



**MEDITERRANEAN ACTION PLAN (MAP)
REGIONAL MARINE POLLUTION EMERGENCY RESPONSE CENTRE FOR THE
MEDITERRANEAN SEA (REMPEC)**

Fourth Meeting of the Mediterranean Network of
Law Enforcement Officials relating to MARPOL
within the framework of the Barcelona Convention (MENELAS)

REMPEC/WG.48/INF.4
Date: 16 April 2021

Online, 21-22 April 2021

Original: English only

Agenda Item 5

**PROPOSAL TO POSSIBLY DEFINE CRITERIA TO DETERMINE THE REPARATION OF
ENVIRONMENTAL DAMAGE BEYOND THE COMPENSATION OF THE CLEANING OPERATIONS
RESULTING FROM POLLUTION OF THE MARINE ENVIRONMENT FROM SHIPS AND TO
HARMONISE PRACTICES TO THAT END**

Note by Croatia

SUMMARY

Executive Summary: This document presents the proposal from the Republic of Croatia to possibly define criteria to determine the reparation of environmental damage beyond the compensation of the cleaning operations resulting from pollution of the marine environment from ships and to harmonise practices to that end.

Action to be taken: Paragraph 69

Related documents: REMPEC/WG.46/12

Introduction

1 This document represents the initiative and contribution of the Republic of Croatia to be considered at the 4th Meeting of the Mediterranean Network of Law Enforcement Officials relating to MARPOL within the framework of the Barcelona Convention (MENELAS), which would allow the possibility of defining the criteria for compensation for ship-source pollution damage in the marine environment and on the Mediterranean coast on top of the compensation for cleaning costs, i.e. on top of the compensation for material damages caused by pollution, all within the framework of the Barcelona Convention and its accompanying protocols (including some other applicable conventions relating to ship-source marine pollution).

2 Although this initiative only deals with the compensation for ship-source pollution damage, the intention is to stimulate a debate on a fundamental question – is truly all the damage arising from the pollution of the sea and the marine environment of the Mediterranean, regardless of the source of pollution, compensated or should some other form of environmental damage also be compensated? If this should be done, how should this damage be determined and how should the criteria for its calculation be determined?

3 This is the initial material of the Republic of Croatia, with which we want to encourage discussion on the content and practical implementation of the Barcelona Convention and its protocols as an international treaty that strongly encourages the protection of the sea, the marine environment and the Mediterranean coast and the prevention of their pollution, for the purpose of getting at full compensation for environmental damage in this area, as well as harmonizing the conduct of the Contracting Parties to the Convention in this matter.

4 However, the question at hand is whether the provisions of the Barcelona Convention and the associated protocols are complete and whether they sufficiently regulate the issue of the extent of pollution damage, which is the criteria for its calculation.

5 This is extremely important and comes in the wake of the intensified efforts of the international community to protect nature and its ecosystems and preserve the planet for future generations.

6 To this end, it would be useful to investigate the legislation and practice of the Contracting Parties to the Barcelona Convention regarding the compensation for environmental damage of the sea and the marine environment, in the context of the application of this Convention and its protocols.

Relevant question – Is the damage caused by the pollution of the sea and the marine environment completely compensated?

7 The area of the Mediterranean Sea and its coast is a true natural wealth and an extremely valuable area in terms of its natural and cultural heritage, but also an environmentally sensitive area that should be preserved not only through international treaties and national regulations of the Mediterranean countries, but also through their actual implementation in practice.

8 The fundamental international treaty that exclusively refers to the protection of the Mediterranean Sea and the coast from pollution is the Barcelona Convention with accompanying protocols, which, by its nature, is a general convention and is aimed primarily at preventing pollution in the Mediterranean by establishing protection measures and cooperation measures between countries.

9 A large number of international treaties has been concluded for the prevention and elimination of pollution and for environmental protection, as well as for defining liability for damage caused by pollution, a significant part of which relates to the sea and which, as sources of international law, are binding for the parties that concluded them. However, international treaties, due to their legal supremacy over national laws, take precedence when resolving and regulating the issue of damage caused by pollution, the scope and amount of the compensation, and can limit or narrow the limits of liability for damage caused by pollution.

10 This is why a number of special conventions have been concluded that regulate only special issues (such as oil pollution, fuel pollution), and they do so in great detail, which begs the question of their mutual relationship and competition, that is, which international treaty is to be applied, with regard to their content, contracting parties, time of entry into force, etc., and whether these special conventions actually derogate the application of the general convention in practice and in which situations.

