417] See section 12.2.2 (“Travel Itinerary”) below.

[418] See section 12.2.3 (“Provisional Calendar”) below.

[419] See section 12.2.3 (“Provisional Calendar”) below.

Revalidation of previous proposals must be "in line with recent developments such as the new EU directive on Environmental Liability, or any other relevant one;" in short, this means that the Consultant must in his review and revalidation work bear in mind major recent legal developments. This could include new EU law, but also new national or international rules affecting in a palpable way the status quo antes.

It is clear that the execution of task #1 will stretch throughout the period of the consultancy, since the elements gathered from the execution of other tasks along the way will contribute by necessity to the review and revalidation process.[420]

12.2.1.2. Research, Collection, Analysis, Classification and Compilation of National Legislation

Task #2 of the terms of reference requires collection of legislation and regulations from the Mediterranean countries in relation to "liability and compensation with a particular emphasis on environmental liability in marine and coastal areas." It is hard to imagine how the Consultant could attempt to do such work without recourse to representatives of the countries themselves and the MAP Secretariat, which may either already have relevant information or be in a position to assist in obtaining the same.[421] In any case, standardized questionnaires and requests of a copy of legislation[422] will have to be drafted by the Consultant imminently and sent out to the various States, after having been approved by the MAP Secretariat (see proposed calendar under section 12.2.3 below). It is important that such questionnaires bear the official seal of the MAP Secretariat in order to expect a diligent response from recipient countries.

This task would require a tabular presentation per country showing the state of the art position in relation to itemized aspects of "national systems related to liability and compensation with particular emphasis on environmental liability in marine and coastal areas."[423] A tabular presentation of the Consultant's assessment of "the state of the art of the national systems" will be provided either in the same table or separately. This task is probably best executed if a summary discussion of salient issues, directions and challenges more comprehensively and meticulously dealt with in the table(s) is also rendered, ideally as an introduction to the tabular presentations.[424]

12.2.1.3. Research, Collection, Analysis, Classification and Compilation of International and Regional Legislation

Resemblance in the nature of the work involved renders a good part of what we set forth in relation to the execution of task #2 of the terms of reference relevant for the purposes of task #3. Methodology will thus consist in the imminent preparation of questionnaires aiming at identifying the "global or regional agreements or regimes related to liability and compensation, which might affect the Mediterranean sea and its coastal area" and to which

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[420] See section 6 ("Recapitulation of Previous Work") above.

[421] Resources at the Consultant's disposal include the World Wide Web and access to a small library. Furthermore, some support may be available to the Consultant through his network of Mediterranean marine lawyers in certain Mediterranean countries.

[422] See sample questionnaire in section 12.3.1 ("Data Gathering Questionnaire – Questionnaire on the State of the Art of Liability and Compensation Systems in Mediterranean Countries with Particular Reference to Environmental Damage in Marine and Coastal Areas")12.3.1 below.

[423] See sections 7.2.1 ("National Systems") and 7.2.2 ("EC System") above.

[424] See section 7.1 ("Exposé") above.

Mediterranean States are party[425] (see proposed calendar under section 12.2.3 below). A copy of otherwise unavailable texts of treaties will be simultaneously requested.

A further questionnaire dealing with the way international treaties and agreements are integrated in the domestic legal order of each Mediterranean State will also be prepared by the Consultant[426] (see proposed calendar under section 12.2.3 below). The purpose of this questionnaire is to complete the picture regarding environmental law in each of the Mediterranean States as far as international norms are concerned.

Search results will be compiled and presented in a tabular form following the national portraits referred to above.[427] The exposé will analytically refer to the prominent features of those international regimes.[428]

12.2.1.4. Consultation with Affected Interests

One of the main pillars of the work leading up to the compilation of the feasibility study is the consultation of affected interests (task #7 of the terms of reference). Before turning to the main instruments of consultation envisaged, we will outline the interests we propose to consult.[429]

12.2.1.4.1. Affected Interests

The crucial consultation required under the terms of reference involves all those parties who will be affected by the establishment of a regime of liability and compensation in the Mediterranean Sea and coastal areas (see in particular tasks #4 to #7 of the terms of reference). Two broad categories of such affected parties may be foreseen, that is the Contracting Parties to the Barcelona Convention and socio-economic partners, which latter category includes the insurance market. Given the special role attributed to the insurance sector, we prefer to treat it separately from the other socio-economic actors.[430]

12.2.1.4.1.1. States

Consultation will be effected with all the Contracting Parties on the basis of written questionnaires and with those Contracting Parties which are selected for purposes of direct interviews.[431] Besides States, certain intergovernmental organizations, such as the European Community, should also be included in the consultation process.

