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Extraordinary Meeting of the Contracting  
Parties to the Convention for the Protection  
of the Mediterranean Sea against Pollution and  
its related Protocols

Athens, 10-13 April 1984

COMMENTS ADDRESSED TO THE SECRETARIAT BY THE CONTRACTING PARTIES  
ON THE EVENTUAL CREATION OF AN INTER-STATE GUARANTEE FUND FOR DAMAGE  
RESULTING FROM THE POLLUTION OF THE MARINE ENVIRONMENT  
IN THE MEDITERRANEAN SEA

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At the Third Meeting of the Contracting Parties held in Dubrovnik (28 February - 4 March 1983), it was agreed that the secretariat would circulate to all Contracting Parties the study on the possibility to create an Inter-State Guarantee Fund for the Mediterranean Sea and that the Contracting Parties would send to the secretariat their comments on the setting up of such a Fund. A decision on the meeting of a team of experts to study this issue would be taken at the following meeting of the Contracting Parties.

The secretariat, on 8th June 1983, addressed a copy of the study to the Contracting Parties for examination by the appropriate national authorities. Their comments had to reach the secretariat by October 30, 1983 at the latest.

The Commission of the European Communities was alone in sending remarks on this study. They are reproduced in this document for the information of the participants.

COMMENTS OF THE COMMISSION OF THE EUROPEAN COMMUNITIES  
ON DOCUMENT UNEP/IG.23/INF.3

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Summary

1. The UNEP study is a very good baseline study on the problems of compensation for damage resulting from the pollution of the marine environment in the Mediterranean Sea.
2. It should be updated in order to take into account the work currently carried out by the International Maritime Organization (IMO) for the adoption, at international level, of two new Protocols to improve compensation for damages of pollution by petroleum hydrocarbons. No specific solution for the Mediterranean could be envisaged without taking note of the solutions which will have been adopted in London in May 1984 at the negotiation meeting on these two Protocols, the ratification of which should be a matter of priority for the Mediterranean States.
3. Likewise, for the marine pollution caused by maritime transport of chemical and dangerous substances, it is suggested to wait for the results of the same negotiation meeting which is expected to adopt the draft convention on the liability and compensation for this type of pollution (H.N.S. Convention).
4. High priority should be given to the compensation, through obligatory insurance mechanisms, of damages caused by marine pollution from land-based sources.

Comments

A. GENERAL REMARKS

1. The following observations refer to the study in its version dated December 15, 1980 (taking the matter up again) without taking note of any other reaction on the part of the committee of experts of Cannes or of any other subsequent meeting of the Contracting Parties to the Convention of Barcelona.
2. Study well documented but not up-dated (\*). In effect, it does not take sufficient account of the progress of the work of the Legal committee of IMO on the revision of International Conventions governing the matter at global level (hydrocarbons and chemical substances).
3. The study has the merit of distinguishing, as far as compensation is concerned, four important pollution sources in the Mediterranean:

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(\* ) Examples :

- p. 36, the insurance market can at the present time extend the guarantee to US \$300 million, rather than \$100 million
- p. 40, 28 States (and not 19) are members of the International Fund FIPOL

- hydrocarbons
- chemical substances
- off-shore
- land-based

It would be appropriate that the Working Group base its work on this distinction. The compensation and liability problems are specific to each source of pollution. Their respective priority and the solutions to be given must take this specificity into consideration. The Working Group should perhaps attempt to give indications on the respective importance of the different types of pollution for the Mediterranean; this would bring out both the priorities and the trends for the future (example : development of off-shore and of transport of chemical substances).

4. The study has the merit of making clear the need for a definite and continuous political will on the part of the Coastal States bordering the Mediterranean. This is the essence of the matter, even though the political will depends of necessity on the often contradictory interests of industry on the one hand and of the victims of pollution (Coastal States, individuals) on the other. Perhaps the options are even more difficult for the developing countries bordering the Mediterranean.
5. Finally, this study has the merit to stress the specific character of the Mediterranean Sea (heavy tanker traffic, practically closed lake, extremely fragile ecosystem, the importance for various developing countries of tourist zones and fishery resources). A non-controlled oil-spillage could have incalculable consequences on economic, social and environmental levels.