11 When it comes to the liability of shipowners, these special conventions clearly set the limits of their liability. For these reasons, when it comes to incidents occurring in the territorial sea of a particular country or in the international waters of the Mediterranean, it is possible that shipowners will be liable only within the limits set by the special conventions.

12 An analysis of international treaties on marine pollution that contain provisions on the civil liability for damage or only in principle touch on the issue of compensation for pollution damage of the sea and the marine environment shows that they do not deal with nor do they regulate compensation for specific types and aspects of damage to nature as an object of protection.

13 The provisions of the applicable international treaties, including the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (hereinafter: the Barcelona Convention) with its protocols (and probably national regulations and practices of the countries that are its Contracting Parties) are primarily aimed at compensation for property damage, which is reflected in the costs of removing the pollution and restoration of the original state, as well as losses due to pollution, but not at the compensation for this type of the damage done to the environment itself caused by the devastation of its features and structure, i.e. the compensation for the “true” environmental damage done to nature itself. Some of them merely mention compensation of damage in principle, but they do not clearly and explicitly specify which types of pollution damage should be compensated. This is precisely the case with the Barcelona Convention and its protocols.

14 This means that, in fact, entities responsible for the damage generally compensate (pay) only part of the total damage caused by the pollution, i.e. they pay only the property damage that arises from the pollution and are probably not made responsible for the damage done to the environment itself and do not pay compensation for it.

15 Each case of environmental pollution or pollution of nature, and particularly the sea, as its very sensitive part, raises a complex issue of consequences, not only for people and their property and interests, but also for the environment or nature as a separate object of protection.

16 This begs the question – is nature itself not property in a broader sense as well, which belongs to everyone?

17 It is common for property to be interpreted in a narrow commercial sense, and damage as a decrease of one's property and the prevention of its increase (lost profit damages). If we interpret nature as a universal property *sui generis*, shouldn't damage due to the reduction in the value of this special property be compensated? In this context, the cleaning costs and the compensation for losses arising from lost earnings due to pollution represent only a part of the compensation for the damages to be paid by the polluter (or its insurer) rather than the entire damage that should be paid or compensated.

18 This raises the following question – is this damage compensated at all, and if not, why not, and why is not enough space created in international treaties to regulate this issue?

19 It is true that in practice it can happen that the consequences of an incident can be completely eliminated and that the original state of nature can be restored very effectively. However, surely we cannot assume that in most major incidents nature will not have suffered any structural degradation or shock in terms of the disruption of biological cycles, damage to flora and fauna, and various impacts on the ecosystem? The same question can be asked for smaller incidents whose cumulative effect can be very unfavourable, even devastating.

20 We will understand this issue better if we look at nature as a separate property that belongs to present and future generations as a universal property *sui generis*. So, natural good is a common good, it is a property that belongs to everyone, even those who are yet to be born, and this is why it should be treated as a universal, supramaterial value and property.

21 This, of course, raises the question of how to calculate the amount of such damage and how to formulate criteria for its calculation and who would be entitled to file a claim or lawsuit, as well as a number of other related issues.

22 At the global level, including in the Mediterranean area covered by the Barcelona Convention, various types of pollution occur, not to mention the cumulative effect of minor pollution and devastation of the marine environment and the coast. Therefore, in practice the following questions arise:

- what does the damage caused by pollution of the marine environment and the coastal area actually consist of?
- is it only a matter of material damage manifested in the costs of cleaning or restoration to the original state, and the compensation of various losses caused by pollution or does it also include other types of damage?
- Should "non-material" damage to nature itself as property *sui generis* of a seemingly abstract nature also be determined and compensated by the polluter?
- if in the practice of the Contracting States such damage is determined and compensated, is the amount of the compensation realistic and does it reflect the significance and potential of the property destroyed?
- how does one determine the criteria for calculating the amount of such environmental damage?

23 Following the above, and in the context of the application of the Barcelona Convention, the question arises whether the content, scope and amount of damage to the ecosystem of the marine environment and the coast should be determined. This type of damage is a kind of non-material damage and represents the destruction or reduction in value of nature or the environment that has suffered as a result of pollution, including the flora and fauna, as special "property" *sui generis* and natural resources.

24 In such a case, it would be a true environmental damage to natural resources, the amount of which we should also be able to calculate and which should be compensated.