A list of competent departments to communicate with will be proposed by the Consultant shortly (see proposed calendar under section 12.2.3 below).

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[425] See sample questionnaire in section 12.3.1 (“Data Gathering Questionnaire – Questionnaire on the State of the Art of Liability and Compensation Systems in Mediterranean Countries with Particular Reference to Environmental Damage in Marine and Coastal Areas”)12.3.1 below.

[426] Ibid.

[427] See section 7.2.3 (“Regional and Global Regimes”) above.

[428] See section 7.1 (“Exposé”) above.

[429] See section 12.4 (“List of Parties Consulted”) below.

[430] See section 12.3.2.2 (“Questionnaire on Insurance Aspects”) below.

[431] See section 12.2.1.4.2.2 (“Interviews”) below.

12.2.1.4.1.2. Socio-Economic Actors

There is a range of socio-economic actors who are likely to be affected by the prospective regime. The choice of actors to be consulted must be based on criteria of relevancy. Furthermore, a cross-section of actors should be sought at the various levels (international, regional, sub-regional, national, local) and by sector (fisheries, aquaculture, shipping, ports, tourism, urban development, manufacturing industry, agriculture, other transport modes, etc.). The list of MAP Partners will be useful in the drawing up of an initial list, which the Consultant will attend to following in the days following submission of this report (see proposed calendar under section 12.2.3 below).

12.2.1.4.1.3. Insurance Market

Local, regional and international markets should be consulted (see tasks #5 and #6 of the terms of reference). This does not exclude State organs which may be empowered to cover risks in the respective Mediterranean countries. Again, a list of parties to consult will be drawn up shortly (see proposed calendar under section 12.2.3 below).

12.2.1.4.2. Consultation Instruments

The use of questionnaires should be prevalent and at the basis of the consultations; however, it will also be important to conduct some interviews.

12.2.1.4.2.1. Questionnaires

Questionnaires should address those issues underlying a prospective liability and compensation regime which are open to controversy. It goes without saying that the questionnaires will center on issues rather than a proposed text for a prospective liability and compensation regime. Drafting of the text setting forth such a regime is a legal task and does not really require the involvement of affected interests, provided they have participated in the consultation phase. The questionnaire may conveniently include requests for the communication of relevant documentation.

As to whether to develop only one questionnaire to be used for consultations generally or differentiated questionnaires tailor-made to the various categories of consulted interests, it is our view that the former approach is preferable. Indeed, the drawing up of tailor-made questionnaires is time-consuming. Furthermore, it is best to use a general questionnaire so as to obtain the widest view possible from the various consulted interests.[432] This does not avoid the need for specific questionnaires on certain matters of a specialist nature, for instance insofar as the insurance aspects of the prospective liability and compensation regime are concerned.[433]

12.2.1.4.2.2. Interviews

As stated above, it will be important to conduct a certain amount of direct consultations by way of face-to-face interviews with relevant interests. The purpose of the suggested interviews will be to gain a broader and deeper understanding of affected interests' positions and concerns, which it would otherwise be difficult for the exclusive recourse to written questionnaires to achieve. Travel should aim to maximize interviewing opportunities.

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[432] See section 12.3.2.1 ("General Questionnaire") below.

[433] See section 12.3.2.2 ("Questionnaire on Insurance Aspects") below.

Insofar as we foresee the need for interviews to be held–with both State officials and socio-economic actors from that State, including insurance market representatives–, it becomes important to determine in which countries this should take place. Any choice to be made should take into consideration the following factors: time frame for the execution of the feasibility study; cross-section of sub-regions and levels of development; concentration and diversity of socio-economic actors; difficulty of correspondence; expected output. Visits per country should last not more than a week and less if possible. The schedule of meetings for each visit should be planned in detail beforehand in consultation with the Contracting Party and the MAP Secretariat. Accordingly, we propose the following tentative choice of countries to be visited:

Mediterranean sub-regions and proposed countries to visit

Sub-region	**Proposed countries to visit**
Western Europe (Spain, France, Monaco, Italy)	France or Italy
Balkans (Slovenia, Croatia, Bosnia & Herzegovina, Serbia & Montenegro, Albania, Greece)	Greece
Asia Minor (Turkey)	
Mashriq (Syria, Lebanon, Israel, Egypt)	Egypt
Greater Maghreb (Morocco, Algeria, Tunisia, Libya)	Morocco
Island States (Malta, Cyprus)	Malta*

* No specific travel needed (Consultant's base country).

