



Sub-regional workshop on the development of a sub-regional agreement for oil spill preparedness and response in Central Africa

Preparatory study
– Final version 09/09/2021

Participating countries:

Angola, Congo & D.R.C

June 2021

Consultant:



*The views expressed in this report are those of the consultant and do not necessarily represent the views of IMO or IPIECA.

NOTE

This document has been prepared within the framework of the Global Initiative for West, Central and Southern Africa as a contribution to the implementation of the biennial action envisaged for this Initiative. The designations employed and the presentation of the material in this document do not imply the expression of any opinion whatsoever on the part of IMO or IPIECA concerning the legal status of any State, Territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

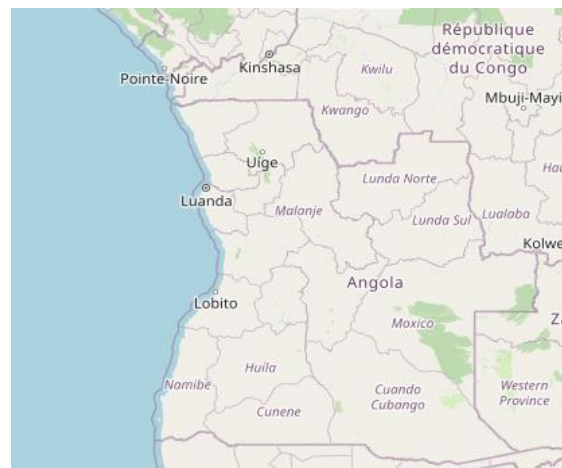
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Preamble

The present document is the report from OTRA for the: “Activity No. 7, Sub-regional workshop on the development of a sub-regional agreement for oil spill preparedness and response in Central Africa. Preparatory study (remote assignment)”.

The present version is the final version, reviewed and commented by GI WACAF, and it includes answers to the questionnaires received from the countries as of 3rd May 2021. An inventory of some agreements for oil spill preparedness and response in the world is provided in a separate Excel file, as well as the copies of the questionnaires filled in by the countries.



Reference of consultation

INTERNATIONAL MARITIME ORGANIZATION - TERMS OF REFERENCE FOR THE CONSULTANT Programme No: TC/2022 - Support to Maritime Development, Africa. Activity No. 7, Sub-regional workshop on the development of a sub-regional agreement for oil spill preparedness and response in Central Africa. Preparatory study (remote assignment) From 2 November 2020 to 29 January 2021. WBS Element No. TC/2022-07-2000

Reference of contract with International Maritime Organisation

“Activity No. 7, Sub-regional workshop on the development of a sub-regional agreement for oil spill preparedness and response in Central Africa. Preparatory study (remote assignment) From 2 November 2020 to 29 January 2021” - Purchase Order 4500028488, date 22/10/2020

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Executive summary

Title of the activity: Sub-regional workshop on the development of a sub-regional agreement for oil spill preparedness and response in Central Africa. Preparatory study (remote assignment)

Hosted & organized by: N/ A (remote activity).

Venue and date: N/ A (remote activity).

Type of event: preparatory study (prior to the organisation of a sub-regional workshop with the view to develop an agreement for oil spill preparedness and response in Central Africa).

Number of participants: N/ A (remote activity).

Supported by: the International Maritime Organization (IMO) and IPIECA, the global oil and gas association for advancing environmental and social performance, within the framework of the GI WACAF Project.

Objectives: “The overall objective of the study is to propose an effective and detailed approach to developing a tailored multilateral agreement between these three countries. The findings of the study will be used to develop a framework to fully assist countries in the region on this particular aspect. The specific objectives of the study include a situational analysis, together with strategic and operational recommendations on how to develop a tailored multilateral oil spill preparedness and response plan between these three countries.”

Main expected outputs. Provide GI WACAF Project team with (Terms of Reference, Art. 7):

- “1. a written report in English that will include a situational analysis, together with strategic and operational recommendations on how to develop a tailored multilateral oil spill preparedness and response plan between these three countries, as detailed below; and
- 2. a PowerPoint presentation and oral feedback during a virtual meeting during which the main findings and recommendations will be discussed.”

