



**IMO**  
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**An Act to Incorporate the Protocol of 1994  
“Offshore Protocol” to the Barcelona Convention  
for the Protection of the Marine Environment and  
the Coastal Region of the Mediterranean, 1976  
into the Laws of Malta**

**A Legislation Drafting Project submitted in partial fulfillment of the  
requirements for the award of the Degree of Master of Laws (LL.M.) at  
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## **1. A historical background to the Barcelona Convention (1976) and the Offshore Protocol.**

The Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, 1976 (or better known as the Barcelona Convention) was a result of the Mediterranean Action Plan (MAP), the first-ever regional seas programme created under the auspices of the United Nations Environment Programme (UNEP). MAP was set up by a collective endeavour of the Mediterranean Countries together with the European Union in a bid to protect the Mediterranean Sea from increasingly pollution problems in the mid-1970's. MAP was created in 1975 when representatives of sixteen Mediterranean States, including Malta got together in Barcelona.<sup>1</sup> MAP consists of mainly three components namely the scientific aspect of MAP which deals with pollution assessment, the socio-economic aspect which deals with prospects and integrated planning and the institutional and legal component which is the one responsible for the Barcelona Convention and its Protocols.<sup>2</sup>

The main objectives of MAP are various, but mainly consist in assisting the Mediterranean Countries to assess and control marine pollution and formulate their national environmental policies. MAP helps the governments improve their ability to identify better development plans and optimize the choices for allocating resources. Indeed, marine pollution was their initial focus point, later widened to include integrated coastal zone planning and management.<sup>3</sup>

In 1976 a Conference of the Mediterranean States was held in Barcelona resulting in the signing of the Barcelona Convention, which entered into force in 1978. At the same time two Protocols were adopted, namely the Dumping Protocol<sup>4</sup> and the Emergency Protocol<sup>5</sup> which resulted in the establishment of the Regional Oil Combating Centre (ROCC) based in Malta, which in 1989

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<sup>1</sup> D. Kasriel, 'The Mediterranean Action Plan', Printed by Dynactis UNEP/MAP, Athens, 2000; p. 12.

<sup>2</sup> B. Charpentier, 'The Mediterranean Action Plan', Printed by Les Arts Graphiques, UNEP/MAP, France 1997, p. 7.

<sup>3</sup> <http://www.unepmap.org/index.php?module=content2&catid=001001002>, accessed on 16 January 2011.

<sup>4</sup> The Protocol for the Prevention of Pollution in the Mediterranean Sea by Dumping from Ships and Aircraft, adopted on 16 February 1976 in Barcelona, Spain. It entered into force on 12 February 1978. This Protocol has been amended and replaced by the Protocol for the Prevention and Elimination of Pollution in the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea, adopted on 10 June 1995 in Barcelona, Spain which is not yet in force. Malta ratified the Dumping Protocol of 1976 on 30 December 1977 and accepted the amendments thereto on 28 October 1999. More information on the status of the Protocol available at: <http://www.unepmap.org/index.php?module=content2&catid=001001001>.

<sup>5</sup> The Protocol Concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and other Harmful Substances in Cases of Emergency, adopted on 16 February 1976 in Barcelona, Spain. It has entered into force on 12 February 1978. This Protocol has been amended and replaced by the Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea which was adopted on 25 January 2002 in Malta and has entered into force on 17 March 2004, in short known as the Prevention and Emergency Protocol. Malta ratified the Emergency Protocol of 1976 on 30 December 1977, and has ratified the Emergency Protocol of 2002 on 18 February 2003. More information on the status of the Protocol available at: <http://www.unepmap.org/index.php?module=content2&catid=001001001>.

became the Regional Marine Pollution Emergency Response Centre for the Mediterranean (REMPEC) administered by the International Maritime Organization (IMO).<sup>6</sup>

The preamble of the Barcelona Convention highlights the need for an international instrument, which deals particularly with the special requirements of the Mediterranean Sea Area. It underlines the need for close cooperation among the States and international organisations concerned from a coordinated regional approach for the protection and the enhancement of the marine environment in the Mediterranean Sea Area. It also recognises the threat posed by pollution to the marine environment, its ecological equilibrium, resources and legitimate uses. It transpires from the text of the Barcelona Convention that its objectives revolve around the principle of assessing and controlling marine pollution in the Mediterranean Sea Area through the strengthening of solidarity amongst the Mediterranean coastal States. Moreover the protection of the marine environment and coastal zones through prevention and reduction of pollution, and as far as possible elimination of pollution whether land or sea-based.<sup>7</sup> In achieving this goal, it would impliedly protect the natural and cultural heritage and contribute to the improvement of the quality of life.<sup>8</sup>

The Barcelona Convention lays down in very general terms a variety of obligations for its State Parties. It starts off by determining the geographical area to which it is applicable. Article 1 states that the Mediterranean Sea Area shall mean the maritime waters of the Mediterranean Sea proper, including its gulfs and seas, bounded to the west by the meridian passing through Cape Spartel lighthouse, at the entrance of the Straits of Gibraltar, and to the east by the southern limits of the Straits of the Dardanelles between Mehmetcik and Kumkale lighthouses. The Convention also provides a couple of definitions for the purposes of its contents in Article 2. General provisions are laid down in Article 3, which provides that State Parties in applying this Convention and its related Protocols shall act in conformity with international law. The Convention leaves it up to State Parties to enter into other bilateral or multilateral agreements for the conservation and preservation of natural resources in the Mediterranean Sea provided that such agreements are consistent with the Convention and its Protocols and conform with international law.<sup>9</sup> Article 4 of the Barcelona Convention lays down the general obligations of State Parties which consist in the Contracting Parties to take individually or jointly, all appropriate measures in accordance with the provisions of the Convention and its Protocols, to prevent, abate, combat, and to the fullest extent possible eliminate pollution of the Mediterranean Sea Area. The Contracting Parties shall also

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<sup>6</sup> B. Charpentier, *op. cit.*, p. 8.

<sup>7</sup> <http://www.unepmap.org/index.php?module=content2&catid=001001004>, accessed on 20 January 2011.

<sup>8</sup> *Ibid.*

<sup>9</sup> See Article 3 of the Barcelona Convention.

take appropriate measures to implement the MAP further to pursue the protection of the marine environment and the natural resources of the Mediterranean.

Article 4 lays down a list of the various methods in which the Contracting Parties shall protect the marine environment and contribute to the sustainable development of the Mediterranean Sea Area. Such methods consist in the avoidance of postponing cost-effective measures for prevention of environmental degradation, where it appears that there are threats of serious irreversible damage, and applying the 'polluter pays' principle by which the polluter is to bear the costs of pollution prevention, control and reduction measures in the public interest. The same article provides for the undertaking of an environmental impact assessment for proposed activities which are likely to cause an adverse impact on the marine environment, and for cooperation between States in environmental impact assessment procedures. States shall commit themselves to promote the integrated management of their coastal zones. Article 4 continues in stating that the Contracting Parties shall cooperate in the formulation and adoption of Protocols and promote measures with international bodies concerning the implementation of programmes of sustainable development.

The Barcelona Convention gave rise to seven Protocols<sup>10</sup>, each addressing specific aspects of the Mediterranean environment conservation and which altogether complete the MAP's legal framework. Indeed, Articles 5 to 11 of the Barcelona Convention correspond to the titles of each of the seven Protocols. For instance Article 7 of the Barcelona Convention provides that the Contracting Parties shall take all appropriate measures to prevent, abate, combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil. As observed, this article is laid down in very general terms and the specific provisions relating to this title are laid down in much more detail in the Offshore Protocol, the focus of this project. Thus Article 7 simply provides the general principle whilst the Offshore Protocol expands this general principle and contains detailed provisions on the matter.

The remaining Articles of the Barcelona Convention deal with some other obligations of Contracting Parties and also with some procedural issues. Article 12 provides for the monitoring of pollution in the Mediterranean Sea by the Contracting Parties. Article 16 deals with liability

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<sup>10</sup> The Seven Protocols to the Barcelona Convention, in their abbreviated titles are: the Dumping Protocol, the Prevention and Emergency Protocol, the Protocol on Land-based sources, the Specially Protected Areas (SPA) and Biodiversity Protocol, the Offshore Protocol, the Hazardous Wastes Protocol and the Integrated Coastal Zone Management (ICZM) Protocol.

and compensation which in general terms states that 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. Article 21 deals with the adoption of additional Protocols and Article 22 lays down how amendments to the Convention and its Protocols should be adopted.

In 1995 the Barcelona Convention was amended so as to include in its geographical coverage all maritime waters of the Mediterranean Sea Area irrespective of their legal conditions (be they maritime internal waters, territorial sea, fishing zones, exclusive economic zones or high seas). However, the sphere of territorial application of the Barcelona legal system is also flexible, in the sense that any protocol may extend (but not restrict) the geographical coverage to which it applies. For example, and for obvious reasons, the Offshore Protocol, applies also to the Continental Shelf, the seabed and its subsoil. The application of the Convention may also be extended to “ coastal areas as defined by each Contracting Party within its own territory”.<sup>11</sup> The Preamble of the Barcelona Convention was also amended and it now makes reference to other international instruments, including the results of the United Nations Conference on Environment and Development held in Rio de Janeiro in 1992 and more importantly the relevant provisions of the United Nations Convention on the Law of the Sea (UNCLOS) adopted at Montego Bay in 1982. A new provision namely Article 15 was added which relates to the right of the public to have access to information on the state of the environment and to participate in the decision-making process relevant to the field of application of the Convention and the Protocols.<sup>12</sup>

This project recommends to the Government of Malta to implement into the Laws of Malta the Offshore Protocol. The Offshore Protocol is laid down in quite a structural manner, sub-divided into 6 sections and containing 32 Articles, 7 Annexes and 1 Appendix. It was adopted on 14 October 1994, in Madrid, Spain and has entered into force recently, on the thirtieth day from its last ratification by Syria done on 22 November 2010. As at today the six countries which have ratified the Offshore Protocol are Albania, Cyprus, Libya Arab Jamahiriya, Morocco, Tunisia and Syrian Arab Republic. The other Mediterranean nations which have signed but not as yet ratified the Offshore Protocol are Croatia, Greece, Israel, Italy, Malta, Monaco, Slovenia, and Spain. The Offshore Protocol was not blessed with the required minimum number of ratifications at the time

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<sup>11</sup> T. Scovazzi, ‘The Revision of MAP Legal Framework: The Barcelona Convention and its Protocols’, Kontorouisis Bros. Graphic Arts, UNEP /Map, Athens, 2002, p. 11.