In addition, a visit to London to meet inter alia with representatives of the international insurance market (including possibly the International Oil Pollution Compensation Fund 2002) may be crucial.

12.2.1.5. Analysis of Socio-Economic and Insurance Aspects

Our consultation and research findings on the socio-economic and insurance implications of a prospective liability and compensation regime will then have to be analyzed in accordance with tasks #4 to #7 of the terms of reference. This analysis will form part of the broader review and re-assessment of earlier proposals for the adoption of a prospective regime.[434]

12.2.1.6. Proposal of a Liability and Compensation Regime (including Drafting of Report)

The main outcome expected from the feasibility study is contained in task #9 of the terms of reference. The presentation of our recommendations should follow as closely as possible the order in which the subject under review has been so far dealt with within the framework of

[434] See section 9 ("Re-Assessment of Previous Work and Elaboration of Recommendations") above.

the MEDU.[435] For ease of reference, recommendations will be re-compiled in a separate section of the report.[436]

12.2.1.7. Participation in Meetings with Secretariat

The last type of activity envisaged by the terms of reference under task #8 will largely depend on the schedule and requirements of the MAP Secretariat. However, we think it is very important for the Consultant to meet the MAP officials soon after submission of this methodology report. The visit can also serve to enable us to collect relevant documentation stored in Athens.

12.2.2. Travel Itinerary

This section recaps the proposed tentative travel itinerary which is otherwise justified in section 12.2.1.4.2.2 above. The MAP's specific travel requirements, in particular in relation to the attendance of MAP-sponsored meetings, will have to be added.

Tentative itinerary

Country to visit	**Meetings**	**Timing (2004)**
Greece	MAP + (if possible) affected interests	Week 40
France or Italy	Affected interests	Week 46
Egypt	Affected interests	Week 48
United Kingdom	International insurance market	Week 50
Morocco	Affected interests	Week 52

12.2.3. Provisional Calendar

This section recaps all the activities envisaged in a chronological manner.

Provisional calendar of activities

Activities	**Timing (2004-2005)**
Submission of methodology report	Week 38 (mid-September)
Approval of methodology report Drafting and submission of questionnaires*	Week 39
Research and collection of national, international and regional legislation	Weeks 39-49

[435] Ibid.

[436] See section 10 ("Compilation of Recommendations").

Meeting with MAP officials in Athens; visit to MAP library Approval of questionnaires* Compilation and submission of lists of parties to be consulted Interviews with affected interests while in Greece (if possible)	Week 40
Approval of lists of parties to be consulted	Week 41
Transmission of questionnaires*	Weeks 41-42
Follow-up of questionnaires*; receipt and processing of responses	Weeks 42-49
Travel for interviews (to be agreed upon)	Weeks 46, 48, 50 and 52
Analysis, classification and compilation of national, international and regional legislation	Weeks 46-49
Analysis of socio-economic and insurance aspects; proposal of a liability and compensation regime (including drafting of feasibility study)	Weeks 50 to 4 (December-January)
Submission of feasibility study	Week 5
Participation in meeting of legal experts aimed at discussing findings and recommendations of feasibility study	Winter/Spring
Submission of report on meeting of legal experts together with final version of feasibility study	April/mid-May

* Questionnaires to comprise both types, i.e. data gathering and consultation questionnaires, including where appropriate requests of documentation

12.3. Sample Questionnaires

12.3.1. Data Gathering Questionnaire – Questionnaire on the State of the Art of Liability and Compensation Systems in Mediterranean Countries with Particular Reference to Environmental Damage in Marine and Coastal Areas

Questionnaire on the State of the Art of Systems of Liability and Compensation in Mediterranean Countries with Particular Reference to Environmental Damage in Marine and Coastal Areas*

