

CONCLUSIONS OF THE STUDY OF LEGAL ASPECTS CONCERNING THE  
ENVIRONMENT RELATED TO OFFSHORE MINING AND DRILLING  
WITHIN THE LIMITS OF NATIONAL JURISDICTION

(Decision iO/I4/VI of the Governing Council of UNEP, of 31 May 1982)

A. General provisions

- I. States should, either individually or jointly, by all appropriate means, take preventive measures against, limit, and in so far as possible reduce pollution and other adverse effect on the environment resulting from offshore exploration for and exploitation of hydrocarbons and other minerals, and related activities, within the limits of national jurisdiction (hereinafter referred to as operations). To this end, States should, in particular, adopt legislative and regulatory measures and provide appropriate machinery.
2.
  - (1) States should ensure that their laws, regulations and other measures relating to operations are no less effective than international rules, standards and recommended practice and procedures. They should acting either directly or through the competent international organizations, facilitate and encourage the exchange of legal, scientific and technical information relating to activities intended to prevent, combat and reduce pollution and other adverse effects on the environment resulting from operations.
  - (2) These laws, regulations and other measures adopted by States should, in so far as possible, be harmonized, in particular at the regional level, taking into account the best available standards and technology. Global or regional rules, standards and recommended practices and procedures should be established.
3. States, acting directly or through the competent international organizations, should co-operate in protecting the environment from pollution and other adverse effects resulting from operations:
  - (a) In formulating, in particular at the regional level, concerted policies, taking into account characteristic regional features;
  - (b) By promoting the development of science and the transfer of technology.

4. Co-operation between States with regard to protection of the environment from pollution and other adverse effects resulting from operations should be carried out on the basis of good faith and in the spirit of good neighborliness. Such co-operation should, inter alia, not cause any unreasonable delays in the carrying out of the operations.

5. States should designate, either individually in areas under their jurisdiction or, where appropriate, jointly, protected areas in order to safeguard from pollution and other adverse effects of operations, important ecosystems or representative samples thereof, as well as special habitats critical for the survival of endangered species of fauna and flora.

## B. Authorization system

6. (1) The important features of operations, including constructions erection on site and major alteration -of installations, should be made subject to a prior written authorization from the competent authority of the State -which, before -granting such authorization, should be satisfied that the applicant has the technical knowledge, ability and economic capacity as deemed to be necessary by the authority to carry out the operations, as well as to apply the necessary safety measures and, whenever necessary, to take contingency action, Such authorization should be given in accordance with an appropriate procedure. For the purposes of these conclusions, " installation" means any offshore structure or facility, whether fixed or mobile, which is used for exploring for, exploiting, storing, loading or transporting hydrocarbons or other minerals from the seabed or its subsoil, but is not considered to include a ship used for transportation of hydrocarbons or other minerals.

(2) The granting of an authorization should be preceded by an assessment of the effects of the proposed operation on the environment, unless the competent authority is satisfied that in the light of the scope, duration and technical methods employed in the operations, significant adverse effects on the environment cannot be expected.

(3) Authorization should be refused if there are clear indications that the operations are likely to cause significant adverse effects on the environment, which could not be avoided by compliance with the conditions in the authorization.

7. The authorization should provide for concrete requirements on environmental protection. Such authorization should, in particular, require the operator:

(a) To take all-necessary measures to ensure that spillage, leakage or wastes resulting from the operations do not endanger public health, fauna and flora and coastal regions;

(b) To have an adequate contingency plan;

(c) To remove the installation upon completion of the operations in so far as this is justifiable from an economic and technical point of view;

(d) To rehabilitate, where appropriate, the environment.

### C. Environmental assessment

8. The assessment referred to in conclusion 6 (2) should cover the effects of operations on the environment, wherever such effects may occur. It should when deemed appropriate contain the following:

- (a) a description of the geographical boundaries of the area within which the operations are to be carried out;
- (b) a description of the initial ecological state of the area;
- (c) an indication of the nature, area and scope of the proposed operations;
- (d) a description of the methods, installations and other means to be used;
- (e) a description of the foreseeable direct and indirect long-term and short-term effects of the operations on the environment, including fauna, flora and the ecological balance;
- (f) a statement setting out the measures proposed to reduce to the minimum the risk of damage to the environment from carrying out the operations and, in addition, 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 at the end of the proposed operations;
- (h) a brief summary of the assessment that may be easily understood by a layman.