25 It seems that in the international community, society does not sufficiently recognize the need to discuss this type of damage and to strengthen, make more rigorous and expand civil liability beyond criminal sanctions.

26 In the practice of courts and public bodies of the Republic of Croatia, environmental damage is often determined only as material (property) damage, which is why only the costs of the measures to remove the pollution as well as the lost profits of the injured party in a particular area are compensated, but rarely is the damage to the environment itself – the true “environmental” damage – determined. Even when such damage is determined, the question is to what extent this is realistic and whether the actual damage has been fully compensated. For instance, there are bylaws that contain price lists for destroyed animal and plant species such as shellfish, fish, and mammals, and the amount of damage is determined based on such regulations. However, the wider consequences of such a loss on the ecosystem are not examined at the same time. It is to be assumed that the practice of other signatories to the Convention is no different, i.e. that damage to nature itself is maybe rarely determined and compensated.

27 The result of this is that the polluter (or its insurer) only compensates the primary material damage – the costs required to intervene in the area of damage, that is the costs of cleaning and restoration to the original state, and the compensation of losses (e.g. lost profits due to disabling tourist activities or fishing) and probably pays a misdemeanour penalty, instead of paying the “non-material” damage done to nature itself.

28 It seems that this would be important to discuss, particularly in the context of international efforts to preserve the planet, since the provisions of the Barcelona Convention and its Protocol on Integrated Coastal Zone Management in the Mediterranean, as well as its other protocols, provide a basis for exploring the possibility of defining the criteria for determining and repairing environmental damage done to nature itself.

On special conventions concerning the pollution of the sea and the marine environment

29 The UN Conference on the Environment, held in Stockholm (1972), was an intensive impetus and turning point for the development of international environmental law because it played an important role and set general principles that states must apply in environmental protection and the prevention of pollution, which has become a global problem and a manifestation of the need for joint and coordinated action by states. Subsequently, due to profuse and dynamic international activity, a number of international treaties concerning the sea and the marine environment were concluded, including the UN Convention on the Law of the Sea (1982), Agenda 21, the Rio de Janeiro Conference on Environment and Development (1982) and others.

30 The International Convention for the Prevention of Pollution from Ships – the so-called MARPOL Convention (1973) is significant for this initiative as it is one of the most important international treaties on the protection of the sea from pollution by various substances originating from ships. However, this Convention, although it contains a large number of binding rules on conduct when operating a ship, does not contain any provisions on civil liability for damage.

31 The issue of liability for damage from pollution of the marine environment with oil is regulated by the International Convention on Civil Liability for Oil Pollution Damage of 1969 (CLC Convention), which is related to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971.

32 The issue of liability for damage due to marine oil pollution is regulated by the International Convention on Civil Liability for Bunker Oil Pollution Damage of 2001 or the so-called Bunker Convention.

33 Unlike the CLC Convention, the Bunker Convention does not prescribe limits on shipowners' liability, but rather refers in this respect to the general system of the limitation of shipowners' liability prescribed by national law or the applicable international convention (1976 Convention on Limitation of Liability for Maritime Claims, as amended by the 1996 Protocol amending the 1976 Convention on Limitation of Liability for Maritime Claims) as well as in relation to responsible persons – the Bunker Convention prescribes a larger number of responsible persons (shipowner, charterer, shipping company, ship manager).

34 It is important to note the type and extent of damages to be compensated under these conventions, which are the costs of reasonable measures undertaken to reduce pollution, the costs of restoration to the original state, the costs of protective measures and compensation for lost profits, i.e. material damage.

35 A series of other international agreements has been concluded relating to civil liability for damage to the marine environment, of which the following are important for ship-source pollution issues: the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea of 1996 and its Protocol, the Basel Convention of 1989, etc.

36 However, as a rule, international treaties containing rules on civil liability for damage caused by pollution from ships provide for objective (causal) liability for damages, i.e. liability regardless of fault, but also reasons for the exclusion of liability (force majeure, armed conflict, intentional action of a third party, intent or fault of the injured party, etc.), and compulsory insurance or other financial coverage.

37 Also, these special conventions do not contain rules on the obligation to compensate for the damage to nature itself devastated by pollution, so the scope of the damage to be compensated under these conventions is narrower.