#### B. SPECIFIC REMARKS

1. Marine pollution resulting from hydrocarbons.
2. Marine pollution resulting from chemical substances.

The issue of the actual setting-up of a regional Mediterranean Fund (State of other) should be dealt with after the diplomatic conference organized by IMO for May 1984 in London.

The conference will deal with:

- a) as concerns damages due to hydrocarbons :

the revision, by means of modification Protocols, of the two international conventions currently governing the liability of the owner of the pollution vessel (CLC Convention 1969) and complementary compensation by an international compensation fund set up by the oil companies. Currently, the maximum compensation award is US \$ 56 million; it should be increased to at least US \$150 to 200 million, if it is to be in any way significant over the next 10 years, when the revision Protocols will enter into force;

b) as concerns damages due to chemical substances :

the adoption of a single draft international convention (called "H.N.S." 1/); one text would cover "the liability of the chemical ship owner and/or the complementary compensation by the shipper of chemical products in the maritime transport of dangerous and harmful substances". The proposed methods of calculating the liability were presented as alternatives and to be submitted to the diplomatic conference. The maximum ceilings of coverage, offered by maritime insurance companies, equal US \$50 million; they are linked to the gauge tonnage of the ship according to a mobile degressive scale and are calculated in units of account.

If, on the basis of past experience and of foreseeable risks, the results of the diplomatic conference are deemed satisfactory by the Mediterranean countries 2/, appropriate action should be taken at Mediterranean level, in order to prevail on the Coastal States (whose oil tanker and chemical fleets are the most important, and/or on those whose coastal zones are the most vulnerable) to ratify as soon as possible the new Protocols of 1984 (hydrocarbons) and the 1984 H.N.S. Convention (chemical substances) which have been adopted at international level.

On the contrary, if the rights and the compensation ceilings of the victims of pollution resulting from petroleum hydrocarbons or by chemical substances were not sufficiently recognized 3/ and taken up at international level, it would be the duty of the Mediterranean States to take counsel together, and if they should decide to act, to work on the basis of the guidelines contained in the UNEP study in order to set up a Mediterranean system which would supplement (or would be a substitute for, as the case might be) the compensation for damages higher than those covered by the 1984 revision Protocols.

Thus, a special Guarantee Fund for damage resulting from the pollution caused by the maritime transport of chemical substances is not recommended, because we believe that it is up to the shippers to cover their liability for this type of transport, through maritime insurance.

It is suggested that studies be undertaken completed or intensified in order to have a better idea, for instance, of the extent of pollution and the damage in the Mediterranean Sea caused by accidents (explosion, fire) of chemical tankers and of the distribution of their traffic (average tonnage of ships etc.) as well as of the projections for the future.

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1/ H.N.S. (Hazardous and noxious substances draft convention).

2/ The state of ratification by the Mediterranean countries of conventions currently in force is as follows:

- CLC : 13 countries (those mentioned in the study plus Lebanon)
- FUND : 7 countries (Algeria, France, Italy, Monaco, Syria, Tunisia, Yugoslavia).

3/ Example : pollution damage in a fishing exploitation area should be compensated. If this is rejected in London it is suggested that the Mediterranean countries active in the fishing sector conclude a regional agreement to cover it.

### 3. Maritime pollution from land-based sources

Taking into account the importance of this type of pollution for the Mediterranean Sea Area, it would perhaps be advisable to consider the compensation of damage caused by such pollution as a priority matter.

The study, quite rightly, deals with the preliminary problem of prevention. In this connection, it would be advisable to set up and above all to monitor the implementation of national programmes to eliminate and abate pollution, as stipulated in the land-based sources Protocol.

In terms of reparations, obligatory insurance on the part of the polluting industries should make for a good solution.

### 4. Marine pollution resulting from off-shore exploitation

No observations, except to point out the need for a better system of information :

- on current levels of pollution caused by off-shore in the Mediterranean;
- on the projected development of this type of exploitation for the years to come.