Summary of activities & Recommendations:

A situational analysis was first carried out (section 3) at three levels: international, regional and national. The level of accession to the international conventions is very different between the three countries (Congo has ratified 43 IMO conventions, while DRC has ratified only 6) and the level of implementation of these conventions into the national regulations could not be evaluated precisely but appears to be in progress in all countries. The Abidjan Convention and its Emergency Protocol provides the only common framework (for spillage at sea and

potentially on the shores) shared by the three countries of the project and the Protocol appears as a sound basis for the project (although is an old document, with gaps and its implementation is not complete in the countries). The Agreement should be developed to “operationalise” and complement the existing cooperation principles within the framework of the Abidjan Convention Emergency Protocol (and possibly extend the scope to land and inland water bodies).

Congo and Angola have an approved National Contingency Plan in place (although their response system is still under development) while the National Contingency Plan is still pending approval in DRC.

Arrangements with similar objectives in other parts of the world were reviewed (Section 4 “Review of other (sub-)regional agreements”). The Regional Conventions related to Marine Environment are first presented as they often serve as the general framework for Maritime spill response Agreements (reviewed after). Relevant items – not present in the Emergency Protocol of the Abidjan Convention – were identified in this section 4. Some more specific bi- or tri-lateral agreements are also presented.

Key issues for the Agreement are presented – for the consideration of the countries – based on the feedback of the countries and the findings of the study (in section 5 “Discussion & Recommendations”): scope & geographical coverage, legal framework for the Agreement and its legal nature, management of Agreement, etc. The legal nature of the Agreement (binding / non-binding) should be based on the specific provisions and requirements identified by the Agreement.

A list of items to consider for the Agreement is also proposed, to be reviewed and adapted by the countries. The provisions of the (sub-)Regional Contingency Plan (developed in the framework of the Abidjan Convention) can also be considered at a later stage (even if the document is not in force).

The involvement of the upstream O&G industry is discussed, as it is critical for this project regarding the activity of the upstream Oil & Gas Industry in the countries.

Recommendations and logical steps are then proposed for the development and approval of the Agreement. The subsequent implementation of the Agreement is finally discussed, with the identification of coordination and sustainable funding mechanisms.

It is reminded that the NCPs remain the fundamental building blocks for any sub-regional agreement. Without approved and robust NCPs in place in the three countries, a sub-regional Agreement is probably not viable. The countries should also consider updating their NCP, should potentially blocking points (i.e. terminology, organization, management principles) be identified that would prevent the full implementation of the Agreement.

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The Global Initiative for West, Central and Southern Africa

Launched in 2006, the Global Initiative for West, Central and Southern Africa (GI WACAF) Project is a collaboration between the International Maritime Organization (IMO) and IPIECA, the global oil and gas industry association for environmental and social issues, to enhance the capacity of partner countries to prepare for and respond to marine oil spills.

The mission is to strengthen the national system for preparedness and response in case of an oil spill in 22 West, Central and Southern African countries in accordance with the provisions set out in the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990 (OPRC 90).

To achieve its mission, the GI WACAF Project organises and delivers workshops, seminars and exercises, that aim to communicate good practice in all aspect of spill preparedness and response, drawing on expertise and experience from within governments, industry and other organizations working in this specialized field. To prepare and implement these activities, the Project relies on the Project's network of dedicated government and industry focal points. Promoting cooperation amongst all relevant government agencies, oil industry business units and stakeholders both nationally, regionally, and internationally is a major objective of the Project during these activities.

GI WACAF operates and delivers activities with contributions from both the IMO and seven oil company members of IPIECA, namely BP, Chevron, ExxonMobil, Eni, Shell, Total Energies and Woodside.



More information is available on the [Project's website](#)

1. INTRODUCTION

1.1. Context & objectives

The context is captured in the Terms of References of the project.

“Introduction. Art. 3 3 The three countries explained that oil regularly contaminates their respective shorelines, and given their close geographical proximity and the hydrodynamics of the area, the pollution is likely to be of a transboundary nature. The countries therefore approached GI WACAF to provide support on the development of a sub-regional agreement for oil spill preparedness and response in Central Africa.”

The countries therefore requested assistance from the GI WACAF Project to **assist in the development of a transboundary agreement on oil spill preparedness and response.**

Such assistance was also in line with the recommendations made during the 8th GI WACAF Regional Conference held in October 2019 in Cape Town, South Africa.