Barcelona Convention as a general convention and its Protocols

38 The Convention for the Protection of the Mediterranean Sea against Pollution was adopted in Barcelona on 16 February 1976, amended on 10 June 1995 and is now called the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (the Barcelona Convention), whose signatories are the European Community and 22 Mediterranean countries. Together with the seven accompanying Protocols that complement it, it is an extremely important international treaty and legal instrument for the protection of the marine environment and the coastal area of the Mediterranean, as well as a legal framework for implementing joint activities of the signatories in achieving this goal.

39 The Convention applies to all sources and all types of pollution (elaborated in particular by the accompanying protocols), and not only to the ship-source pollution of the sea.

40 The Protocols of the Barcelona Convention are the following: the Dumping Protocol – the Protocol for the Prevention and Elimination of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at the Sea (1976, amended in 1995); Emergency Protocol – Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea (1976, replaced by a new one in 2002); the LBS Protocol – Protocol for the Protection of the Mediterranean Sea Against Pollution from Land-Based Sources and Activities (1980, amended in 1996); the SPA and Biodiversity Protocol – Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean (1982, replaced by a new one in 1995); Offshore Protocol – Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from the Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil (1994); the Hazardous Wastes Protocol – the Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal (1996) and the ICZM Protocol – the Protocol on Integrated Coastal Zone Management in the Mediterranean (2008).

- **Object of protection of the Convention**

41 The object of protection of the Convention is defined in its very title, and is interpreted in more detail in the provisions of the Convention, as well as the provisions of some of its protocols, especially the Protocol on Integrated Coastal Zone Management in the Mediterranean and the Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean.

42 The Convention protects the sea, the marine environment and the coastal area of the Mediterranean including promoting the concept of sustainable development and, together with the protocols, emphasizes in detail its values as well as the “fragility” of the area that is the object of the protection.

43 In the preamble to the Convention, the signatories clearly declare that they are “fully aware of their responsibility for the preservation and sustainable development of this common heritage for the benefit and enjoyment of present and future generations” and emphasize that pollution poses a threat to the marine environment, balance, resources and legal use, that the Mediterranean Sea has special hydrographic and ecological features and is particularly vulnerable to pollution.

44 The value and quality of the marine environment and coastal area of the Mediterranean that is the object of protection is directly or indirectly valorized by a number of provisions of the Convention and the above indicated Protocols.

- **Provisions of the Convention and the Protocols on pollution and on the object of the protection**

45 In Article 16 the Contracting Parties of the Barcelona Convention undertake to **cooperate in the formulation and adoption of appropriate regulations and procedures for determining liability and compensation for damage** resulting from pollution of the marine environment in the Mediterranean Sea. However, this was never done nor was the corresponding Protocol adopted.

46 Furthermore, there are no provisions in the Convention on how liability for damage should be regulated in national regulations and what types of damage should be compensated, and, despite strong declarations, it does not sufficiently define what causes or can cause damage caused by pollution.

47 No other provision of the Convention, nor its protocols, directly elaborates the obligation referred to in Art. 12 of the Convention in respect of compensation for damage to the marine environment. Nevertheless, the provisions of the Convention and the accompanying Protocols are a very good basis for discussion, and a stronghold and direction for shaping the criteria of precisely those provisions of the Convention and the Protocols that describe the environment and its features that certainly need to be protected.

48 Art. 2 (a), the Convention defines pollution in following manner: 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.

49 Furthermore, Art. 4 of the Convention clearly obliges the Contracting parties to prevent, abate, combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area and to protect and enhance the marine environment in that Area so as to contribute towards its sustainable development.

50 The guiding provisions of the Protocol on Integrated Coastal Zone Management in the Mediterranean are particularly important for discussing the criteria for calculating the amount of damage to nature itself. The general provision of Art. 2 (1) (f) of the Protocol defines integrated coastal zone management as a “dynamic process for the sustainable management and use of coastal zones, taking into account at the same time the fragility of coastal ecosystems and landscapes, the diversity of activities and uses, their interactions, the maritime orientation of certain activities and uses and their impact on both the marine and land parts”.

51 The objectives defined by Art. 5 of the Protocol are based on, among other things, valuing the environment and landscape, the preservation of coastal areas for the benefit of present and future generations, the preservation of the integrity of coastal ecosystems, geomorphology, etc.

52 The first general principle of the integrated management referred to in **Art. 6 of the Protocol is to take into account the biological wealth and the natural dynamics and functioning of the intertidal area and the complementary and interdependent nature of the marine part and the land part forming a single entity.**

53 Furthermore, the Protocol points to the “fragile nature of coastal areas” and the need to protect marine resources from pollution. The protection of coastal landscapes is defined in Art. 11 of the Protocol, prescribing that the Parties shall, recognising the specific aesthetic, natural and cultural value of coastal landscapes, irrespective of their classification as protected areas, adopt measures to ensure the protection of coastal landscapes.