<sup>12</sup> Ibid.

of its adoption in 1994 and it took some 16 years for it to come into force. This is described by Evangelos Raftopoulos as a long stagnant situation or rather the ‘dormant’ protocol.<sup>13</sup>

Bearing in mind that the Barcelona Convention was amended in 1995, a year after the adoption of the Offshore Protocol, and despite the importance of the entry into force of the Offshore Protocol in 2010, the Offshore Protocol urgently needs to be revised and updated.<sup>14</sup>

It is to be noted that the text of the Offshore Protocol is the result of a long negotiation process among the Contracting Parties to the Barcelona Convention. It was initially drafted by the International Juridical Organisation for Environment and Development, an Italian non-governmental organisation, in cooperation with the Secretariat of the MAP and the Barcelona Convention. It was then heavily negotiated and thoroughly discussed by four meetings of *Ad Hoc* working groups of experts held between 1990 and 1994 before it reached its final stage at the Conference of the Plenipotentiaries for its adoption and signature which took place in Madrid, Spain, on 13 and 14 October 1994.<sup>15</sup>

The Offshore Protocol covers the full circle of activities concerning exploration and exploitation of resources in the Mediterranean including scientific activities, exploration activities (e.g. seismological activities, exploration drilling) and exploitation activities (e.g. installation establishment, development drilling, recovery/treatment/storage, transportation to shore). It also covers all types of installations (any fixed or floating structure, and any integral part thereof, engaged in offshore activities).<sup>16</sup> Several provisions of the Protocol establish obligations of the State Parties with respect to activities carried out by operators, who can also be private persons, either natural or juridical. This kind of obligation is to be understood in the sense that each Party is bound to exercise the appropriate legislative, executive or judicial activities in order to ensure that the operators comply with the provisions of the Protocol.<sup>17</sup> The preamble of the Offshore Protocol makes specific reference to Article 7 of the Barcelona Convention, and also to two of its protocols namely the Emergency Protocol and the SPA and Biodiversity Protocol. It recognises the fact that pollution which may result from the exploration and exploitation of the Mediterranean seabed and its subsoil represents a serious danger to the environment and to

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<sup>13</sup> E. Raftopoulos, ‘Sustainable Governance of Offshore Oil and Gas Development in the Mediterranean: Revitalizing the Dormant Mediterranean Offshore Protocol’, Article written on 19 August 2010, p. 6. Online, available at: <http://www.mepielanbulletin.gr/default.aspx?pid=18&CategoryId=4&ArticleId=29&Article=Sustainable-Governance-of-Offshore-Oil-and-Gas-Development-in-the-Mediterranean:-Revitalizing-the-Dormant-Mediterranean-Offshore-Protocol>, accessed on 20 January 2011.

<sup>14</sup> <http://www.mepielan-ebulletin.gr/default.aspx?pid=18&CategoryId=10&CategoryTitle=Enviromental-Governance-Regimes>, accessed on 20 January 2011.

<sup>15</sup> E. Raftopoulos, op. cit., p. 3.

<sup>16</sup> Ibid., p. 4.

<sup>17</sup> T. Scovazzi, op.cit., p. 23.

human beings and it underlines the need of protecting and preserving the Mediterranean Sea from pollution resulting from exploration and exploitation activities. Similar to the preamble of the Barcelona Convention, the preamble of the Offshore Protocol also makes reference to UNCLOS.

Part XII of UNCLOS specifically addresses marine environmental protection. Regarding offshore oil activities, it aims to minimize **to the fullest extent possible** pollution from installations and devices used in exploration or exploitation of the natural resources of the seabed and subsoil, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices.<sup>18</sup>

Article 1 of the Offshore Protocol gives a list of definitions. For example, when defining ‘pollution’<sup>19</sup> the Offshore Protocol simply cross-refers to the definition given in the Convention. For the purposes of the Protocol, installation means any fixed or floating structure and any integral part thereof that is engaged in activities, including fixed or mobile offshore drilling units, offshore storage facilities including ships used for this purpose. The definition of ‘operator’ is broad. It includes not only persons authorised to carry out activities (for example the holder of a licence) or who carry out activities (for example a sub-contractor of the holder), but also any person who does not hold an authorization but is *de facto* in control of such activities. The Parties are thus under an obligation, that no one engages in activities which have not been previously authorised or which are exercised illegally.<sup>20</sup>

Article 2 of the Offshore Protocol describes the geographical coverage to which the Protocol applies. The Protocol Area shall be the Mediterranean Sea Area as defined in Article 1 of the Barcelona Convention including the continental shelf and the seabed and its subsoil. The Protocol Area includes also the waters, including the seabed and its subsoil, on the landward side of the baselines from which the breadth of the territorial sea is measured and extending in the case of watercourses, up to the freshwater limit. Wetlands and coastal areas may also be included if the Contracting Parties decide so. At the same time, the Protocol, taking into account the existing legal disputes concerning the delimitation of the continental shelf in the Mediterranean and the need, nevertheless, to promote an environmental governance regime for offshore activities in the Area, contains a typical disclaimer clause in Article 2(3) stating that the Protocol shall not

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<sup>18</sup> See Article 194(3)(c) of UNCLOS.

<sup>19</sup> The term ‘pollution’ in the Barcelona Convention 1976 is defined as follows: ‘...the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results, or is likely to result, in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of seawater and reduction of amenities.’

<sup>20</sup> T. Scovazzi, *op. cit.*, p. 23.



prejudice the rights of any State concerning the delimitation of the Continental Shelf. The message here is clear. The environmental governance regime of the Protocol will be established and appropriately promoted in the framework of the Barcelona Convention system, irrespective of presently unsettled issues concerning the delimitation of the Continental Shelf.<sup>21</sup>

The sustainable management system established within the framework of the governance architecture of the Protocol requires special attention, although it reflects the predominant at that time ‘State-centric approach’ and it lacks certain aspects of sustainable governance that are to be considered as indispensable by today’s standards and requirements. Nevertheless, it clearly sets up the first operable regional management system for the sustainable development of offshore activities in the Mediterranean. Thus, the Protocol establishes in Article 3(2) a ‘due diligence’ obligation of the Contracting Parties: they are obliged to ensure that all necessary measures are taken so that offshore activities, within their jurisdiction, are in accordance with this Protocol and do not cause pollution.<sup>22</sup> And this ‘due diligence’ obligation is somewhat tailored to the particular capabilities of the Parties; they are obliged to ensure that the operator uses the best available techniques which are ‘environmentally effective and economically appropriate’.<sup>23</sup>

Specifying the sustainable management system, the Offshore Protocol provides that all activities in the Offshore Protocol Area, including the erection of installations on site, are subject to the prior written authorisation<sup>24</sup> of the competent authority of a Party. Before granting authorisation, the authority must be satisfied that the installation has been constructed according to international standards and practice and that the operator has the technical competence and financial capacity to carry out the activities.<sup>25</sup>

Authorisation shall be refused if there are indications that the proposed activities are likely to cause significant adverse effects on the environment that could not be avoided by compliance with specific technical conditions. This obligation can be seen as an application of the precautionary principle. Moreover special restrictions or conditions may be established for the granting of authorisations for activities in specially protected areas.<sup>26</sup>

Section three of the Protocol entitled ‘Wastes and Harmful or Noxious Substances and Materials’ starts off with Article 8 which states that the Parties shall impose a general obligation upon

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<sup>21</sup> E. Raftopoulos, *op. cit.*, p. 4.

<sup>22</sup> *Ibid.*, p. 4.

<sup>23</sup> See Article 3(1) of the Offshore Protocol.

<sup>24</sup> The relevant provisions on authorizations are found in Articles 4, 5 and 6 of the Offshore Protocol.

<sup>25</sup> T. Scovazzi, *op. cit.*, p. 24.

<sup>26</sup> See Article 21 of the Offshore Protocol.

operators to use the best available, **environmentally effective** and **economically appropriate** techniques and to observe internationally accepted standards regarding wastes, as well as the use, storage and discharge of harmful or noxious substances and materials, with a view to minimizing the risk of pollution.

The Offshore Protocol leaves it up to each Contracting Party to formulate and adopt common standards for the disposal of oil and oily mixtures from installations into the Protocol Area. Other articles relate to the prohibition of discharge of sewage from installations permanently manned by 10 or more persons into the Protocol Area. The Contracting Parties shall also prohibit the disposal into the Protocol Area of garbage including non-biodegradable garbage, such as paper products, rags, glass, metal, bottles and others listed under Article 12. There are exceptions to these limitations namely in the case of *force majeure* and in particular for disposals to save human life, to ensure the safety of installations, and in case of damage to the installation or its equipment. The other exception relates to the discharge into the sea of substances containing oil or harmful or noxious substances or materials which, subject to the prior approval of the competent authority, are being used for the purpose of combating specific pollution incidents in order to minimize due to the pollution.<sup>27</sup>

Section 4 of the Protocol deals with safeguards. Article 15 particularly provides that the Contracting Party within whose jurisdiction activities are envisaged or are being carried out, shall ensure that safety measures are taken with regards to the design, construction, placement, equipment, marking, operation and maintenance of installations.

Article 16<sup>28</sup> stipulates that the operators are required to have a contingency plan to combat accidental pollution, and in cases of emergency the Contracting Parties shall implement *mutatis mutandis* the provisions of the Emergency Protocol.

Article 26 of the Protocol speaks about transboundary pollution and states that each Party shall take all measures necessary to ensure that activities under its jurisdiction are so conducted as not to cause pollution beyond the limits of its jurisdiction. This could be a very useful provision which would avoid transboundary disputes between States especially in the case of major pollution incidents.

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<sup>27</sup> See Article 14 of the Offshore Protocol.

<sup>28</sup> See Article 16 of the Offshore Protocol.