A sub-regional workshop on the subject was planned for delivery in 2020. Due to the COVID pandemic, the GI WACAF decided to postpone the physical workshop to 2021. However, the countries involved (DRC, Congo, and Angola) have requested that “alternative means be explored to keep the momentum and work on developing the basis of a sub-regional agreement for oil spill preparedness and response in Central Africa”.

This project is also in line with the OPRC 90 Convention and role of IMO: “(2) *In carrying out the activities specified in this article, the Organization shall endeavour to strengthen the ability of States individually or through regional arrangements to prepare for and combat oil pollution incidents, drawing upon the experience of States, regional agreements and industry arrangements and paying particular attention to the needs of developing countries.*” (OPRC 90, Art. 12: Institutional arrangements)

Consequently, the GI WACAF project decided to initiate a preparatory study, to be undertaken as a remote assignment, with “*The overall objective (...) to propose an effective and detailed approach to developing a tailored multilateral agreement between these three countries (Angola, D.R.C. and Congo). The findings of the study will be used to develop a framework to fully assist countries in the region on this particular aspect.*” (Terms of Reference, Art. 6). The findings of this study should also be used to prepare a sub-regional activity with representatives from Angola, DRC and Congo, organized by the GI WACAF (when physical workshops are possible again).

OTRA company was contracted by IMO to assist in carrying out this study.

Notes:

- The “multilateral agreement between these three countries (Angola, D.R.C. and Congo)” or “sub-regional agreement for oil spill preparedness and response in Central Africa” is referred to as the “Agreement” or the “Agreement A-C-DRC” in the present document. Names of other agreements are specified.
- Terminology is presented in the Appendices.

1.2. Expected activities

The expected activities are (Terms of Reference, Art. 9):

“Tasks and activities. The Consultant will, in close liaison with the GI WACAF Project team, undertake the completion of the following tasks:

- .1 Conduct a review of the current regional and transboundary oil spill response arrangements existing in the GI WACAF region and elsewhere in the world, analysing their specificities, difference/ similarities, strengths and weaknesses;
- .2 Identify the specific needs, requirements, risks, and sensitivities of the three countries. The consultant will liaise closely with the GI WACAF team to perform this task. The GI WACAF team will act as a liaison with government focal points from the three countries;
- .3 Propose an effective and detailed approach to developing a tailored multilateral agreement. Such approach will include the identification of the national entities that will have to be involved, of the expectations from the governmental focal points, and of the role the GI WACAF Project could play in this endeavour, amongst others; and
- .4 Make a presentation on the main findings of the study during a virtual meeting with representatives of the three countries. ...“

The main expected outputs are to provide GI WACAF Project team with (Terms of Reference, Art. 7):

- “1. a written report in English that will include a situational analysis, together with strategic and operational recommendations on how to develop a tailored multilateral oil spill preparedness and response plan between these three countries, as detailed below; and
- 2. a PowerPoint presentation and oral feedback during a virtual meeting during which the main findings and recommendations will be discussed.”

1.3. Study management

The study is coordinated by:

- Émilie Canova, GI WACAF Project Manager, IPIECA
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- Chloé Gondo, GI WACAF Project Coordinator, Subdivision for Implementation, Marine Environment Division

- o Email: CGondo@imo.org

IMO ensure an overall supervision via the Sub-division for Implementation, Marine Environment Division:

- Mr Clément Chazot, Technical Officer
- Ms Patricia Charlebois, Deputy-Director

The focal points involved in the countries are, along with other supporting ministries/ agencies:

Congo

- IMO: NKOU Christian Armel (Min. Transports, Aviation Civile et Marine Marchande)
- GI WACAF: Médard NGOBO (Chef Service Protection Milieu Marin, Min. Transports, Aviation Civile et Marine Marchande)

DRC

- IMO: TUNDA KASONGO Jeanne (Dir. Marine Marchande)
- GI WACAF: LUNGU MALUTSHI Louis (MEDD)
- BOPE BOPE LAPWONG Jean Marie (MEDD)

Angola

- IMO: Olivio Jacinto (Maritime and Port Institute Angola - IMPA)
- GI WACAF: Manuel Augusto Xavier Junior, (National Director of Safety, Emergencies and Environment, Ministry of Mineral Resources and Petroleum - MIREMPET)

OTRA personnel involved is:

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1.4. Purpose & structure of report

The purpose of the present report is to:

- Keep track of the activities carried out;
- Provide an overview of the situation in the three countries about oil spill preparedness, and at regional and international level;
- Provide an overview of the existing other agreements in the world;

- Discuss options for the content, development and implementation of A-C-DRC Agreement;
- Provide a link to the questionnaires filled in by the countries.