54 The question arises whether the above provisions of this Protocol, as well as the introductory provisions of the Convention, could be both the basis and the source for calculating the criteria for the compensation for certain (non-material) damage caused to the very nature of the marine environment and the Mediterranean coastal area.

Potential criteria for calculating environmental damage – template for discussion

55 Taking into account the rationale behind the Barcelona Convention and its Protocols, as well as the relevant provisions of the above indicated Convention and the Protocol on the Integrated Coastal Zone Management of the Mediterranean, possibilities are opened for defining criteria for damage to nature itself beyond the compensation for cleaning costs and economic losses caused by pollution.

56 The criteria for determining the amount of environmental damage in the context of Art. 16 of the Barcelona Convention and its Protocols could be the following:

- special natural value of the property destroyed in the area of the pollution (purity of the sea, richness or peculiarity of flora and fauna, importance of sea currents, etc.);
- biological wealth and diversity of the area;
- degree and status of legal protection, but neither primarily nor unconditionally;
- the length of time it takes for the marine environment to fully recover and return to its original state;
- significance and aesthetic value of the sea and coastal landscape;
- area of special cultural value;
- area of special natural value;
- intact areas of the sea and sea coast;
- degree of disruption of biological cycles;
- degree of ecosystem degradation;
- the presence of endangered species, endemic as well as endangered species;
- the degree of disruption to the functioning of nature in the area as a single entity;
- and others.

Regulations and practice of the Republic of Croatia

57 When it comes to the legal protection of nature, the key problem in the national legislation was the lack of prescribed criteria for calculating the real environmental damage to nature that would enable precise quantification of this damage in expert report and its determination and processing in full, either in administrative or judicial procedure. The Republic of Croatia is entitled to compensation for this damage.

58 Relevant laws of the Republic of Croatia governing environmental protection, nature and sea protection, sea coast and navigation are now provided with provisions defining the obligation to compensate for environmental damage, and the Nature Protection Act of 2013 also provides for the criteria for its calculation and reparation.

59 It follows from the content of the provisions of these laws that it is possible to claim damages for nature as a whole, not only for flora and fauna, for which there are price lists determined by bylaws (for example, how much a particular plant or animal species is worth). These provisions now make it possible to calculate environmental damage in a wider content and in a higher amount (e.g. due to interruption of the biological cycle, devastation of the ecosystem for a longer period) and to initiate judicial and administrative proceedings.

60 However, despite the normative regulation, in practice the issue of detecting damage and perpetrators, determining evidence and conducting supervision and quick and coordinated reaction of all competent authorities at the time of the incident has been raised. The issue of expertise on the scope and amount of damage is particularly relevant. In order to truly determine the “true” environmental damage, practice has demonstrated the need for complex multidisciplinary expertise. The practice of compensating environmental damage in civil proceedings is practically still non-existent, but there is a positive tendency to initiate judicial and administrative proceedings due to the growing global awareness of the need for environmental protection and to boldly seek and determine compensation for “true” environmental damage.

- **The Fidelity Case, oil pollution, Croatia**

61 Below is an example from the practice of the Republic of Croatia – the case of marine pollution due to leakage of hydrocarbons from a ship in international navigation, which vividly depicts the scope and limitation of liability for pollution damage, based on an international treaty to which the Republic of Croatia is a party, and whose application excludes the possibility of compensation of damage to nature itself, which is otherwise provided for by the national regulations of the Republic of Croatia.

62 This specific case regards the application of the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunker Convention), whose provisions have been applied in practice to assess the liability for damage in the event of an incident in June of 2018 caused by the m/b Fidelity in Raška Bay in Croatia.

63 The incident occurred in June 2018 during the loading of hydrocarbons on the ship Fidelity, which led to the leakage of fuel into the sea and, consequently, large scale pollution of the environment – the sea and the coast in the Raška Bay in Istria, as well as the nearby port of Trget. Measures have been taken to remove pollution and restore the original state in accordance with Art. 1 (9) of the Bunker Convention. An out-of-court settlement has been concluded with the ship’s insurer. According to the settlement, all types of damages determined by the Convention have been paid, and the insurer paid the Republic of Croatia and the County of Istria USD 3,325,000.00. However, one type of damage remained unpaid, as there was no basis for doing so by invoking an international treaty – and that is the damage caused by the devastation of the Raška Bay ecosystem – the sea and the marine environment.