An interesting provision of the Offshore Protocol is Article 27, which relates to liability and compensation. The first paragraph is a mere repetition of the traditional formula of deferment, by which the Parties “..undertake to co-operate as soon as possible in formulating and adopting appropriate rules and procedures for the determination of liability and compensation for damages resulting from the activities dealt with in this Protocol”.<sup>29</sup> However, the second paragraph of Article 27 provides for some substantial obligations. Pending the development of such procedures, the Parties shall take all measures necessary to ensure that liability for damage caused by activities is imposed on operators who shall be required to pay prompt and adequate compensation (strict liability); the Parties shall also take all measures necessary to ensure that operators shall have and maintain insurance cover or other financial security in order to ensure compensation for damages caused by the activities covered by the Protocol (compulsory insurance).<sup>30</sup>

There are other articles under the Offshore Protocol which deal with various issues such as the removal of installations, appointment of competent authorities, meetings and other procedural issues. Article 32 is a procedural provision and deals with the signature, ratification, accession and entry into force of the Protocol.

The Annexes to the Protocol deal with several issues. Annexes 1 and 2 enlist a number of harmful or noxious substances and materials the disposal of which is either prohibited<sup>31</sup> or subject to a special permit.<sup>32</sup> The Offshore Protocol here introduces the differentiating control system of black list and grey list, a typical pattern featuring the first phase of development of international environmental regimes. Thus, if the harmful and noxious substances and materials are black listed their disposal is prohibited whilst if they are grey listed, their disposal in each case requires a special permit. This approach was abandoned at the current second phase of development of international environmental regimes, and was replaced by an integrating management system which responded better to the new scientific evidence and is incorporated into the extensively amended versions of related Protocols to the Barcelona Convention system or other related instruments of international environmental regime.<sup>33</sup>

Annex III lays down the factors to be considered for the issuing of permits. Annex IV provides a list of what the environmental impact assessment should contain, and Annex V deals with oil and oily mixtures and drilling fluids and cuttings. Annex VI enlists the safety measures which should

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<sup>29</sup> T. Scovazzi, op. cit., p. 23.

<sup>30</sup> Ibid.

<sup>31</sup> See Annex I to the Offshore Protocol.

<sup>32</sup> See Annex II to the Offshore Protocol.

<sup>33</sup> E. Raftopoulos, op. cit., p. 5.

be prescribed by the State Parties and Annex VII speaks about the contingency plan and places a number of obligations on the operators. The only Appendix to the Protocol simply gives a list of oil, ranging from asphalt solutions to gasolines.

One should note that the Offshore Protocol does not envisage any informational and participatory pattern for the active involvement of all the relevant stakeholders such as local communities, offshore operators, representatives of fishing industry and tourism, Non Governmental Organisations, scientists and the public concerned, in decision-making procedures for the effective and efficient management of the complex issues involved.<sup>34</sup> One can also observe that despite the rather strong appeal and advanced content of Article 27, setting out strict liability and compulsory insurance regimes, it remains on the whole deficient and requires reconstruction in the light of contemporary developments. Oil spills arising from the activities of offshore installations can be disastrous and accidents can have devastating long-term effects on the environment and the economic life of the region. As a result they may involve considerable clean up costs and compensation payable to affected parties. On the other hand, the case of unreported small and medium-sized oil spills, which are more common, arising from the normal operation of offshore installations and caused by accidental discharges of oil during terminal operations, should also be seriously considered in the development of a relevant liability and compensation regime.<sup>35</sup>

In view of a probable re-evaluation of the Offshore Protocol, in particular the re-evaluation of certain aspects and applications of its sustainable management system, one should consider two aspects, that of introducing provisions relating to pollution caused by the seismic surveys carried out at the exploration phase of offshore oil and gas development activities.<sup>36</sup> The second aspect would be the removal of installations which requires a more integrated management and the plans for removal of installations should be developed in consultation with the competent authorities and stakeholders and post removal environmental monitoring should be part and parcel of the removal process.<sup>37</sup>

Of equal importance is the development of the interconnection between the Offshore Protocol and the recently adopted Integrated Coastal Zone Management (ICZM) Protocol adopted on 21 January 2008, which is the seventh Protocol to the Barcelona Convention and which establishes a

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<sup>34</sup> Ibid., p. 6.

<sup>35</sup> Ibid., p. 7.

<sup>36</sup> Ibid., p. 8.

<sup>37</sup> Ibid., p. 9.

common regional framework for the sustainable governance of the Mediterranean coastal zone and applies the ecosystem approach to coastal zone planning and management.<sup>38</sup>

However, the text of the Barcelona Convention coupled with the text of the Offshore Protocol currently provides a holistic approach towards protecting the Mediterranean Sea Area from environmental pollution arising from the exploration and the exploitation of the Continental Shelf, its seabed and subsoil.

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<sup>38</sup> Ibid.

## **2. Why is there a need for Malta to implement the Offshore Protocol?**

Maltese Law does not yet contain any comprehensive set of provisions dealing with the protection of the Maltese waters from pollution caused by the exploration and exploitation of the Continental Shelf, its seabed and subsoil. The adoption of the Offshore Protocol would signify a reputation of compliance with the Regional Maritime Programme of MAP which applies specifically to the countries found in the Mediterranean Sea.

In view of the devastating environmental, economic and social effects of the *Deepwater Horizon* oil spill incident, the Maltese Government has to make sure that its legislation provides an adequate framework in dealing with such incidents were they to happen within its waters. The incident of the *Deepwater Horizon* threw new light on the existing situation in the Mediterranean having its special geographic and differentiated internal system. Offshore oil installations are presently working in Libya, Egypt, Italy and Croatia and drilling has increased substantially. Malta having a strategically geographical location right in the middle of the Mediterranean Sea, can be easily affected by transboundary pollution caused by an oil spill in the waters of the abovementioned neighbouring States. In view of this, the Maltese Government has to ensure that it has an adequate response system in place.

Moreover recent discussions manifest that there is a strong intention of the Maltese Government to enter into joint exploration activities with Libya, Italy and attempts were also made with Tunisia. In the year 2009, the Maltese Government submitted a joint exploration proposal to both the Italian and the Libyan Governments. Malta was in favour of joint exploration because this avoided reference to the International Court of Justice and without prejudice to any presumed rights, the countries could arrive at an amicable way to exploit resources. With regards to a possible joint exploration agreement with Tunisia, a Joint Experts Group formed between Malta and Tunisia was set up to identify zones where there could be joint oil exploration. This group met four times between April and July of 2006. The issue was also raised in talks with the Tunisian Foreign Affairs Minister in May 2007, May 2009 and June 2010.<sup>39</sup> Certainly successful activities of the kind whether taken up individually or jointly would also be beneficial to the Maltese economy. In view of these developments and considerations, the Offshore Protocol would ensure that Malta can adequately deal with situations arising from the carrying out of exploration and exploitation activities within the areas which fall under Maltese jurisdiction.

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<sup>39</sup> <http://www.timesofmalta.com/articles/view/20101026/local/malta-still-seeking-joint-oil-exploration-with-italy-and-libya>, accessed on 20 January 2011.

The *Deepwater Horizon* incident also drew the attention of the European Union, and it was acknowledged that the risks associated with offshore oil and gas exploration and exploitation need to be specifically addressed in an integrated and sustainable manner. Various EU legislative proposals were submitted in this regard.

On the international plane the issue has been recently discussed during the 97<sup>th</sup> Session of the IMO Legal Committee. Indonesia in fact put forward its proposal following a blow out on 21 August 2009, on the *Montara* offshore oil platform located in the Australian Exclusive Economic Zone (EEZ). In its proposal Indonesia held that there are currently no treaties addressing the consequences of trans-border pollution caused by offshore exploration and exploitation. Indonesia believes that developing an international instrument to address the question of liability and compensation in such cases is the best way of responding to similar problems occurring in the future.<sup>40</sup>

Moreover one has to consider the position of other nations in the Mediterranean. For instance, Israel has recently announced the discovery of an extremely significant natural gas reserve at an offshore drilling site in the Mediterranean Sea Area. Cyprus to facilitate offshore exploration has also signed a Delimitation Agreement of the EEZ with Egypt and Lebanon, whilst being constantly in touch with Israel for the delimitation of maritime borders. Lebanon passed a law in August 2010 authorizing exploration and drilling of offshore oil and gas fields even though maritime borders with Israel are not delimited.<sup>41</sup>

The fact that the response at Maltese national level remains very limited, precisely underlines the need for the ratification of the Offshore Protocol which has now also entered into force.

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<sup>40</sup> LEG 97/14/1, 97<sup>th</sup> Session of the IMO Legal Committee, 10 September 2010.

<sup>41</sup> E. Raftopoulos, *op. cit.*, p. 3.

### **3. The Implementation of the Offshore Protocol into Maltese Law**

The Maltese legal system is a dualist system and requires the enactment of a domestic instrument in order to incorporate an international convention in its national laws. In default of such domestic instrument, the international agreement applies only on the international plane and not within the domestic context. With regards to the Offshore Protocol, Malta is already a signatory State, and the next step is to ratify the Protocol through the enactment of a domestic instrument.

Malta's Ratification of Treaties Act regulates the ratification of an international convention and holds under article 3(4) that "*No provision of a treaty shall become, or be enforceable as, part of the law of Malta except by or under an Act of Parliament.*" Therefore a separate legal instrument in the form of an Act of Parliament is necessary for the implementation of the Offshore Protocol into Maltese Law.

The term 'treaty' is defined under article 2 of this Ratification of Treaties Act as being "*an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.*" Therefore, whatever the title of the agreement (be it a protocol or a convention), if it is written, it would fall within the scope of application of this law. This means that the Offshore Protocol falls within the parameters of the Ratification of Treaties Act. To this extent a stand alone Act of Parliament is necessary to incorporate the Offshore Protocol into Maltese Legislation. In addition, Regulations need to be drafted for the proper implementation of the Act incorporating the said Protocol.

The need for a stand alone Act arises from the lack of provisions, under the current domestic legislation, dealing with the protection of the Mediterranean Sea against pollution resulting from activities covered by the Offshore Protocol.

The Continental Shelf Act<sup>42</sup> and the Petroleum (Production) Act<sup>43</sup> contain provisions relating to exploration and exploitation activities without however regulating pollution arising there from.