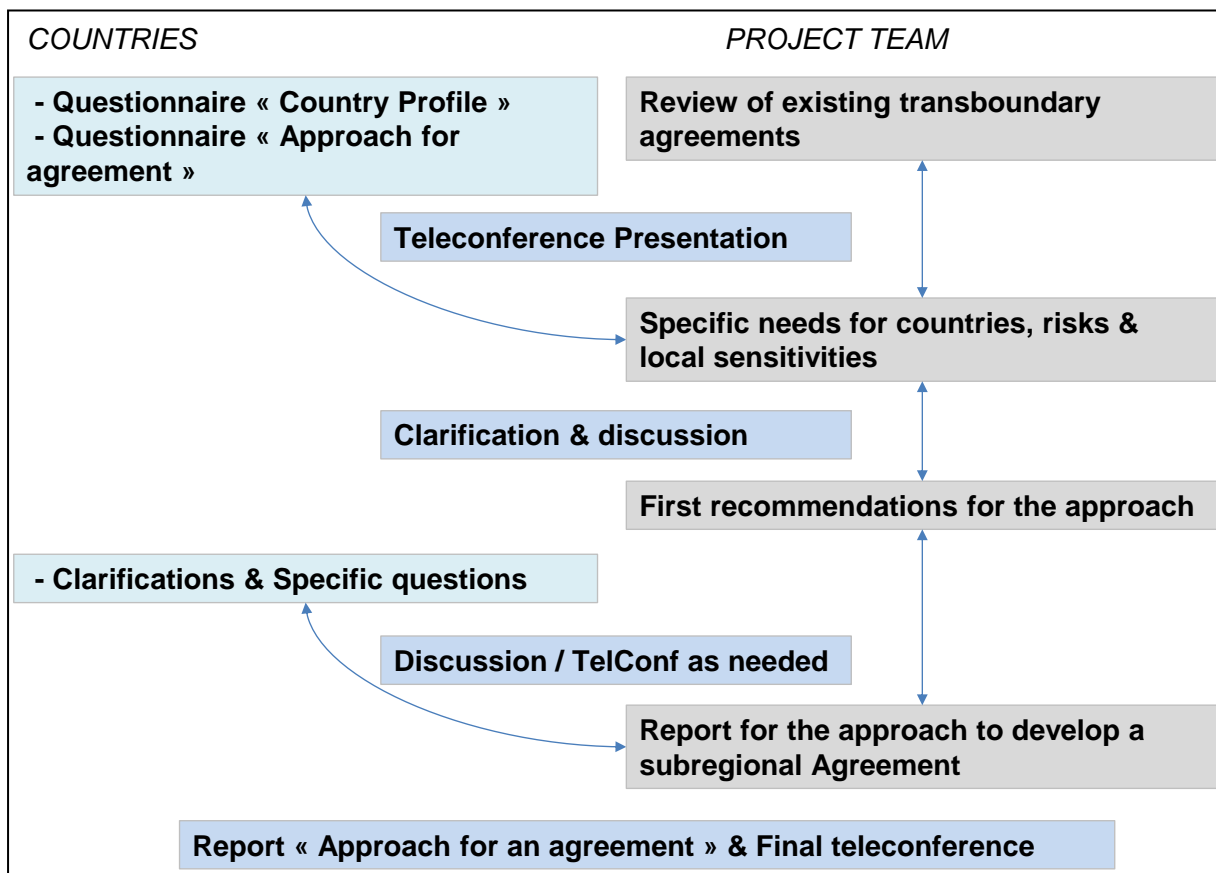
The report is structured accordingly in 7 sections:

- Introduction
- Situational analysis
- Review of other (sub-)regional agreements
- Discussion & recommendations
- Conclusion & way forward
- Appendices

2. SUMMARY OF ACTIVITIES

This section summarizes the activities planned and carried out up to date.

The figure below outlines the planned activities for this study (after discussion with the GI WACAF project and adaptations compared to the Terms of References).




The table below summarizes the activities carried out up to date (April 2021).