9. Before taking its decision, the competent authority may request additional information from the applicant and may consult other public authorities concerned.

10. Where compatible with the legal system, the assessment and/or its brief summary may be made available to persons concerned to enable them to gather information well enough in advance to make observations in an appropriate form. The applicant should be entitled to reply to any observations thus made.

### D. Appropriate environmental monitoring system

11. The operator should be required to measure the effects of his operations on the environment and to report on them periodically or upon request to the competent authority, according to an established procedure

12. The competent authority should be in a position to survey the installations regularly in order to ensure that the conditions under which the authorization was issued are being met. It should be in a position to enforce the provisions of the authorization and, if necessary, to suspend or revoke it.

13. States should keep registers and other records of authorizations granted for operations. Where appropriate, States and persons concerned, as well as competent international organizations may, upon request, be provided with information concerning such registers or records, the transmission of which is not prevented by national laws or regulations.

14. States should establish appropriate national monitoring systems including monitoring agencies equipped with the requisite instruments and trained personnel for monitoring the effects of operations and processing and evaluating data.

15. States should, where appropriate, enter into bilateral and multilateral, in particular regional, agreements providing for coordination of monitoring of the effects of operations in the environment.

#### E. Consideration of transfrontier environmental impact when authorizing operations; procedures for information and consultation

16. (1) States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

(2) Accordingly, States within whose jurisdiction operations are carried out should take measures to avoid to the maximum extent possible and reduce to the minimum level possible pollution and other adverse effects on the environment beyond the limits of their jurisdiction.

17. (1) Whenever a State has reason to believe that operations could have significant adverse effects on the environment of other States or of areas beyond the limits of national jurisdiction, it should provide such other States, as well as competent international organizations, with timely information that would enable them, where necessary, to take appropriate measures.

(2) Such information should provide relevant data, the transmission of which is not prevented by national laws or regulations.

18. States involved should be willing to hold consultations about the measures needed to prevent, combat and reduce significant adverse effects on the environment, which operations may produce outside the limits of the jurisdiction of the authorizing State.

19. (1) A State within whose jurisdiction operations are being considered or carried out should 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; *inter alia*, such non-discrimination should be observed in national preventive laws and regulations.

(2) States should endeavour, in accordance with their legal systems and where appropriate, on a basis agreed with other States, 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.

## F. Safety measures

20. States within whose jurisdiction operations are being considered or are being carried out should ensure that such safety measures are undertaken with regard to the design, construction placement, equipment, marking, operation and maintenance of installations that the provisions set out in conclusion 1 are observed.

21. States should accordingly ensure, *inter alia* that:

(a) the materials used in the construction of installations are chosen in the light of the load they will have to bear and the condition governing the service expected of the installations;

(b) installations are designed and constructed so that, except in those circumstances ' that are both safe and irresistible they will withstand any natural conditions to which they may be subjected;

(c) every installation which may pose a danger to navigation is externally marked so as to give i.e warning of its presence and sufficient details for its identification, using appropriate internationally recognized warning signals;

(d) installations are, when appropriate, indicated on charts and notified to those concerned.

22. States should also ensure, inter alia, that:

(a) all phases of operations, whether at the stage of exploration or exploitation, are properly prepared;

(b) in the case of offshore exploration and exploitation of hydrocarbons, adequate controls are exercised, in particular, over'

- well-head equipment and protective devices including blowout prevention equipment.
- devices for controlling seabed equipment from the surface;
- mud programmes and procedures for well casing and cementing'
- operating procedures applicable to installations and their implementation;

(c) the operators monitors all his operations;

(d) storage offshore of hydrocarbons and other minerals is effected

a safe manner;

(e) hydrocarbons and other minerals from the seabed are transported to shore in a safe manner,

23. Furthermore, States should ensure that:

(a) the use of any mote fatten is conditional upon obtaining a certification of approval by a competent body;

(b) continuing supervision of installations is maintained and proper inspections are conducted.