Further, Article 7 of the Continental Shelf Act only provides that in case of a statutory breach a fine is to be imposed on the person liable for the pollution damage. However the existence of

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<sup>42</sup> Chapter 194 of the Laws of Malta.

<sup>43</sup> Chapter 156 of the Laws of Malta.



such provision does not overlap with any of the provisions of the Offshore Protocol and it is to be distinguished from its Article 27. The latter deals with Liability and Compensation in case of pollution damage arising from exploration and exploitation activities and requires State Parties to take all necessary measures that liability and prompt compensation rules are in force and that the operators engaged in activities within the scope of the Offshore Protocol maintain insurance cover or other financial security of such type. It is worth mentioning that the compensation afforded to a claimant under Article 27 would be, depending on the case, probably much higher than the fine established in Article 7 of the Continental Shelf Act.

Once an international convention or treaty has been duly ratified and transposed into domestic law by an Act of Parliament, such Act must be subsequently published in the Malta Government Gazette to have the force of law. Article 72(4) of the Constitution states:

*“When a law has been assented to by the President it shall without delay be published in the Gazette and shall not come into operation until it has been so published, but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.”*

After this ratification process has been followed, the Offshore Protocol would become part of the Laws of Malta. This would ensure that Malta is in line with its regional and international obligations.

**Protocol for the Protection of the Mediterranean Sea Against Pollution  
resulting from Exploration and Exploitation of the Continental Shelf  
and the Seabed and its Subsoil (Incorporation) Act**

CHAPTER \_\_\_\_ . \_\_\_\_

PROTOCOL FOR THE PROTECTION OF THE MEDITERRANEAN SEA AGAINST  
POLLUTION RESULTING FROM EXPLORATION AND EXPLOITATION OF THE  
CONTINENTAL SHELF AND THE SEABED AND ITS SUBSOIL  
(INCORPORATION) ACT

*To incorporate the Protocol for the Protection of the Mediterranean Sea against Pollution  
resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its  
Subsoil (Offshore Protocol).*

\_\_\_\_\_, April, 2011

- |  |   |
|--|---|
| <p>1. (1) The title of this Act is the Protocol for the Protection of the Mediterranean Sea against Pollution resulting from Exploration and Exploitation of the Continental Shelf and the seabed and its subsoil (Incorporation) Act.</p>   | <p>Short Title.</p>   |
| <p>2. The Protocol for the Protection of the Mediterranean Sea against Pollution resulting from Exploration and Exploitation of the Continental Shelf and the seabed and its subsoil done at Madrid on the fourteenth day of October, 1994 shall form part of the Laws of Malta.</p> | <p>Incorporation of the Offshore Protocol into Maltese Law.</p> |
| <p>3. The text of the Offshore Protocol is being published in the English language in the Schedule to this Act.</p>  | <p>Text of the Offshore Protocol.</p>                           |
| <p>4. Subject to the Provisions of this Act and to any International obligations entered into by the Government, the Minister may make regulations for the proper implementation of this Act.</p>  | <p>Power to make regulations.</p>                               |

## SCHEDULE

### **THE PROTOCOL FOR THE PROTECTION OF THE MEDITERRANEAN SEA AGAINST POLLUTION RESULTING FROM EXPLORATION AND EXPLOITATION OF THE CONTINENTAL SHELF AND THE SEABED AND ITS SUBSOIL**

Preamble

The Contracting Parties to the present Protocol,

Being Parties to the Convention for the Protection of the Mediterranean Sea against Pollution, adopted at Barcelona on 16 February 1976,

Bearing in mind Article 7 of the said Convention,

Bearing in mind the increase in the activities concerning exploration and exploitation of the Mediterranean seabed and its subsoil,

Recognizing that the pollution which may result therefrom represents a serious danger to the environment and to human beings,

Desirous of protecting and preserving the Mediterranean Sea from pollution resulting from exploration and exploitation activities,

Taking into account the Protocols related to the Convention for the Protection of the Mediterranean Sea against Pollution and, in particular, the Protocol concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency, adopted at Barcelona on 16 February 1976, and the Protocol concerning Mediterranean Specially Protected Areas, adopted at Geneva on 3 April 1982,

Bearing in mind the relevant provisions of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982 and signed by many Contracting Parties,

Recognizing the differences in levels of development among the coastal States, and taking account of the economic and social imperatives of the developing countries,

Have agreed as follows:

#### **SECTION I - GENERAL PROVISIONS**

##### **Article 1: DEFINITIONS**

For the purposes of this Protocol:

(a) "Convention" means the Convention for the Protection of the Mediterranean Sea against Pollution, adopted at Barcelona on 16 February 1976;

- (b) "Organization" means the body referred to in Article 17 of the Convention;
- (c) "Resources" means all mineral resources, whether solid, liquid or gaseous;
- (d) "Activities concerning exploration and/or exploitation of the resources in the Protocol Area" (hereinafter referred to as "activities") means:
- (i) Activities of scientific research concerning the resources of the seabed and its subsoil;
  - (ii) Exploration activities:
    - Seismological activities; surveys of the seabed and its subsoil; sample taking;
    - Exploration drilling;
  - (iii) Exploitation activities:
    - Establishment of an installation for the purpose of recovering resources, and activities connected therewith;
    - Development drilling;
    - Recovery, treatment and storage;
    - Transportation to shore by pipeline and loading of ships;
    - Maintenance, repair and other ancillary operations;
- (e) "Pollution" is defined as in Article 2, paragraph (a), of the Convention;
- (f) "Installation" means any fixed or floating structure, and any integral part thereof, that is engaged in activities, including, in particular:
- (i) Fixed or mobile offshore drilling units;
  - (ii) Fixed or floating production units including dynamically-positioned units;
  - (iii) Offshore storage facilities including ships used for this purpose;
  - (iv) Offshore loading terminals and transport systems for the extracted products, such as submarine pipelines;
  - (v) Apparatus attached to it and equipment for the reloading, processing, storage and disposal of substances removed from the seabed or its subsoil;
- (g) "Operator" means:
- (i) Any natural or juridical person who is authorized by the Party exercising jurisdiction over the area where the activities are undertaken (hereinafter referred to as the "Contracting Party") in accordance with this Protocol to carry out activities and/or who carries out such activities; or
  - (ii) Any person who does not hold an authorization within the meaning of this Protocol but is de facto in control of such activities;
- (h) "Safety zone" means a zone established around installations in conformity with the provisions of general international law and technical requirements, with appropriate markings

to ensure the safety of both navigation and the installations;

(i) "Wastes" means substances and materials of any kind, form or description resulting from activities covered by this Protocol which are disposed of or are intended for disposal or are required to be disposed of;

(j) "Harmful or noxious substances and materials" means substances and materials of any kind, form or description, which might cause pollution, if introduced into the Protocol Area;

(k) "Chemical Use Plan" means a plan drawn up by the operator of any offshore installation which shows:

(i) The chemicals which the operator intends to use in the operations;

(ii) The purpose or purposes for which the operator intends to use the chemicals;

(iii) The maximum concentrations of the chemicals which the operator intends to use within any other substances, and maximum amounts intended to be used in any specified period;

(iv) The area within which the chemical may escape into the marine environment;

(l) "Oil" means petroleum in any form including crude oil, fuel oil, oily sludge, oil refuse and refined products and, without limiting the generality of the foregoing, includes the substances listed in the Appendix to this Protocol;

(m) "Oily mixture" means a mixture with any oil content;

(n) "Sewage" means:

(i) Drainage and other wastes from any form of toilets, urinals and water-closet scuppers;

(ii) Drainage from medical premises (dispensary, sick bay, etc.) via wash basins, wash tubs and scuppers located in such premises;

(iii) Other waste waters when mixed with the drainages defined above;

(o) "Garbage" means all kinds of food, domestic and operational waste generated during the normal operation of the installation and liable to be disposed of continuously or periodically, except those substances which are defined or listed elsewhere in this Protocol;

(p) "Freshwater limit" means the place in water courses where, at low tides and in a period of low freshwater flow, there is an appreciable increase in salinity due to the presence of sea water.

## **Article 2: GEOGRAPHICAL COVERAGE**

1. The area to which this Protocol applies (referred to in this Protocol as the "Protocol Area") shall be:

(a) The Mediterranean Sea Area as defined in Article 1 of the Convention, including the continental shelf and the seabed and its subsoil;

(b) Waters, including the seabed and its subsoil, on the landward side of the baselines from which the breadth of the territorial sea is measured and extending, in the case of watercourses, up to the freshwater limit.

2. Any of the Contracting Parties to this Protocol (referred to in this Protocol as "the Parties")

may also include in the Protocol area wetlands or coastal areas of their territory.

3. Nothing in this Protocol, nor any act adopted on the basis of this Protocol, shall prejudice the rights of any State concerning the delimitation of the continental shelf.

#### **Article 3: GENERAL UNDERTAKINGS**

1. The Parties shall take, individually or through bilateral or multilateral cooperation, all appropriate measures to prevent, abate, combat and control pollution in the Protocol Area resulting from activities, inter alia by ensuring that the best available techniques, environmentally effective and economically appropriate, are used for this purpose.

2. The Parties shall ensure that all necessary measures are taken so that activities do not cause pollution.

### **SECTION II - AUTHORIZATION SYSTEM**

#### **Article 4: GENERAL PRINCIPLES**

1. All activities in the Protocol Area, including erection on site of installations, shall be subject to the prior written authorization for exploration or exploitation from the competent authority. Such authority, before granting the authorization, shall be satisfied that the installation has been constructed according to international standards and practice and that the operator has the technical competence and the financial capacity to carry out the activities. Such authorization shall be granted in accordance with the appropriate procedure, as defined by the competent authority.

2. Authorization shall be refused if there are indications that the proposed activities are likely to cause significant adverse effects on the environment that could not be avoided by compliance with the conditions laid down in the authorization and referred to in Article 6, paragraph 3, of this Protocol.

3. When considering approval of the siting of an installation, the Contracting Party shall ensure that no detrimental effects will be caused to existing facilities by such siting, in particular, to pipelines and cables.