Activity	Status	Participants & Comments
Kick-off meeting GI WACAF – OTRA	Done 10/12/2020	
GI WACAF – REMPEC Telconf	Done beginning March 21021	
Progress meeting GI WACAF – OTRA	Done 15/01/2021 + 27/01/2021 + 17/04/2021 + 30/04/2021	
Questionnaires « Country Profile » + « Approach for agreement »	Sent by GI WACAF to Congo, DRC and Angola : 18/02/2021	
Questionnaires Telconfs	Status	Participants & Comments
TelConf with DRC on questionnaires	Done 01/03/2021	Included: - BOPE BOPE LAPWONG Jean Marie (MEDD) + representatives of various port & specialized companies. Absent: - Pt Focal OMI: TUNDA KASONGO Jeanne (Dir. Mar. Mar.) - Pt Focal GI WACAF: LUNGU MALUTSHI Louis (MEDD)
TelConf with Angola on questionnaires	Done 16/03/2021	Included: - IMO Focal Pt: Olivio JACINTO (Maritime and Port Institute Angola - IMPA) - GI WACAF Focal Pt: Manuel Augusto XAVIER Junior, (National Director of Safety, Emergencies and Environment, Ministry of Mineral Resources and Petroleum - MIREMPET) - Juliana GARCIA (Min in charge of Environment, spill response department)
TelConf with Congo on questionnaires	Pending – if needed	Three TelConfs organized but no connection with Mr Médard
Questionnaires feedback	Status	Participants & Comments
Questionnaires feedback Congo	Both pending	
Questionnaires feedback DRC	- « Country Profile » received 13/05/2021 - « Approach for agreement » received on 06/04/2021	
Questionnaires feedback Angola	- « Country Profile » received 17/04/2021 - « Approach for agreement » received on 15/03/2021 and updated/ & resent on 08/04/2021	

3. SITUATIONAL ANALYSIS

To build any sub-regional agreement, an understanding of the national spill response systems in place in each country is necessary: competent authorities, alert focal points, key provisions of the contingency plan, national organisation, response policies, available resources, presence and involvement of O&G industry, etc.

This section provides a (high-level) review of the spill response preparedness in the countries, and of the regional/ international framework for the development of an Agreement. The key sources of information used here are:

- The answers from the countries to the Questionnaires « Country Profile » sent in 2021,
 - see  “Questionnaire “Country profile” & answers ”, p.106
- The status of the IMO conventions (consulted April 2021 on
 - <https://www.imo.org/en/About/Conventions/Pages/StatusOfConventions.aspx>;
- The GI WACAF country profiles
 - consulted February-March 2021 on <https://www.giwacaf.net/en/>
- The latest versions of the National Contingency Plans (NCPs) or NOSCPs (National Oil Spill Contingency Plans if they focus solely on oil spills, and do not consider releases of HNS) of the countries made available to OTRA ¹
 - Congo: « Plan national d’intervention d’urgence en cas de pollution par les hydrocarbures (PNIU), révisé 2009 », mise à jour suivant les recommandations des ateliers de 2006, 2007 et 2009 »
 - Version from the GI WACAF website (retrieved April 2021)
 - DRC: « Plan National d’Urgence contre la Pollution Marine par Hydrocarbures et Substance Nocives et Potentiellement Dangereuses (SNPD)» Version provisoire 25/05/2010 »
 - Draft (incomplete) from the GI WACAF website (retrieved April 2021), developed by OTRA in 2010 after a national workshop in Kinshasa in 2010
 - A newer version of the Plan is mentioned in the questionnaire, but not available to OTRA “Plan POLMARC » ².”
 - Angola: « National Marine Oil Spill Contingency Plan – Republic of Angola »
 - Version translated in English of the plan of Angola, approved in 2008, as declared in the “Diaro da Republica 22 Déc. 2008”.
 - Made available to OTRA during previous projects.

¹ The ITOPF country profiles were also consulted but it is assumed that – for the WACAF countries – the GI WACAF country profiles are more complete and up-to-date

² Updated on 25th July 2019. Approved by ministerial decree (reference not provided), but not tested.

- a. details of its assessments and any action it has taken, or intends to take, to deal with the incident, and
- b. further information as appropriate, until the action taken to respond to the incident has been concluded or until joint action has been decided by such States. (...).