24. States should ensure:

(a) sufficient scanning levels on installations;

(b) suitable qualifications and experience of persons working on installations, taking into account the best available standard and technology;

(c) appropriate training programmes, including training on a continuing basis, particularly as regards safety and environmental matters.

25. States should, as far as possible:

(a) ensure that, during operations, international rules, standards and recommended practices and procedures as regards occupational safety, health and conditions of work, are effectively followed;

(b) encourage co-operation among workers, employers and government on matters relating to safety, health and conditions of work in operations.

## G. Contingency planning and implementation measures

26. (1) States within whose jurisdiction operations are being considered or are being carried out should ensure the development and, whenever necessary, application of plans to deal with accidents and other unforeseen events resulting in pollution and other adverse effects on the environment, or the threat thereof (hereinafter referred to as contingencies" )

(2) Contingency plans should, in particular, establish special procedures for dealing with contingencies which could create pollution of such significance or magnitude, that widespread or lasting damage, or the risk thereof, could ensue

27. States should ensure that action is taken to deal effectively with contingencies. To this end, they should:

(a) ensure that operators take the actions necessary under their contingency plans;

- (b) as appropriate, take action in accordance with their national contingency plans; and
- (c) take such other actions as may be necessary.

28. States should not allow the commencement or continuation of operations unless satisfied as to the availability of the technical knowledge, trained personnel and financial and other resources necessary to carry out the contingency plan referred to in conclusion 7 (b) and that satisfactory arrangements for their use in case of a contingency have been made

29. The operator' s contingency plan should establish appropriate measures for dealing effectively with contingencies and, in particular, should include arrangements for:

- (a) the immediate raising of an alarm in the area of the operations;
- (b) rapid warning of an authority or authorities designated for the purpose;
- (c) the warning, as may be necessary, to shipping which might be about to enter the immediate vicinity,
- (d) an up to date list of the persons to be alerted and informed together with the speediest means available of, and necessary information for making contact with them;
- (e) a continuing flow to an authority or authorities designated for the purpose of full information relating to particulars of the contingency, measures already taken and further action required;
- (f) immediate action to deal with a contingency under- the direction of a designated person, in particular to protect human life and also to protect living resources:
- (g) the stemming of the flow of toxic. or other harmful substances and the extinguishment of fires as well as the means necessary to achieve these ends;
- (h) the removal, as appropriate of polluting substances,
- (i) the reduction of and, insofar as possible, prevention of adverse effects on the environment, as well as mitigation of such effects;
- (j) as appropriate, joint action by mutual assistance among operators to respond to a contingency, and
- (k) periodic emergency exercises.

30. States should prepare national contingency plans which set forth measures for undertaking or taking control of the conduct of actions in response to contingencies. To

this end, the plans should, *inter alia*, include provisions for:

- (a) supervision of the activities of the operator at all times during contingency;
- (b) a procedure under which the appropriate authorities may intervene whenever they consider it necessary or desirable. Such intervention may involve either giving directions to the operators or a State authority itself undertaking action to deal with a contingency;
- (c) establishing arrangements for:
  - (i) the designation of a single authority to take command of the actions referred to in subparagraphs (a) and (b) above;
  - (ii) the receipt and, as necessary, the obtaining and dissemination of information concerning contingencies;
  - (iii) ensuring the ready availability, at strategically placed centres of the necessary personnel equipment and materials;
  - (iv) ensuring the communication of notice of contingencies to the appropriate national authorities and competent international organizations with a view to avoiding danger to shipping or other interests;
  - (v) complementing the capability of operators to take the actions envisaged under, *inter alia*, conclusion 29 (d) and (f) to (i); and
- (d) establishing, as necessary, other administrative arrangements for implementing national contingency plans.

31. A State within whose national jurisdiction actions are being considered or are being taken to deal with contingencies, should take into account any potential adverse environmental effects without discrimination as to where, in particular in areas of equivalent ecological importance, such effects are likely to occur.