#### **Article 5: REQUIREMENTS FOR AUTHORIZATIONS**

1. The Contracting Party shall prescribe that any application for authorization or for the renewal of an authorization is subject to the submission of the project by the candidate operator to the competent authority and that any such application must include, in particular, the following:

(a) A survey concerning the effects of the proposed activities on the environment; the competent authority may, in the light of the nature, scope, duration and technical methods employed in the activities and of the characteristics of the area, require that an environmental impact assessment be prepared in accordance with Annex IV to this Protocol;

(b) The precise definition of the geographical areas where the activity is envisaged, including safety zones;

(c) Particulars of the professional and technical qualifications of the candidate operator and personnel on the installation, as well as of the composition of the crew;

(d) The safety measures as specified in Article 15;

- (e) The operator's contingency plan as specified in Article 16;
- (f) The monitoring procedures as specified in Article 19;
- (g) The plans for removal of installations as specified in Article 20;
- (h) Precautions for specially protected areas as specified in Article 21;
- (i) The insurance or other financial security to cover liability as prescribed in Article 27, paragraph 2 (b).

2. The competent authority may decide, for scientific research and exploration activities, to limit the scope of the requirements laid down in paragraph 1 of this Article, in the light of the nature, scope, duration and technical methods employed in the activities and of the characteristics of the area.

#### **Article 6: GRANTING OF AUTHORIZATIONS**

1. The authorizations referred to in Article 4 shall be granted only after examination by the competent authority of the requirements listed in Article 5 and Annex IV.
2. Each authorization shall specify the activities and the period of validity of the authorization, establish the geographical limits of the area subject to the authorization and specify the technical requirements and the authorized installations. The necessary safety zones shall be established at a later appropriate stage.
3. The authorization may impose conditions regarding measures, techniques or methods designed to reduce to the minimum risks of and damage due to pollution resulting from the activities.
4. The Parties shall notify the Organization as soon as possible of authorizations granted or renewed. The Organization shall keep a register of all the authorized installations in the Protocol Area.

#### **Article 7: SANCTIONS**

Each Party shall prescribe sanctions to be imposed for breach of obligations arising out of this Protocol, or for non-observance of the national laws or regulations implementing this Protocol, or for non-fulfilment of the specific conditions attached to the authorization.

### **SECTION III - WASTES AND HARMFUL OR NOXIOUS SUBSTANCES AND MATERIALS**

#### **Article 8: GENERAL OBLIGATION**

Without prejudice to other standards or obligations referred to in this Section, the Parties shall impose a general obligation upon operators to use the best available, environmentally effective and economically appropriate techniques and to observe internationally accepted standards regarding wastes, as well as the use, storage and discharge of harmful or noxious substances and materials, with a view to minimizing the risk of pollution.

#### **Article 9: HARMFUL OR NOXIOUS SUBSTANCES AND MATERIALS**

1. The use and storage of chemicals for the activities shall be approved by the competent authority, on the basis of the Chemical Use Plan.



2. The Contracting Party may regulate, limit or prohibit the use of chemicals for the activities in accordance with guidelines to be adopted by the Contracting Parties.
3. For the purpose of protecting the environment, the Parties shall ensure that each substance and material used for activities is accompanied by a compound description provided by the entity producing such substance or material.
4. The disposal into the Protocol Area of harmful or noxious substances and materials resulting from the activities covered by this Protocol and listed in Annex I to this Protocol is prohibited.
5. The disposal into the Protocol Area of harmful or noxious substances and materials resulting from the activities covered by this Protocol and listed in Annex II to this Protocol requires, in each case, a prior special permit from the competent authority.
6. The disposal into the Protocol Area of all other harmful or noxious substances and materials resulting from the activities covered by this Protocol and which might cause pollution requires a prior general permit from the competent authority.
7. The permits referred to in paragraphs 5 and 6 above shall be issued only after careful consideration of all the factors set forth in Annex III to this Protocol.

**Article 10: OIL AND OILY MIXTURES AND DRILLING FLUIDS AND CUTTINGS**

1. The Parties shall formulate and adopt common standards for the disposal of oil and oily mixtures from installations into the Protocol Area:
  - (a) Such common standards shall be formulated in accordance with the provisions of Annex V, A;
  - (b) Such common standards shall not be less restrictive than the following, in particular:
    - (i) For machinery space drainage, a maximum oil content of 15 mg per litre whilst undiluted;
    - (ii) For production water, a maximum oil content of 40 mg per litre as an average in any calendar month; the content shall not at any time exceed 100 mg per litre;
  - (c) The Parties shall determine by common agreement which method will be used to analyze the oil content.
2. The Parties shall formulate and adopt common standards for the use and disposal of drilling fluids and drill cuttings into the Protocol Area. Such common standards shall be formulated in accordance with the provisions of Annex V, B.
3. Each Party shall take appropriate measures to enforce the common standards adopted pursuant to this Article or to enforce more restrictive standards that it may have adopted.

**Article 11: SEWAGE**

1. The Contracting Party shall prohibit the discharge of sewage from installations permanently manned by 10 or more persons into the Protocol Area except in cases where:
  - (a) The installation is discharging sewage after treatment as approved by the competent authority at a distance of at least four nautical miles from the nearest land or fixed fisheries installation, leaving the Contracting Party to decide on a case by case basis; or
  - (b) The sewage is not treated, but the discharge is carried out in accordance with international

rules and standards; or

(c) The sewage has passed through an approved sewage treatment plant certified by the competent authority.

2. The Contracting Party shall impose stricter provisions, as appropriate, where deemed necessary, inter alia because of the regime of the currents in the area or proximity to any area referred to in Article 21.

3. The exceptions referred to in paragraph 1 shall not apply if the discharge produces visible floating solids or produces colouration, discolouration or opacity of the surrounding water.

4. If the sewage is mixed with wastes and harmful or noxious substances and materials having different disposal requirements, the more stringent requirements shall apply.

#### **Article 12: GARBAGE**

1. The Contracting Party shall prohibit the disposal into the Protocol Area of the following products and materials:

(a) All plastics, including but not limited to synthetic ropes, synthetic fishing nets and plastic garbage bags;

(b) All other non-biodegradable garbage, including paper products, rags, glass, metal, bottles, crockery, dunnage, lining and packing materials.

2. Disposal into the Protocol Area of food wastes shall take place as far away as possible from land, in accordance with international rules and standards.

3. If garbage is mixed with other discharges having different disposal or discharge requirements, the more stringent requirements shall apply.

#### **Article 13: RECEPTION FACILITIES, INSTRUCTIONS AND SANCTIONS**

The Parties shall ensure that:

(a) Operators dispose satisfactorily of all wastes and harmful or noxious substances and materials in designated onshore reception facilities, except as otherwise authorized by the Protocol;

(b) Instructions are given to all personnel concerning proper means of disposal;

(c) Sanctions are imposed in respect of illegal disposals.

#### **Article 14: EXCEPTIONS**

1. The provisions of this Section shall not apply in case of:

(a) Force majeure and in particular for disposals:

- to save human life,

- to ensure the safety of installations,

- in case of damage to the installation or its equipment,

on condition that all reasonable precautions have been taken after the damage is discovered or after the disposal has been performed to reduce the negative effects.

(b) The discharge into the sea of substances containing oil or harmful or noxious substances or materials which, subject to the prior approval of the competent authority, are being used for the purpose of combating specific pollution incidents in order to minimize the damage due to the pollution.

2. However, the provisions of this Section shall apply in any case where the operator acted with the intent to cause damage or recklessly and with knowledge that damage will probably result.

3. Disposals carried out in the circumstances referred to in paragraph 1 of this Article shall be reported immediately to the Organization and, either through the Organization or directly, to any Party or Parties likely to be affected, together with full details of the circumstances and of the nature and quantities of wastes or harmful or noxious substances or materials discharged.

#### **SECTION IV - SAFEGUARDS**

##### **Article 15: SAFETY MEASURES**

1. The Contracting Party within whose jurisdiction activities are envisaged or are being carried out shall ensure that safety measures are taken with regard to the design, construction, placement, equipment, marking, operation and maintenance of installations.

2. The Contracting Party shall ensure that at all times the operator has on the installations adequate equipment and devices, maintained in good working order, for protecting human life, preventing and combating accidental pollution and facilitating prompt response to an emergency, in accordance with the best available environmentally effective and economically appropriate techniques and the provisions of the operator's contingency plan referred to in Article 16.

3. The competent authority shall require a certificate of safety and fitness for the purpose (hereinafter referred to as "certificate") issued by a recognized body to be submitted in respect of production platforms, mobile offshore drilling units, offshore storage facilities, offshore loading systems and pipelines and in respect of such other installations as may be specified by the Contracting Party.

4. The Parties shall ensure through inspection that the activities are conducted by the operators in accordance with this Article.

##### **Article 16: CONTINGENCY PLANNING**

1. In cases of emergency the Contracting Parties shall implement *mutatis mutandis* the provisions of the Protocol concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency.

2. Each Party shall require operators in charge of installations under its jurisdiction to have a contingency plan to combat accidental pollution, coordinated with the contingency plan of the Contracting Party established in accordance with the Protocol concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency and approved in conformity with the procedures established by the competent authorities.

3. Each Contracting Party shall establish coordination for the development and implementation of contingency plans. Such plans shall be established in accordance with

guidelines adopted by the competent international organization. They shall, in particular, be in accordance with the provisions of Annex VII to this Protocol.

#### **Article 17: NOTIFICATION**

Each Party shall require operators in charge of installations under its jurisdiction to report without delay to the competent authority:

- (a) Any event on their installation causing or likely to cause pollution in the Protocol Area;
- (b) Any observed event at sea causing or likely to cause pollution in the Protocol Area.

#### **Article 18: MUTUAL ASSISTANCE IN CASES OF EMERGENCY**

In cases of emergency, a Party requiring assistance in order to prevent, abate or combat pollution resulting from activities may request help from the other Parties, either directly or through the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC), which shall do their utmost to provide the assistance requested.

For this purpose, a Party which is also a Party to the Protocol concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency shall apply the pertinent provisions of the said Protocol.

#### **Article 19: MONITORING**

1. The operator shall be required to measure, or to have measured by a qualified entity, expert in the matter, the effects of the activities on the environment in the light of the nature, scope, duration and technical methods employed in the activities and of the characteristics of the area and to report on them periodically or upon request by the competent authority for the purpose of an evaluation by such competent authority according to a procedure established by the competent authority in its authorization system.