Article 7: International co-operation in pollution response. (1) Parties agree that, subject to their capabilities and the availability of relevant resources, they will co-operate and provide advisory services, technical support and equipment for the purpose of responding to an oil pollution incident, when the severity of such incident so justifies, upon the request of any Party affected or likely to be affected. The financing of the costs for such assistance shall be based on the provisions set out in the Annex to this Convention.

(...)

(3) In accordance with applicable international agreements, each Party shall take necessary legal or administrative measures to facilitate:

(a) the arrival and utilization in and departure from its territory of ships, aircraft and other modes of transport engaged in responding to an oil pollution incident or transporting personnel, cargoes, materials and equipment required to deal with such an incident; and (b) the expeditious movement into, through, and out of its territory of personnel, cargoes, materials and equipment referred to in subparagraph (a).

Article 10: Promotion of bilateral and multilateral co-operation in preparedness and response. Parties shall endeavour to conclude bilateral or multilateral agreements for oil pollution preparedness and response. Copies of such agreements shall be communicated to the Organization which should make them available on request to Parties.

OPRC/HNS PROTOCOL (2000) has similar provisions for Hazardous & Noxious Substances, but is only ratified by Congo (e.g. Art. 5 International co-operation in pollution response, Art. 8 Promotion of bilateral and multilateral co-operation in preparedness and response).

Liability and compensation conventions for accidental spillage from shipping incidents. Three international instruments exist to provide compensation in the event of (persistent) oil spills from tankers:

- 1992 Protocol to the International Convention on Civil Liability for Oil Pollution Damage (CLC 1992)
- 1992 Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund 1992)
- 2003 International Oil Pollution Compensation Supplementary Fund (Supplementary Fund)

The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunker 2001) was formulated to ensure that adequate, prompt, and effective compensation is available to compensate for damage caused by spills of (persistent) oil, when carried as fuel in ships' bunkers. The Convention requires ships over 1,000 gross tonnage to maintain insurance or other financial security, to cover the liability of the registered owner for pollution damage "in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases, not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime Claims, 1976, as amended". The 1996 Protocol to the London Limitation Convention 1976 addresses the limitation of the liability of shipowners for claims for loss of life or personal injury (e.g. injuries to crew, stevedores, or passengers on another ship) and claims other than loss of life or personal injury such as claims for oil pollution damage or salvage operations.

Instruments related to compensation for shipping incidents with HNS (HNS 96 and Protocol) are not yet in force.

The **international convention on maritime Search and Rescue SAR, 1979** (amended by resolution MSC. 70(69)) includes provisions on cooperation between States in its Chapter 3, including the facilitation of entry of "rescue units" in its territory, the set-up of agreements between neighbouring States to facilitate these facilitations and strengthen cooperation, the empowerment of the rescue centre for these facilitations, etc.

Art 5, 6, 7 and 10 of the OPRC 90 Convention provide fundamentals elements for the Agreement. It is assumed that DRC adheres to the OPRC 90 provisions (although it has still not ratified it). Accordingly, all three countries commit to:

- inform each other in case of spills (or risk of) that may affect another country or that may warrant the mobilisation of assistance.
- provide each other mutual assistance, if and when possible, in case of oil spill, and for the party requesting party to re-imburse the cost of assistance to the providing party.
- facilitate the movement of personnel, equipment and logistic support between countries.
- set-up multi-lateral agreement for oil spill preparedness and response.

It is essential that all countries ratify the key conventions, particularly OPRC 90, CLC 92, Fund 92 by DRC. However, this will not be possible in the timeframe of the project.

Consequently, and to ensure a common international framework for maritime oil spillage, **it is essential that DRC confirms officially that the country adheres to the provisions of OPRC 90 and commits to implement effectively its provisions.**

It is recommended that all three countries confirm they adhere to the provisions of the OPRC/HNS 2000 Protocol, to ensure an international framework including maritime spillage of HNS.

3.1.2. Other regional or international instruments

Countries have also ratified other conventions that may be relevant for trans-boundary spills.