32. (1) Whenever a State has reason to believe that any contingency within the limits of its national jurisdiction is likely to have significant adverse effects on the environment of other States, it should provide as soon as practicable such other States, as well as any competent international organizations, with information that would enable them, where necessary, to take appropriate measures

(2) Such information should provide relevant data, the transmission of which is not prevented by national laws or regulations~

33. A State should:

- (a) when considered necessary, inform other States within its region of the technical expertise, trained personnel, equipment and materials kept available pursuant to conclusion 30 (c) (iii);
- (b) provide such assistance as it can reasonably make available, including technical expertise, trained personnel, equipment and materials. To this end it should:

(i) consider making on a bilateral and multilateral basis standing arrangements for mutual assistance and co-operation, and

(ii) in the absence of a standing arrangement, provide such assistance at the request of another State requiring assistance and under an ad hoc arrangement relating to the specific contingency, which may include appropriate financial provisions.

## H. Liability and compensation

34. States should adopt appropriate measures for the determination of damage suffered as a result of operations and liability therefore, as well as for the payment of prompt and adequate compensation for such damage. There should be appropriate arrangements [or the award and payment of compensation when damage is suffered outside their respective jurisdictions.

35. (1) States should, by appropriate measures, provide for the determination of a person or persons, physical or juridical, to be liable for damage which may result from operations. The operator should be liable unless otherwise provided. Where more than one person is liable, their liability should be joint and several,

(2) The person or persons liable should retain any right of recourse he or they may have against others.

(3) The person or persons referred to in paragraph (1) above should be strictly liable for any damage resulting, from operations. This provision need not be applied when no risk of significant adverse effect on the environment is involved or when considered inappropriate.

(4) Exceptions to or modifications of liability may be made, *inter alia*, when damage results from circumstances of an exceptional inevitable and irresistible character.

36. (1) Exceptions to or modifications of liability may be made, *inter alia*, when damage results from circumstances of an exceptional inevitable and irresistible character

(1) A State should assure to any person who has suffered damage as a result of operations an enforceable right to prompt and adequate compensation from the persons or persons referred to in conclusion 35 (1). bearing in mind *inter alia* the degree to which such person may have contributed to the damage. This paragraph is subject to paragraph (2) below.

(2) The maximum liability of the person or persons referred to in conclusion 35 (1) may be limited, taking fully into account the foreseeable damage and the objective of providing full compensation to the person suffering the damage.

37. (1) States should make provision for the joint and several liability of persons referred to in conclusion 35 (1) in cases where damage results from the operations of two or more of those persons and where that. damage is not reasonably separable.

- (2) In cases where the cause of damage emanates from a defined area, Where the particular operation or operations from which the damage emanates cannot be ascertained, States should consider making provision for arrangements to provide compensation
38. (1) The person or persons referred to in conclusion 35 (1) should be required to make appropriate arrangements to meet awards of compensation made against them.
- (2) Such arrangements could consist inter alia, of insurance, compensation funds or other financial securities.
39. A State should give consideration to providing that public authorities or other appropriate persons who take reasonable action designed to prevent the spread of pollution, minimize damage as well as cleanse and restore the areas affected are entitled to recover all expenses incurred, including reimbursement of any payments for "any damage caused by such action."
40. When it is in accordance with its legal system, a State should consider adopting special provisions by means of which a specific person or authority is entitled to sue for compensation to: damage to the environment resulting from operations, in cases where otherwise no person or authority would have standing to sue.
41. In order to facilitate the payment of compensation to persons who have suffered damage as a result of operations, States should consider, inter alia encouraging the establishment of compensation funds in particular such funds might be established to deal with cases in which such a person or persons remain wholly or partially uncompensated.
42. (1) In any one region operations, States should endeavour to conclude an agreement on liability and compensation. Such an agreement should, where feasible, seek to eliminate or reduce any differences in the nature and extent of liability, the principles for determining damage, the measure of compensation available under the respective national legal regimes and the procedures for obtaining compensation.
- (2) In endeavouring to reach such agreement, States should, with particular regard to the case of persons who suffer damage within the jurisdiction of one State as the result of operations carried out within the jurisdiction of another State, give consideration to the following:
- (a) determination of the applicable law and the competence of courts, as well as facilitation of access to courts;
- (b) enforcement of awards and judgements.
- (3) When appropriate, States should give consideration to the establishment of intergovernmental commissions.