Government office surveyed			
Issue	Sources of liability	**Question**	Indicate the provisions of your national law which set forth each of the following types of third-party liability, if any.
Instance	General civil liability	**Answer**	
Instance	General administrative liability (liability of State organs) (if different from general civil liability)	**Answer**	
Instance	Marine liability	**Answer**	
Instance	Environmental liability	**Answer**	
Issue	Basis of liability	**Question**	Indicate for each type of third-party liability whether liability is fault-based, strict or absolute and what exemptions from liability, if any, are provided for under national law.
Instance	General civil liability	**Answer**	
Instance	General administrative liability (liability of State organs) (if	**Answer**	

	different from general civil liability)		
Instance	Marine liability	**Answer**	
Instance	Environmental liability	**Answer**	
Issue	Compensable damage	**Question**	Is pure environmental damage, e.g. loss of biodiversity, compensable under your national law and, if so, who can sue for it? Indicate any relevant provisions of national law.
		Answer	
Issue	Remedies	**Question**	Indicate whether the following types of remedies are available in the event of third-party liability concerning environmental harm. Elaborate on the facilities and difficulties encountered in taking advantage of each type of remedy. In particular, refer to any system of compulsory insurance for third-party liability in existence.
Instance	Damages	**Answer**	
Instance	Operational prescriptions (measures imposed by the court on the defendant affecting the conduct of its activities and aiming at reducing environmental harm)	**Answer**	
Instance	Reinstatement of the environment	**Answer**	

Issue	International and regional regimes of liability and compensation	**Question**	Specify any global, regional or sub-regional system of liability and compensation relating to environmental harm affecting marine and coastal areas that has been adopted or is in force in your country.
		Answer	
Issue	Transformation of international conventions (or treaties) into domestic law	**Question**	Is a legislative instrument (Act of Parliament or of another legislative body) required to make an international convention (or treaty) binding on the domestic courts and on the citizens (etc.) of the State? Would you answer to the foregoing question be different with regard to 'self-executing' international conventions (or treaties)?
		Answer	
Issue	Adequacy of existing rules	**Question**	In your opinion, are the existing rules of liability and compensation adequate to deal with the consequences of environmental degradation in marine and coastal areas?
		Answer	

* This questionnaire should ideally be filled out by a legal officer serving in the Administration. Please provide a copy of all relevant legislation (both in the official language(s) and in a translated English or French version, if available) with your answers to this questionnaire.

12.3.2. Consultation Questionnaires

12.3.2.1. General Questionnaire

General Consultation Questionnaire

Party consulted				
Issue	**Premise or consensus (based on working documents)**	**We agree**	**We disagree**	**Comments**
Advisability of an ad hoc liability and compensation regime	17) There is a need to create in the Mediterranean Sea Area and under the framework of the Barcelona Convention an ad hoc liability and compensation regime to deal with the consequences of			

	environmental degradation but without prejudice to existing international systems of liability and compensation.			
Form of prospective regime	18) It is best to formulate the prospective new regime in the form of a binding legal instrument, as opposed to a voluntary or “soft law” instrument.			
	19) The prospective regime should be submitted for approval by Contracting Parties in the same way as a new treaty or protocol, i.e. requiring in most States approval by the State legislative assembly or Parliament.			
Relationship with other regimes	20) The prospective regime should avoid conflict with existing international regimes of liability and compensation relating to certain types of environmental degradation, notably IMO conventions dealing with ship-source pollution damage.			
Geographical scope of application of the prospective regime	21) The prospective regime should extend to the high seas.			
	22) The prospective regime should extend to the coastal area.			
Type of damage to be covered under the prospective regime	23) The prospective regime should extend to economic loss, e.g. loss of business.			
	24) The prospective regime should extend to pure environmental damage, e.g. loss of biodiversity.			

Type of activities to be covered under the prospective regime	25) The prospective regime should extend to land-based activities of all types.	*If you agree, skip proposition #10.*		
	(Skip if you agree with proposition #9) 26) The prospective regime should extend to: e) agricultural activities,			
	f) urban activities,			
	g) land-based manufacturing activities;			
	h) terrestrial transport activities in the coastal area.			
	27) The prospective regime should extend to: e) aquaculture activities;			
	f) offshore mineral activities;			
	g) dumping activities at sea;			
	h) leisure activities at sea.			
Type of incident to be covered under the prospective regime	28) The prospective regime should extend to continuous phenomena, e.g. continuous pollution, and not merely sudden incidents, e.g. explosion, accidental spillage.			