	Congo	DRC	Angola
United Nations Convention on the Law of the Sea. Montego Bay, 10 December 1982 In force since 16/11/1994	Ratification 09/07/2008	Ratification 17/02/1989	Ratification 05/12/1990
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989	Accession: 20/04/2007 Entry into force: 19/07/2007	Accession: 06/10/1994 Entry into force: 04/01/1995	Accession: 06/02/2017 Entry into force: 07/05/2017
Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal Basel, 10 December 1999	Accession: 20/04/2007	Accession: 23/03/2005	No

United Nations Economic Commission for Europe (UNECE) aim to promote pan-European economic integration (across Europe, North America and Asia). However, all interested United Nations member States may participate in the work. UNECE has developed various instruments:

- **“Convention on the Protection and Use of Transboundary Watercourses and International Lakes”⁴** seeks to “prevent, control and reduce any transboundary impact” on transboundary water⁵. It includes provisions on bilateral and multilateral cooperation for pollution prevention, monitoring, reduction, control, information exchange and emergency response (Art. 9), regular joint monitoring and assessment (Art. 11), common research and development (Art. 12), exchange of information between riparian parties (Art. 13), warning and alarm systems, where the Riparian Parties shall without delay inform each other about any critical situation (Art. 14), mutual assistance (Art. 15).
- **“Convention on the Transboundary Effects of Industrial Accidents”⁶** aims at “protecting human beings and the environment against industrial accidents by preventing such accidents as far as possible, by reducing their frequency and severity and by mitigating their effects. It promotes active international cooperation between the contracting Parties, before, during and after an industrial accident”.
 - Convention applies to “the prevention of, preparedness for and response to industrial accidents capable of causing transboundary effects, including the effects of such accidents caused by natural disasters, and to international cooperation concerning mutual assistance, research and development,

⁴ as amended, along with decision VI/3 clarifying the accession procedure (adopted in Helsinki, Finland, on 17 March 1992, and entered into force on 6 October 1996.

⁵ Transboundary water: “any surface or ground waters which mark, cross or are located on boundaries between two or more States; wherever transboundary waters flow directly into the sea, these transboundary waters end at a straight line across their respective mouths between points on the low-water line of their banks”.

⁶ signed at Helsinki 17 March 1992, amended on 15 December 2015

exchange of information and exchange of technology in the area of prevention of, preparedness for and response to industrial accidents.”

- Convention does not apply to some cases, particularly those occurring in the marine environment, e.g. *“Accidents caused by activities in the marine environment, including seabed exploration or exploitation; (g) Spills of oil or other harmful substances at sea.”*
- Convention includes articles on: Emergency preparedness in country (Article 8), Industrial accident notification systems in country and with neighbouring countries (Article 10), Mutual assistance and possible bi- or multi-lateral agreements (Article 12, further detailed in Annex X & XII), R&D, exchange of information and technology (Articles 14, 15 & 16),
- **“Protocol on civil liability and compensation for damage caused by the transboundary effects of industrial accidents on transboundary waters to the 1992 Convention on the protection and use of transboundary watercourses and international lakes and to the 1992 Convention on the transboundary effects of industrial accidents”⁷** provides a comprehensive regime for civil liability and for adequate and prompt compensation for damage caused by the transboundary effects of industrial accidents on transboundary waters. It sets the strict liability (with some financial limits) of the operator responsible for the industrial damage. It is an instrument comparable to the CLC 92.

The above instrument demonstrates the existence of mechanisms for assistance and cooperation between countries, in case of release of pollutant inland (accidental or not, transboundary or not) and in transboundary water bodies.

Senegal and Chad have acceded to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) in 2018.

Some bi-lateral agreements implement practical provisions of the above instruments:

- "Agreement Between the Government of the Republic of Latvia and the Government of the Republic of Lithuania on the Mutual Support in the Event of Natural Disasters and other Large Scale Accidents" (2001) and Technical Protocol between Latvia and Lithuania governments on Exchange of Information on Emergency Ecological Situations,
- “Agreement Between The Government Of The Republic Of Latvia And The Government Of The Kingdom Of Sweden On Collaboration Within The Field Of Emergency Prevention, Preparedness And Response” (2002).

The **“Convention on assistance in the case of a nuclear accident or radiological emergency”** signed in 1987 (but not in force in any countries of the project) includes some provisions on

⁷ adopted and signed by 22 countries at the Ministerial Conference "Environment for Europe" in Kyiv, Ukraine, on 21 May 2003

assistance between countries (Art. 2), direction and control of assistance by the requesting country (Art. 3), designation of Competent authorities and points of contact (Art. 4), reimbursements of costs (Art. 7), Privileges, immunities and facilities for the assisting party and personnel (Art. 8), facilitate the transit of personnel, equipment and property (Art. 9), Claims and compensation (Art. 10), Termination of assistance (Art. 11).