2. The competent authority shall establish, where appropriate, a national monitoring system in order to be in a position to monitor regularly the installations and the impact of the activities on the environment, so as to ensure that the conditions attached to the grant of the authorization are being fulfilled.

#### **Article 20: REMOVAL OF INSTALLATIONS**

1. The operator shall be required by the competent authority to remove any installation which is abandoned or disused, in order to ensure safety of navigation, taking into account the guidelines and standards adopted by the competent international organization. Such removal shall also have due regard to other legitimate uses of the sea, in particular fishing, the protection of the marine environment and the rights and duties of other Contracting Parties. Prior to such removal, the operator under its responsibility shall take all necessary measures to prevent spillage or leakage from the site of the activities.

2. The competent authority shall require the operator to remove abandoned or disused pipelines in accordance with paragraph 1 of this Article or to clean them inside and abandon them or to clean them inside and bury them so that they neither cause pollution, endanger navigation, hinder fishing, threaten the marine environment, nor interfere with other legitimate uses of the sea or with the rights and duties of other Contracting Parties. The competent authority shall ensure that appropriate publicity is given to the depth, position and dimensions of any buried pipeline and that such information is indicated on charts and notified to the Organization and other competent international organizations and the Parties.

3. The provisions of this Article apply also to installations disused or abandoned by any

operator whose authorization may have been withdrawn or suspended in compliance with Article 7.

4. The competent authority may indicate eventual modifications to be made to the level of activities and to the measures for the protection of the marine environment which had initially been provided for.

5. The competent authority may regulate the cession or transfer of authorized activities to other persons.

6. Where the operator fails to comply with the provisions of this Article, the competent authority shall undertake, at the operator's expense, such action or actions as may be necessary to remedy the operator's failure to act.

#### **Article 21: SPECIALLY PROTECTED AREAS**

For the protection of the areas defined in the Protocol concerning Mediterranean Specially Protected Areas and any other area established by a Party and in furtherance of the goals stated therein, the Parties shall take special measures in conformity with international law, either individually or through multilateral or bilateral cooperation, to prevent, abate, combat and control pollution arising from activities in these areas.

In addition to the measures referred to in the Protocol concerning Mediterranean Specially Protected Areas for the granting of authorization, such measures may include, inter alia:

(a) Special restrictions or conditions when granting authorizations for such areas:

(i) The preparation and evaluation of environmental impact assessments;

(ii) The elaboration of special provisions in such areas concerning monitoring, removal of installations and prohibition of any discharge.

(b) Intensified exchange of information among operators, the competent authorities, Parties and the Organization regarding matters which may affect such areas.

#### **SECTION V – COOPERATION**

##### **Article 22: STUDIES AND RESEARCH PROGRAMMES**

In conformity with Article 13 of the Convention, the Parties shall, where appropriate, cooperate in promoting studies and undertaking programmes of scientific and technological research for the purpose of developing new methods of:

(a) Carrying out activities in a way that minimizes the risk of pollution;

(b) Preventing, abating, combating and controlling pollution, especially in cases of emergency.

##### **Article 23: INTERNATIONAL RULES, STANDARDS AND RECOMMENDED PRACTICES AND PROCEDURES**

1. The Parties shall cooperate, either directly or through the Organization or other competent international organizations, in order to:

(a) Establish appropriate scientific criteria for the formulation and elaboration of international rules, standards and recommended practices and procedures for achieving the aims of this

Protocol;

(b) Formulate and elaborate such international rules, standards and recommended practices and procedures;

(c) Formulate and adopt guidelines in accordance with international practices and procedures to ensure observance of the provisions of Annex VI.

2. The Parties shall, as soon as possible, endeavour to harmonize their laws and regulations with the international rules, standards and recommended practices and procedures referred to in paragraph 1 of this Article.

3. The Parties shall endeavour, as far as possible, to exchange information relevant to their domestic policies, laws and regulations and the harmonization referred to in paragraph 2 of this Article.

#### **Article 24: SCIENTIFIC AND TECHNICAL ASSISTANCE TO DEVELOPING COUNTRIES**

1. The Parties shall, directly or with the assistance of competent regional or other international organizations, cooperate with a view to formulating and, as far as possible, implementing programmes of assistance to developing countries, particularly in the fields of science, law, education and technology, in order to prevent, abate, combat and control pollution due to activities in the Protocol Area.

2. Technical assistance shall include, in particular, the training of scientific, legal and technical personnel, as well as the acquisition, utilization and production by those countries of appropriate equipment on advantageous terms to be agreed upon among the Parties concerned.

#### **Article 25: MUTUAL INFORMATION**

The Parties shall inform one another directly or through the Organization of measures taken, of results achieved and, if the case arises, of difficulties encountered in the application of this Protocol. Procedures for the collection and submission of such information shall be determined at the meetings of the Parties.

#### **Article 26: TRANSBOUNDARY POLLUTION**

1. Each Party shall take all measures necessary to ensure that activities under its jurisdiction are so conducted as not to cause pollution beyond the limits of its jurisdiction.

2. A Party within whose jurisdiction activities are being envisaged or carried out shall take into account any adverse environmental effects, without discrimination as to whether such effects are likely to occur within the limits of its jurisdiction or beyond such limits.

3. If a Party becomes aware of cases in which the marine environment is in imminent danger of being damaged, or has been damaged, by pollution, it shall immediately notify other Parties which in its opinion are likely to be affected by such damage, as well as the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC), and provide them with timely information that would enable them, where necessary, to take appropriate measures. REMPEC shall distribute the information immediately to all relevant Parties.

4. The Parties shall endeavour, in accordance with their legal systems and, where appropriate, on the basis of an agreement, to grant equal access to and treatment in administrative

proceedings to persons in other States who may be affected by pollution or other adverse effects resulting from proposed or existing operations.

5. Where pollution originates in the territory of a State which is not a Contracting Party to this Protocol, any Contracting Party affected shall endeavour to cooperate with the said State so as to make possible the application of the Protocol.

#### **Article 27: LIABILITY AND COMPENSATION**

1. The Parties undertake to cooperate as soon as possible in formulating and adopting appropriate rules and procedures for the determination of liability and compensation for damage resulting from the activities dealt with in this Protocol, in conformity with Article 16 of the Convention.

2. Pending development of such procedures, each Party:

(a) Shall take all measures necessary to ensure that liability for damage caused by activities is imposed on operators, and they shall be required to pay prompt and adequate compensation;

(b) Shall take all measures necessary to ensure that operators shall have and maintain insurance cover or other financial security of such type and under such terms as the Contracting Party shall specify in order to ensure compensation for damages caused by the activities covered by this Protocol.

#### **SECTION VI - FINAL PROVISIONS**

#### **Article 28: APPOINTMENT OF COMPETENT AUTHORITIES**

Each Contracting Party shall appoint one or more competent authorities to:

(a) Grant, renew and register the authorizations provided for in Section II of this Protocol;

(b) Issue and register the special and general permits referred to in Article 9 of this Protocol;

(c) Issue the permits referred to in Annex V to this Protocol;

(d) Approve the treatment system and certify the sewage treatment plant referred to in Article 11, paragraph 1, of this Protocol;

(e) Give the prior approval for exceptional discharges referred to in Article 14, paragraph 1 (b), of this Protocol;

(f) Carry out the duties regarding safety measures referred to in Article 15, paragraphs 3 and 4, of this Protocol;

(g) Perform the functions relating to contingency planning described in Article 16 and Annex VII to this Protocol;

(h) Establish monitoring procedures as provided in Article 19 of this Protocol;

(i) Supervise the removal operations of the installations as provided in Article 20 of this Protocol.

#### **Article 29: TRANSITIONAL MEASURES**

Each Party shall elaborate procedures and regulations regarding activities, whether authorized or not, initiated before the entry into force of this Protocol, to ensure their conformity, as far as practicable, with the provisions of this Protocol.

#### **Article 30: MEETINGS**

1. Ordinary meetings of the Parties shall take place in conjunction with ordinary meetings of the Contracting Parties to the Convention held pursuant to Article 18 of the Convention. The Parties may also hold extraordinary meetings in accordance with Article 18 of the Convention.

2. The functions of the meetings of the Parties to this Protocol shall be, inter alia:

(a) To keep under review the implementation of this Protocol and to consider the efficacy of the measures adopted and the advisability of any other measures, in particular in the form of annexes and appendices;

(b) To revise and amend any annex or appendix to this Protocol;

(c) To consider the information concerning authorizations granted or renewed in accordance with Section II of this Protocol;

(d) To consider the information concerning the permits issued and approvals given in accordance with Section III of this Protocol;

(e) To adopt the guidelines referred to in Article 9, paragraph 2, and Article 23, paragraph 1 (c), of this Protocol;

(f) To consider the records of the contingency plans and means of intervention in emergencies adopted in accordance with Article 16 of this Protocol;

(g) To establish criteria and formulate international rules, standards and recommended practices and procedures in accordance with Article 23, paragraph 1, of this Protocol, in whatever form the Parties may agree;

(h) To facilitate the implementation of the policies and the achievement of the objectives referred to in Section V, in particular the harmonization of national and European Community legislation in accordance with Article 23, paragraph 2, of this Protocol;

(i) To review progress made in the implementation of Article 27 of this Protocol;

(j) To discharge such other functions as may be appropriate for the application of this Protocol.

#### **Article 31: RELATIONS WITH THE CONVENTION**

1. The provisions of the Convention relating to any Protocol shall apply with respect to this Protocol.

2. The rules of procedure and the financial rules adopted pursuant to Article 24 of the Convention shall apply with respect to this Protocol, unless the Parties to this Protocol agree



otherwise.

**Article 32: FINAL CLAUSE**

1. This Protocol shall be open for signature at Madrid from 14 October 1994 to 14 October 1995, by any State Party to the Convention invited to the Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region on the Protocol for the Protection of the Mediterranean Sea against Pollution resulting from Exploration and Exploitation of the Seabed and its Subsoil, held at Madrid on 13 and 14 October 1994. It shall also be open until the same dates for signature by the European Community and by any similar regional economic grouping of which at least one member is a coastal State of the Protocol Area and which exercises competence in fields covered by this Protocol in conformity with Article 30 of the Convention.