Liable party	29) Given the extent of potential damage, liability under the prospective regime should be split up in multiple tiers: d) the person who is in control of the damaging activity (referred to as "the operator") should bear the first tier of liability, subject to compulsory insurance;			
	e) a special fund, designated as the Mediterranean Inter-State Compensation Fund, and contributed to by the Contracting Parties, should bear the second tier of liability;			
	f) the Mediterranean Contracting State under whose jurisdiction the damaging activity was carried out should bear the third tier of liability.			
	<u>Alternatively,</u> the operator should have unlimited liability and his liability should, in the event of failure to pay, be supplemented by the Mediterranean Inter-State Compensation Fund and the State's residual liability.			
Standard of liability	30) The standard of liability under the prospective regime should be strict; in other words, the victim should not be required to			

	prove fault or negligence on the part of the liable party, but simply the occurrence of damage caused by a covered activity.			
Who can sue?	31) The following interests should be allowed to bring actions for compensation in respect of pure environmental damage, e.g. loss of biodiversity: c) by the State;			
	d) environmental non-governmental organizations.			
Time for suit	32) Actions for compensation should be barred three years after the date on which the claimant knew or ought reasonably to have known of the damage and of the identity of the operator and, in any case, thirty years after the date of the incident.			
Additional comments	Please state any other comments you may wish to bring to the subject.			

12.3.2.2. Questionnaire on Insurance Aspects

Questionnaire on Insurance Aspects (to be answered after the General Consultation Questionnaire)

Party consulted		
Issue	**Question**	**Answer**
Insurability of scheme.	5) Is the prospective regime insurable under current market conditions?	
Which markets?	6) Indicate whether cover could be obtained locally, regionally and/or internationally.	

Limit of cover	7) What in your opinion should be the limit of cover?	
Additional comments	8) Please state any other comments you may wish to bring to the subject.	

12.4. List of Parties Consulted

Lists of parties consulted (NGOs only)

Name of party	Main field of interest	Level of action	Headquarters	Web site
Advisory Committee on Protection of the Sea (ACOPS)	Environmental protection	Global	London, UK	www.acops.org
AMWAJ of the Environment	Environmental protection	National	Beirut, Lebanon	www.amwajenvt.com.lb
Arab Office For Youth & Environment (AOYE)	Environmental protection; development	Regional	Egypt?	www.aoye.org/about.htm
Arab Network For Environment & Development (RAED)	Environmental protection; development	Regional	Egypt?	www.aoye.org/Raed/raed1.html
Association of National Organisations of Fishing Enterprises in the EU (Europeche)	Fishing	Regional	Brussels, Belgium	http://europa.eu.int/comm/civil_society/coneccs/detail.cfm?CL=en&organisation_id=112
Association of the Chambers of Commerce and Industry of the Mediterranean (ASCAME)	Economic development; tourism	Regional	Barcelona, Spain	www.pa.camcom.it/fenici/ascame/default-asc.htm
Association for the Protection of Nature and the Environment, Kairouan	Environmental protection		Kairouan, Tunisia	www.europsolar.com/apnek/home.htm
BirdLife International	Environmental protection	Global	Cambridge, United Kingdom	http://www.birdlife.net
Clean Up Greece	Environmental protection; sustainable development	National	Athens, Greece	http://www.cleanupgreece.org.gr

Coastal Union (EUCC)	Environmental protection; sustainable development; coastal zone management	Regional	Leiden, The Netherlands	http://www.eucc.nl
Comité Maritime International (CMI)	Maritime law	Global	Antwerp, Brussels	www.comitemaritime.org
Committee of Agricultural Organisations in the EU/ General Committee for Agricultural Cooperation in the EU (COPA/COGECA)	Agriculture	Regional	Brussels, Belgium	http://www.copa-cogeca.be
Conference of Peripheral Maritime Regions of Europe (CPMR)	Regional development	Regional	Rennes, France	http://www.crpm.org/
Cyprus Conservation Foundation (CCF)	Environmental protection	National	Limassol, Cyprus	http://www.conservation.org.cy
Cyprus Marine Environment Protection Association (CYMEPA)	Environmental protection	National	?	?
Environnement Développement et Action au Maghreb (Enda Maghreb)	Environmental protection; sustainable development	National	Rabat, Morocco	http://www.enda.org.ma
EU Fish Processors Association (AIPCE)	Fishing	Regional	Brussels, Belgium	http://europa.eu.int/comm/civil_society/coneccs/detail.cfm?CL=en&organisation_id=768
Euro-Mediterranean Centre on Insular Coastal Dynamics (ICoD)	Coastal zone management	Regional	Valletta, Malta	www.icod.org.mt
European Anglers Alliance (EAA)	Fishing	Regional	Strasbourg, France	http://www.eaa-europe.org
European Atomic Forum (FORATOM)	Energy	Regional	Brussels, Belgium	http://www.foratom.org