64 The settlement did not successfully resolve the issue of whether the perpetrator should have been liable under the national regulations of the Republic of Croatia, the Environmental Protection Act and the Maritime Code, which provided for liability for environmental damage to nature and compensation for it, which ultimately benefited the perpetrator, i.e. the insurer, assuming that the judicial investigation and expertise would show the need for compensation of this type of environmental damage as well.

- **Excerpt from the relevant law of the Republic of Croatia (criteria for the calculation of environmental damage)**

65 In order to illustrate the implementation of obligations under the Barcelona Convention, but also to introduce nature protection criteria that the Barcelona Convention and its Protocols, unfortunately, do not contain, the provision of the Nature Protection Act 2013 is quoted below, which regulates and prescribes criteria for calculating environmental damage done to nature itself, which were necessary to facilitate the identification and prosecution of such damage in practice.

Nature Protection Act (OG Nos. 80/13, 15/18, 14/19 and 127/19)

Article 174

“(3) Ecological damage shall be compensated by establishing the original state of nature, as it was before the damage occurred. In the event that it is not possible to fully or partially restore the original state, the perpetrator shall be obliged to pay monetary compensation to the Republic of Croatia.

(4) *The amount of compensation referred to in paragraph 3 of this Article shall be determined according to the degree of nature protection if that part of nature is protected, the status of part of nature, conservation, originality and integrity of nature and the degree of reduction of these values, the degree of biodiversity reduction, landscape diversity and geodiversity, degree of aesthetic value and peculiarity and/or diversity of landscape, degree and extent of damage and/or destruction of a part of nature, degree of surface or underground, geological, hydrogeological and geomorphological values of nature and degree of their damage habitat, the area affected by the intervention, i.e. action, the impact on the conservation of this part of nature for the future, etc.*"

66 The explanation of the legislator on the purpose and goal of this provision, when passing the law in the Croatian Parliament was as follows: "Finally, it is prescribed that damage to nature is environmental damage and the criteria are determined for calculating compensation in order to guarantee the right to collect compensation for environmental damage caused by nature damage and facilitate the processing of such damage, which has been difficult due to the lack of definition of compensation criteria."

Conclusion

67 We **find it would be useful**, in order to better prevent sea and marine environment pollution, to discuss the possibility of incorporating criteria for compensation of environmental damage in nature in one of the accompanying Protocols of the Barcelona Convention, starting from what was the *rationale* behind the drafting and conclusion of this international treaty and its accompanying Protocols, and we suggest that prior to this, in this context, the following be discussed:

- .1 Can we consider nature, including the sea, the marine environment and the Mediterranean coast to be **special and universal property *sui generis* and a natural wealth that belongs to present and future generations?**
- .2 If the answer to the first question is – **yes**, does the reduction and devastation of this universal and *sui generis* property cause a kind of non-material damage that also needs to be determined and compensated?
- .3 If it is a kind of non-material [environmental] damage, it should be possible to determine such by prescribing criteria for calculating the content, extent and amount of such damage, as opposed to material damage caused by pollution, which according to existing practice is easier to determine because it refers only to pollution removal costs, losses and other material damage.
- .4 If the answer to the above questions and claims is – **yes**, then it is necessary to formulate criteria for determining the scope and amount of this non-material type of damage based on the fundamental provisions of the Barcelona Convention and its Protocols. So, the main question is how does one determine the amount of this damage in monetary terms and how to formulate criteria for calculating the scope and amount of compensation for this type of non-material environmental damage done to nature?
- .5 In this context, it is useful, before defining the international criteria for determining the extent and amount of non-material [environmental] damage, to investigate and collect information on the legislation and practice of the Contracting Parties in the application of the Barcelona Convention and its Protocols.

68 Following all of the above, we propose that the 4th meeting of the Mediterranean Network of Law Enforcement Officials relating to MARPOL within the framework of the Barcelona Convention (MENELAS) discuss this proposal, as well as further activities of international law defining the true and full scope of liability and criteria for reparation for damages due to the devastation of nature, i.e. the sea, the marine environment and the sea coast of the Mediterranean, and the harmonization of practices in this regard.

Action requested by the Meeting

69 **The Meeting is invited to take note** of the information provided in the present document.