2. This Protocol shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Government of Spain, which will assume the functions of Depositary.

3. As from 15 October 1995, this Protocol shall be open for accession by the States referred to in paragraph 1 above, by the European Community and by any grouping referred to in that paragraph.

4. This Protocol shall enter into force on the thirtieth day following the date of deposit of at least six instruments of ratification, acceptance or approval of, or accession to, the Protocol by the Parties referred to in paragraph 1 of this Article.

IN WITNESS WHEREOF the undersigned, being duly authorized, have signed this Protocol.

## ANNEX I

### HARMFUL OR NOXIOUS SUBSTANCES AND MATERIALS THE DISPOSAL OF WHICH IN THE PROTOCOL AREA IS PROHIBITED

A. The following substances and materials and compounds thereof are listed for the purposes of Article 9, paragraph 4, of the Protocol. They have been selected mainly on the basis of their toxicity, persistence and bioaccumulation:

1. Mercury and mercury compounds
2. Cadmium and cadmium compounds
3. Organotin compounds and substances which may form such compounds in the marine environment\*
4. Organophosphorus compounds and substances which may form such compounds in the marine environment\*
5. Organohalogen compounds and substances which may form such compounds in the marine environment\*
6. Crude oil, fuel oil, oily sludge, used lubricating oils and refined products
7. Persistent synthetic materials which may float, sink or remain in suspension and which may interfere with any legitimate use of the sea
8. Substances having proven carcinogenic, teratogenic or mutagenic properties in or through the marine environment
9. Radioactive substances, including their wastes, if their discharges do not comply with the principles of radiation protection as defined by the competent international organizations, taking into account the protection of the marine environment

B. The present Annex does not apply to discharges which contain substances listed in section A that are below the limits defined jointly by the Parties and, in relation to oil, below the limits defined in Article 10 of this Protocol.

\* With the exception of those which are biologically harmless or which are rapidly converted into biologically harmless substances.

## **ANNEX II**

### **HARMFUL OR NOXIOUS SUBSTANCES AND MATERIALS THE DISPOSAL OF WHICH IN THE PROTOCOL AREA IS SUBJECT TO A SPECIAL PERMIT**

A. The following substances and materials and compounds thereof have been selected for the purpose of Article 9, paragraph 5, of the Protocol.

1. Arsenic
2. Lead
3. Copper
4. Zinc
5. Beryllium
6. Nickel
7. Vanadium
8. Chromium
9. Biocides and their derivatives not covered in Annex I
10. Selenium
11. Antimony
12. Molybdenum
13. Titanium
14. Tin
15. Barium (other than barium sulphate)
16. Boron
17. Uranium
18. Cobalt
19. Thallium
20. Tellurium
21. Silver
22. Cyanides

B. The control and strict limitation of the discharge of substances referred to in section A must be implemented in accordance with Annex III.

## **ANNEX III**

### **FACTORS TO BE CONSIDERED FOR THE ISSUE OF THE PERMITS**

For the purpose of the issue of a permit required under Article 9, paragraph 7, particular account will be taken, as the case may be, of the following factors:

#### **A. Characteristics and composition of the waste**

1. Type and size of waste source (e.g. industrial process);
2. Type of waste (origin, average composition);
3. Form of waste (solid, liquid, sludge, slurry, gaseous);
4. Total amount (volume discharged, e.g. per year);
5. Discharge pattern (continuous, intermittent, seasonally variable, etc.);
6. Concentrations with respect to major constituents, substances listed in Annex I, substances listed in Annex II, and other substances as appropriate;
7. Physical, chemical and biochemical properties of the waste.

#### **B. Characteristics of waste constituents with respect to their harmfulness**

1. Persistence (physical, chemical, biological) in the marine environment;
2. Toxicity and other harmful effects;
3. Accumulation in biological materials or sediments;
4. Biochemical transformation producing harmful compounds;
5. Adverse effects on the oxygen content and balance;
6. Susceptibility to physical, chemical and biochemical changes and interaction in the aquatic environment with other sea-water constituents which may produce harmful biological or other effects on any of the uses listed in Section E below.

#### **C. Characteristics of discharge site and receiving marine environment**

1. Hydrographic, meteorological, geological and topographical characteristics of the area;
2. Location and type of the discharge (outfall, canal, outlet, etc.) and its relation to other areas (such as amenity areas, spawning, nursery and fishing areas, shellfish grounds) and other discharges;
3. Initial dilution achieved at the point of discharge into the receiving marine environment;
4. Dispersion characteristics such as effects of currents, tides and wind on horizontal transport and vertical mixing;
5. Receiving water characteristics with respect to physical, chemical, biological and ecological conditions in the discharge area;
6. Capacity of the receiving marine environment to receive waste discharges without undesirable effects.

#### **D. Availability of waste technologies**

The methods of waste reduction and discharge for industrial effluents as well as domestic sewage should be selected taking into account the availability and feasibility of:

- (a) Alternative treatment processes;
- (b) Reuse or elimination methods;
- (c) On-land disposal alternatives;
- (d) Appropriate low-waste technologies.

E. Potential impairment of marine ecosystem and sea-water uses

1. Effects on human life through pollution impact on:

- (a) Edible marine organisms;
- (b) Bathing waters;
- (c) Aesthetics.

2. Effects on marine ecosystems, in particular living resources, endangered species and critical habitats.

3. Effects on other legitimate uses of the sea in conformity with international law.

## **ANNEX IV**

### **ENVIRONMENTAL IMPACT ASSESSMENT**

1. Each Party shall require that the environmental impact assessment contains at least the following:

- (a) A description of the geographical boundaries of the area within which the activities are to be carried out, including safety zones where applicable;
- (b) A description of the initial state of the environment of the area;
- (c) An indication of the nature, aims, scope and duration of the proposed activities;
- (d) A description of the methods, installations and other means to be used, possible alternatives to such methods and means;
- (e) A description of the foreseeable direct or indirect short and long-term effects of the proposed activities on the environment, including fauna, flora and the ecological balance;
- (f) A statement setting out the measures proposed for reducing to the minimum the risk of damage to the environment as a result of carrying out the proposed activities, including possible alternatives to such measures;
- (g) An indication of the measures to be taken for the protection of the environment from pollution and other adverse effects during and after the proposed activities;
- (h) A reference to the methodology used for the environmental impact assessment;
- (i) An indication of whether the environment of any other State is likely to be affected by the proposed activities.

2. Each Party shall promulgate standards taking into account the international rules, standards and recommended practices and procedures, adopted in accordance with Article 23 of the Protocol, by which environmental impact assessments are to be evaluated.

## ANNEX V

### OIL AND OILY MIXTURES AND DRILLING FLUIDS AND CUTTINGS

The following provisions shall be prescribed by the Parties in accordance with Article 10:

#### A. Oil and Oily Mixtures

1. Spills of high oil content in processing drainage and platform drainage shall be contained, diverted and then treated as part of the product, but the remainder shall be treated to an acceptable level before discharge, in accordance with good oilfield practice;
2. Oily waste and sludges from separation processes shall be transported to shore;
3. All the necessary precautions shall be taken to minimize losses of oil into the sea from oil collected or flared from well testing;
4. All the necessary precautions shall be taken to ensure that any gas resulting from oil activities should be flared or used in an appropriate manner.

#### B. Drilling Fluids and Drill Cuttings

1. Water-based drilling fluids and drill cuttings shall be subject to the following requirements:

- (a) The use and disposal of such drilling fluids shall be subject to the Chemical Use Plan and the provisions of Article 9 of this Protocol;
- (b) The disposal of the drill cuttings shall either be made on land or into the sea in an appropriate site or area as specified by the competent authority.

2. Oil-based drilling fluids and drill cuttings are subject to the following requirements:

- (a) Such fluids shall only be used if they are of a sufficiently low toxicity and only after the operator has been issued a permit by the competent authority when it has verified such low toxicity;
- (b) The disposal into the sea of such drilling fluids is prohibited;
- (c) The disposal of the drill cuttings into the sea is only permitted on condition that efficient solids control equipment is installed and properly operated, that the discharge point is well below the surface of the water, and that the oil content is less than 100 grams of oil per kilogram dry cuttings;
- (d) The disposal of such drill cuttings in specially protected areas is prohibited;
- (e) In case of production and development drilling, a programme of seabed sampling and analysis relating to the zone of contamination must be undertaken.

3. Diesel-based drilling fluids:

The use of diesel-based drilling fluids is prohibited. Diesel oil may exceptionally be added to drilling fluids in such circumstances as the Parties may specify.

## ANNEX VI

### SAFETY MEASURES

The following provisions shall be prescribed by the Parties in accordance with Article 15:

- (a) That the installation must be safe and fit for the purpose for which it is to be used, in particular, that it must be designed and constructed so as to withstand, together with its maximum load, any natural condition, including, more specifically, maximum wind and wave conditions as established by historical weather patterns, earthquake possibilities, seabed conditions and stability, and water depth;
- (b) That all phases of the activities, including storage and transport of recovered resources, must be properly prepared, that the whole activity must be open to control for safety reasons and must be conducted in the safest possible way, and that the operator must apply a monitoring system for all activities;
- (c) That the most advanced safety systems must be used and periodically tested in order to minimize the dangers of leakages, spillages, accidental discharges, fire, explosions, blow-outs or any other threat to human safety or the environment, that a trained specialized crew to operate and maintain these systems must be present and that this crew must undertake periodic exercises. In the case of authorized not permanently manned installations, the permanent availability of a specialized crew shall be ensured;
- (d) That the installation and, where necessary, the established safety zone, must be marked in accordance with international recommendations so as to give adequate warning of its presence and sufficient details for its identification;
- (e) That in accordance with international maritime practice, the installations must be indicated on charts and notified to those concerned;
- (f) That, in order to secure observance of the foregoing provisions, the person and/or persons having the responsibility for the installation and/or the activities, including the person responsible for the blow-out preventer, must have the qualifications required by the competent authority, and that sufficient qualified staff must be permanently available. Such qualifications shall include, in particular, training, on a continuing basis, in safety and environmental matters.