European Chemical Industry Council (CEFIC)	Manufacturing	Regional	Brussels, Belgium	http://www.cefic.org
European Environmental Bureau	Environmental protection	Regional	Brussels, Belgium	http://www.eeb.org/
European Federation of Trade Unions in the Food, Agriculture and Tourism Sectors and Allied Branches (EFFAT)	Food industry; agriculture; fisheries; tourism	Regional	Brussels, Belgium	http://www.effat.org/
European Fertilizer Manufacturers Association (EFMA)	Manufacturing	Regional	Brussels, Belgium	http://www.efma.org/
European Fishing Tackle Trade Association (EFTTA)	Fishing supplies	Regional	London, United Kingdom	http://www.eftta.com
European Petroleum Industry Association (EUROPIA)	Energy	Regional	Brussels, Belgium	http://www.europia.com
European Sea Ports Organisation (ESPO)	Ports and harbors	Regional	Brussels, Belgium	http://www.espo.be/
European Union of Aquarium Curators (EUAC)	Tourism	Global	Barcelona, Spain	http://www.euac.org/
Fédération Française des Pêcheurs en Mer (FFPM)	Fishing	National	Anglet, France	http://www.ffpm.org/
Federation of National Organisations of Importers and Exporters of Fish (CEP)	Fishing	Regional ?	Brussels, Belgium	http://europa.eu.int/comm/civil_society/coneccs/detail.cfm?CL=en&organisation_id=298
Forum for the Lagoon	Environmental protection	Local	Venice, Italy	http://www.forumlagunavenezia.org/
Friends of the Earth Croatia	Environmental protection	National	Zagreb, Croatia	www.zelena-akcija.hr
Friends of the Earth Europe	Environmental protection	Regional	Brussels, Belgium	www.foeeurope.org

Friends of the Earth France	Environmental protection	National	Montreuil, France	www.amisdelaterre.org
Friends of the Earth Greece	Environmental protection	National	Athens, Greece	www.foei.org/groups/members/greece.html
Friends of the Earth International	Environmental protection	Global	Amsterdam, the Netherlands	www.foei.org
Friends of the Earth Italy	Environmental protection	National	Rome, Italy	www.amicidellaterra.it/
Friends of the Earth Malta	Environmental protection	National	Valletta, Malta	www.foemalta.org
Friends of the Earth Middle East	Environmental protection	Sub-regional	Amman, Jordan	www.foeme.org
Friends of the Earth Tunisia	Environmental protection	National	Tunis, Tunisia	www.foei.org/groups/members/tunisia.html
Greenpeace France	Environmental protection	National	Paris, France	http://www.greenpeace.org/france_fr/
Greenpeace Greece	Environmental protection	National	Athens, Greece	http://www.greenpeace.gr/
Greenpeace International	Environmental protection	Global	Amsterdam, The Netherlands	http://www.greenpeace.org
Greenpeace Israel	Environmental protection	National	Tel Aviv, Israel	
Greenpeace Italy	Environmental protection	National	Rome, Italy	http://www.greenpeace.it
Greenpeace Malta	Environmental protection	National	Balzan, Malta	
Greenpeace Spain	Environmental protection	National	Madrid, Spain	http://www.greenpeace.org/espana_es/
Greenpeace Turkey	Environmental protection	National	Istanbul, Turkey	
Hellenic Marine Environment Protection Association	Environmental protection	National	Athens, Greece	http://www.helmepa.gr
Institut du droit économique de la mer (INDEMER)	Marine affairs	Global	Monaco	http://www.indemer.org/