## ANNEX VII

### CONTINGENCY PLAN

#### A. The operator's contingency plan

##### 1. Operators are obliged to ensure:

- (a) That the most appropriate alarm system and communication system are available at the installation and they are in good working order;
- (b) That the alarm is immediately raised on the occurrence of an emergency and that any emergency is immediately communicated to the competent authority;
- (c) That, in coordination with the competent authority, transmission of the alarm and appropriate assistance and coordination of assistance can be organized and supervised without delay;
- (d) That immediate information about the nature and extent of the emergency is given to the crew on the installation and to the competent authority;
- (e) That the competent authority is constantly informed about the progress of combating the emergency;
- (f) That at all times sufficient and most appropriate materials and equipment, including stand-by boats and aircraft, are available to put into effect the emergency plan;
- (g) That the most appropriate methods and techniques are known to the specialized crew referred to in Annex VI, paragraph (c), in order to combat leakages, spillages, accidental discharges, fire, explosions, blow-outs and any other threat to human life or the environment;
- (h) That the most appropriate methods and techniques are known to the specialized crew responsible for reducing and preventing long-term adverse effects on the environment;
- (i) That the crew is thoroughly familiar with the operator's contingency plan, that periodic emergency exercises are held so that the crew has a thorough working knowledge of the equipment and procedures and that each individual knows exactly his role within the plan.

2. The operator shall cooperate, on an institutional basis, with other operators or entities capable of rendering necessary assistance, so as to ensure that, in cases where the magnitude or nature of an emergency creates a risk for which assistance is or might be required, such assistance can be rendered.

#### B. National coordination and direction

The competent authority for emergencies of a Contracting Party shall ensure:

- (a) The coordination of the national contingency plan and/or procedures and the operator's contingency plan and control of the conduct of actions, especially in case of significant adverse effects of the emergency;
- (b) Direction to the operator to take any action it may specify in the course of preventing, abating or combating pollution or in the preparation of further action for that purpose,

including placing an order for a relief drilling rig, or to prevent the operator from taking any specified action;

(c) The coordination of actions in the course of preventing, abating or combating pollution or in preparation for further action for that purpose within the national jurisdiction with such actions undertaken within the jurisdiction of other States or by international organizations;

(d) Collection and ready availability of all necessary information concerning the existing activities;

(e) The provision of an up-to-date list of the persons and entities to be alerted and informed about an emergency, its development and the measures taken;

(f) The collection of all necessary information concerning the extent and means of combating contingencies, and the dissemination of this information to interested Parties;

(g) The coordination and supervision of the assistance referred to in Part A above, in cooperation with the operator;

(h) The organization and if necessary, the coordination of specified actions, including intervention by technical experts and trained personnel with the necessary equipment and materials;

(i) Immediate communication to the competent authorities of other Parties which might be affected by a contingency to enable them to take appropriate measures where necessary;

(j) The provision of technical assistance to other Parties, if necessary;

(k) Immediate communication to the competent international organizations with a view to avoiding danger to shipping and other interests.

## **APPENDIX**

### LIST OF OILS \*

#### ASPHALT SOLUTIONS

Blending Stocks  
Roofers Flux  
Straight Run Residue

#### OILS

Clarified  
Crude Oil  
Mixtures containing crude oil  
Diesel Oil  
Fuel Oil No. 4  
Fuel Oil No. 5  
Fuel Oil No. 6  
Residual Fuel Oil  
Road Oil  
Transformer Oil  
Aromatic Oil (excluding vegetable oil)  
Lubricating Oils and Blending Stocks  
Mineral Oil  
Motor Oil  
Penetrating Oil  
Spindle Oil  
Turbine Oil

#### DISTILLATES

Straight Run  
Flashed Feed Stocks

#### GAS OIL

Cracked

#### JET FUELS

JP-1 (Kerosene)  
JP-3  
JP-4  
JP-5 (Kerosene, Heavy)  
Turbo Fuel  
Kerosene  
Mineral Spirit

#### NAPHTHA

Solvent

Petroleum  
Heartcut Distillate Oil

#### GASOLINE BLENDING STOCKS

Alkylates - fuel  
Reformats  
Polymer -fuel

#### GASOLINES

Casinghead (natural)  
Automotive  
Aviation  
Straight Run  
Fuel Oil No. 1 (Kerosene)  
Fuel Oil No. 1-D  
Fuel Oil No. 2  
Fuel Oil No. 2-D

\* The list of oils should not necessarily be considered as exhaustive.

**Protocol for the Protection of the Mediterranean Sea Against Pollution  
resulting from Exploration and Exploitation of the Continental Shelf  
and the Seabed and its Subsoil Regulations**

## SUBSIDIARY LEGISLATION \_\_\_\_\_.\_\_\_\_

### PROTOCOL FOR THE PROTECTION OF THE MEDITERRANEAN SEA AGAINST POLLUTION RESULTING FROM EXPLORATION AN EXPLOITATION OF THE CONTINENTAL SHELF AND THE SEABED AND ITS SUBSOIL REGULATIONS

\_\_\_\_\_, April, 2011

LEGAL NOTICE ..... of 2011.

1. (1) The title of these regulations is the Protocol for the Protection of the Mediterranean Sea against Pollution resulting from Exploration and Exploitation of the Continental Shelf and the seabed and its subsoil Regulations.

Citation.

(2) These regulations shall come into force on the same date of their publication in the Government Gazette as required by Article 72(4) of the Constitution of Malta.

2. (1) In these regulations unless the context otherwise requires –

Interpretation.

"the Act" means the Protocol for the Protection of the Mediterranean Sea against Pollution resulting from Exploration and Exploitation of the Continental Shelf and the seabed and its subsoil (Incorporation) Act.

Cap. \_\_\_\_

"Activities concerning exploration and/or exploitation of the resources in the Area" (hereinafter referred to as "activities") means:

(i) Activities of scientific research concerning the resources of the seabed and its subsoil;

(ii) Exploration activities:

- Seismological activities; surveys of the seabed and its subsoil; sample taking;

- Exploration drilling;

(iii) Exploitation activities:

- Establishment of an installation for the purpose of recovering resources, and activities connected therewith;

- Development drilling;

- Recovery, treatment and storage;

- Transportation to shore by pipeline and loading of ships;
- Maintenance, repair and other ancillary operations;

"The Area" has the same meaning as assigned to it by the Offshore Protocol;

"Competent Authority" means the Malta Resources Authority as authorized by the Minister and such other body or person as the Minister may by order in the Gazette prescribe;

"Continental shelf" has the same meaning as is assigned to it by article 2 of the Continental Shelf Act;

"Convention" means the Convention for the Protection of the Mediterranean Sea against Pollution, done at Barcelona on 16<sup>th</sup> February, 1976;

"installation" has the same meaning as assigned to it by the Offshore Protocol; means any fixed or floating structure, and any integral part thereof, that is engaged in activities, including, in particular:

- (i) Fixed or mobile offshore drilling units;
- (ii) Fixed or floating production units including dynamically positioned units;
- (iii) Offshore storage facilities including ships used for this purpose;
- (iv) Offshore loading terminals and transport systems for the extracted products, such as submarine pipelines;
- (v) Apparatus attached to it and equipment for the reloading, processing, storage and disposal of substances removed from the seabed or its subsoil;

"Malta" has the same meaning as assigned to it by Article 124 of the Constitution of Malta;

"Minister" means the Prime Minister of Malta and includes such other Minister, public officer or authority acting under his authority;

"Offshore Protocol" means the Protocol for the Protection of the Mediterranean Sea against Pollution resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil, done at Madrid on 14<sup>th</sup> October 1994, and is attached as a Schedule to the Act;

"Operator" means:

- (i) Any natural or juridical person authorized by Malta to carry out activities and/or who carries out exploration and/or exploitation activities as defined in the Offshore Protocol; or

- (ii) Any person who does not hold an authorization within the meaning of the Offshore Protocol but is *de facto* in control of such activities;

"pollution" means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results, or is likely to result, in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of seawater and reduction of amenities;

(2) Unless otherwise defined in these regulations, or unless the context so requires, words and expressions used in these regulations shall have the same meaning assigned to them in the Offshore Protocol.

(3) Any reference in these regulations to an international convention or its related protocol or code shall include reference to any amendment to such convention, protocol or code accepted by the Government of Malta.

Competent  
Authority

3. The Competent Authority shall be responsible for the administration and implementation of these regulations.

Powers of  
the Minister

4. The Minister or the Competent Authority as duly authorized by the Minister may either on a case by case basis or through the issue of Legal Notices, determine, lay down, prescribe, set or specify what may be required to be determined, laid down, prescribed, set or specified by these regulations or by the Offshore Protocol, or expound on the requirements of these regulations or of such Protocol or clarify their applicability or interpretation;

and in so doing, and without prejudice to the generality of the foregoing, the Minister or the Competent Authority as the case may be, shall be guided by the circulars, clarifications, codes, decisions, directives, guidelines, instruments, interpretations, manuals, notices, publications, recommendations, regulations, resolutions, rules or any other similar medium of the United Nations Environment Programme (UNEP) and/or the Mediterranean Action Plan (MAP) or any other body or organization with an appropriate knowledge or competence on the subject matter.

Powers of  
the  
Competent  
Authority.

5. The Competent Authority for the purposes of granting, renewing and registering the authorizations in terms of the Offshore Protocol shall, subject to the provisions of these regulations and such Protocol, determine the conditions of issue and validity of such authorizations.

Liability of  
the Operator

6. (1) The Operator shall be liable for any pollution damage caused by Activities in the Area.



(2) The Operator shall be required to pay prompt and adequate compensation.

7. The Operator shall be required to maintain insurance or other financial security such as the guarantee of a bank or similar financial institution to cover liability for pollution damage in terms of Article 6 above.

Compulsory  
Insurance.

8. It shall be the duty of the operator of an installation to ensure that the installation is in compliance with the provisions of these regulations and such person, if in fault, shall be liable to the penalties provided for in the Act, and if no such penalty is provided, such person shall for each offence be liable to a fine (*multa*) not exceeding 500 units.

Duty to ensure  
compliance

9. Save as provided for in these regulations, where any provisions of any rules and regulations made under the Act are inconsistent with the provisions of the Offshore Protocol, the provisions of that Protocol shall, unless specifically provided for in such rules or regulations, apply.

Provisions of rules and  
regulations inconsistent  
with the Offshore  
Protocol

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