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Institut méditerranéen de l'eau	Water	Regional	Marseille, France	http://www.indemer.org/
International Association for Mediterranean Forests	Environmental protection	Regional	Marseille, France	www.aifm.org
International Association of Hydraulic Engineering and Research	Public works	Global	Madrid, Spain	http://www.iahr.org
International Association of Marine Aids to Navigation and Lighthouse Authorities (IALA)	Public works	Global	Saint-Germain-en-Laye, France	www.iala-aism.org
International Association of Oil & Gas Producers (OGP)	Energy	Global	London, United Kingdom	http://www.ogp.org.uk/
International Association of Ports and Harbors (IAPH)	Ports and harbors	Global	Tokyo, Japan	www.iaphworldports.org
International Centre for Coastal Resources Research (CIIRC)	Coastal zone management	Non-specific	Barcelona, Spain	http://lim-ciirc.upc.es/
International Centre for Coastal and Ocean Policy Studies (ICCOPS)	Coastal zone management	Non-specific	Genoa, Italy	http://www.iccops.it/
International Council of Marine Industry Association (ICOMIA)	Boating	Global	Egham, United Kingdom	http://www.icomia.com/
International Council on Monuments and Sites (ICOMOS)	Cultural heritage	Global	Paris, France	http://www.icomos.org/
ICOMOS Albanian Section	Cultural heritage	National	Tirana, Albania	http://www.international.icomos.org/address.htm#advisory
ICOMOS Algerian Section	Cultural heritage	National	Algiers, Algeria	http://www.international.icomos.org/address.htm#advisory

ICOMOS Croatian Section	Cultural heritage	National	Zagreb, Croatia	http://www.international.icomos.org/address.htm#advisory
ICOMOS Cypriot Section	Cultural heritage	National	Nicosia, Cyprus	http://www.international.icomos.org/address.htm#advisory
ICOMOS Egypt	Cultural heritage	National	Cairo, Egypt	http://www.international.icomos.org/address.htm#advisory
ICOMOS French Section	Cultural heritage	National	Paris, France	http://www.archi.fr/ICOMOS-FR
ICOMOS Hellenic Section	Cultural heritage	National	Athens, Greece	http://www.icomoshellenic.gr
ICOMOS Israel	Cultural heritage	National	Jerusalem	
ICOMOS Italian Section	Cultural heritage	National	Naples, Italy	http://www.international.icomos.org/address.htm#advisory
ICOMOS Lebanon	Cultural heritage	National	Beirut, Lebanon	http://www.international.icomos.org/address.htm#advisory
ICOMOS Maltese Section	Cultural heritage	National	Valletta, Malta	http://www.international.icomos.org/address.htm#advisory
ICOMOS Moroccan Section	Cultural heritage	National	Rabat, Morocco	http://www.international.icomos.org/address.htm#advisory
ICOMOS (Observer) Palestinian Section	Cultural heritage	National	Al-Bireh, West Bank	http://www.international.icomos.org/address.htm#advisory
ICOMOS Serbia and Montenegro Section	Cultural heritage	National	Belgrade, Serbia and Montenegro	http://www.international.icomos.org/address.htm#advisory
ICOMOS Spain	Cultural heritage	National	Madrid, Spain	http://www.esicomos.org
ICOMOS Tunisian Section	Cultural heritage	National	Tunis, Tunisia	http://www.international.icomos.org/address.htm#advisory
ICOMOS Turkish Section	Cultural heritage	National	Istanbul, Turkey	http://www.international.icomos.org/address.htm#advisory
International Association of Drilling Contractors (IADC)	Energy	Global	Houston, United States	www.iadc.org
International Cargo Handling Coordination Association (ICHCA)	Cargo handling	Global	Romford, United Kingdom	www.ichcainternational.co.uk

(ICHCA)				
International Dry Bulk Terminals Contact Group (DBTG)	Storage	Global	Brighton, United Kingdom	www.sph-global.com
International Energy Foundation (IEF)	Energy; environmental protection	Global	Tripoli, Libya	http://www.ief-ngo.org
International Friends of Nature (IFN)	Environmental protection; sustainable development	Global	Vienna, Austria	http://www.nfi.at
International Institute Stop Disasters (IISD)	Civil defense; sustainable development	Regional	Naples, Italy	http://www.stopdisasters.org
International Marine Contractors Association (IMCA)	Offshore; public works	Global	London, United Kingdom	www.imca-int.com
International Navigation Association (PIANC)	Shipping; ports and harbors	Global	Brussels, Belgium	www.pianc-aipcn.org
International Ocean Institute (IOI)	Maritime affairs	Global	Gzira, Malta	http://www.ioinst.org
International Petroleum Industry Environmental Conservation Association (IPIECA)	Environmental protection	Global	London, United Kingdom	http://www.ipieca.org
International Pipe Line & Offshore Contractors Association (IPLOCA)	Energy; manufacturing	Global	Gent, Belgium	http://www.iploca.com
International Salvage Union (ISU)	Salvage	Global	London, United Kingdom	www.marine-salvage.com
International Solid Waste Association (ISWA)	Waste treatment	Global	Copenhagen, Denmark	http://www.iswa.org/
International Tourism Alliance (AIT)	Tourism	Regional	Brussels, Belgium	http://www.aitgva.ch

International Underwriting Association (IUA)	Insurance	Global	London, United Kingdom	www.iua.co.uk
International Union of Marine Insurance (IUMI)	Marine insurance	Global	Zurich, Switzerland	www.iumi.org
IUCN -The World Conservation Union	Environmental protection	Global	Gland, Switzerland	http://www.iucn.org
Legambiente	Environmental protection	National	Rome, Italy	http://www.legambiente.com
Marevivo	Environmental protection	National	Rome, Italy	http://www.marevivo.it
Marinalg International	Fishing	Global	Paris, France	http://www.marinalg.org/
MedCities	Sustainable development; environmental protection	Regional	Paris, France	http://www.medcities.org
MEDCOAST	Environmental protection; coastal zone management	Regional	Ankara, Turkey	http://www.medcoast.org.tr
MED Forum	Environmental protection; sustainable development	Regional	Barcelona, Spain	http://www.medforum.org
Medisamak	Fishing	Regional	Tunis, Tunisia	
Mediterranean Association to Save the Sea Turtles (MEDASSET)	Environmental protection	Regional	United Kingdom/Greece	http://www.euroturtle.org/medasset
Mediterranean Information Office for Environment Culture and Sustainable Development (MIO-ECSDE)	Environmental protection; cultural heritage; sustainable development	Regional	Athens, Greece	http://www.mio-ecsde.org
Mediterranean Wetlands Committee (MedWet/Com)	Environmental protection	Regional	Kifissia, Greece	http://www.medwet.org

Méditerranée 2000	Environmental protection	Local	Cannes, France	http://www.mediterranee2000.com
Oil Companies International Marine Forum (OCIMF)	Environmental protection	Global	London, United Kingdom	www.ocimf.com
Seas At Risk (SAR)	Environmental protection	Internatio nal	Utrecht, the Netherlands	http://www.seas-at-risk.org
Sea Turtle Protection Society of Greece (Archelon)	Environmental protection	National	Athens, Greece	http://www.archelon.gr
Society of International Gas Tanker and Terminal Operators (SIGTTO)	Shipping; energy	Global	London, United Kingdom	www.sigtto.org
Sustainable Business Associates (SBA)	Environmental protection	Global	Lausanne, Switzerland	http://www.planet.ch/sba
Turkish Foundation for Combating Soil Erosion, for Reforestation and the Protection of Natural Habitats (TEMA)	Environmental protection	National	Istanbul, Turkey	http://www.tema.org.tr
Turkish Marine Environment Protection Association (TURMEPA)	Environmental protection	National	Istanbul, Turkey	http://www.turmepa.org.tr
Turkish Society for the Protection of Nature (DHKD)	Environmental protection	National	Istanbul, Turkey	http://www.dhkd.org
Underwater Research Society – Mediterranean Seal Research Group (SAD-AFAG)	Environmental protection		Ankara, Turkey	http://www.afag.org
Union Nationale pour la Pêche en France et la Protection du Milieu Aquatique (UNPF)	Fishing; aquaculture	National	Paris, France	http://www.unpf.fr

WWF Mediterranean Programme	Environmental protection	Regional	Rome, Italy	http://www.panda.org/about_wwf/where_we_work/mediterranean/index.cfm
The World Conservation Union Centre for Mediterranean Cooperation	Environmental protection	Regional	Malaga, Spain	http://iucn.org/places/medoffice/indexEN.htm