The provisions of these conventions should be reminded for the Agreement (ratified by all countries, except Angola for the Basel Protocol).

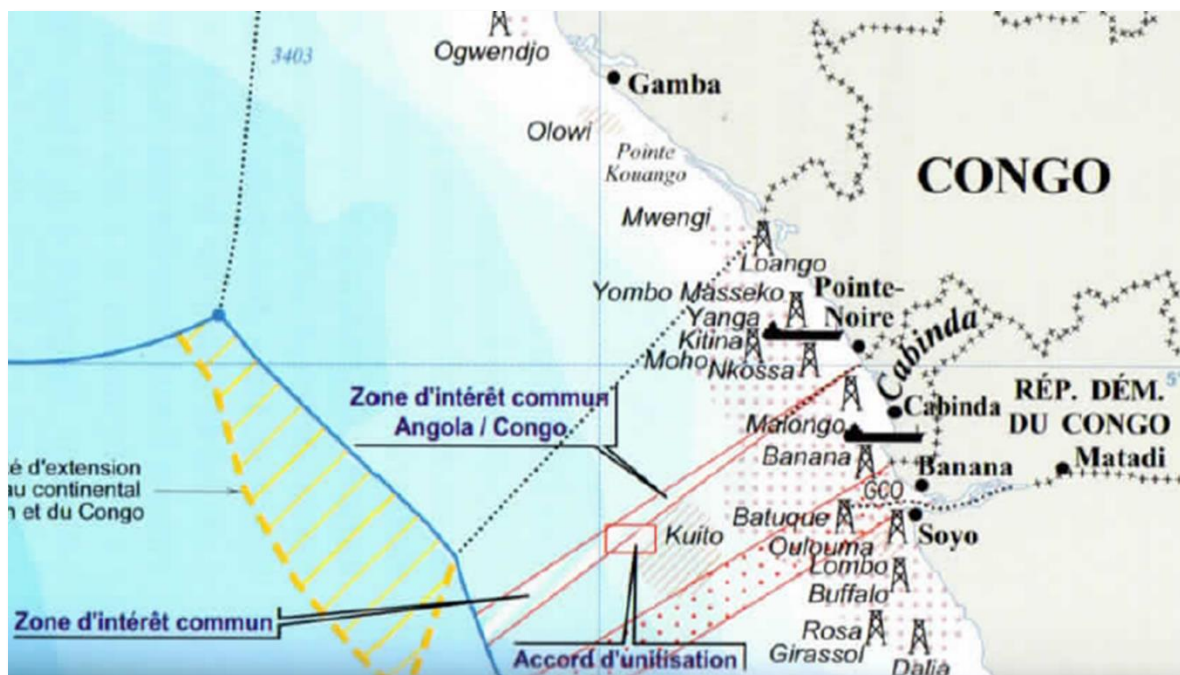
- United Nations Convention on the Law of the Sea. Montego Bay, 10 December 1982
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989
- Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal Basel, 10 December 1999

Other instruments (not ratified by the countries) **may provide a useful source of information**, particularly when considering spillage on land and in water courses:

- Convention on the Protection and Use of Transboundary Watercourses and International Lakes
- Convention on the Transboundary Effects of Industrial Accidents
- Protocol on civil liability and compensation for damage caused by the transboundary effects of industrial accidents on transboundary waters
- Convention on assistance in the case of a nuclear accident or radiological emergency

3.1.3. Maritime boundaries

It is reminded that some maritime borders are being discussed between the countries.



As outlined on the above map (from ORTOLLAND Didier , PIRAT Jean-Pierre, 2010, Atlas géopolitique des espaces maritimes, 2e éd., éd. Technip), discussions are on-going between Angola and DRC about their respective EEZs, and the request of DRC for a direct access to high seas (area with red dots on map). The status of discussion is unknown at the time of writing.

Other discussions are also on-going between Angola and the Republic of the Congo about the maritime border in the area containing the Lianzi Oil Field which includes parts of Block 14 located in Angola, and the “Haute Mer Permit” located in Congo (termed “Zone d’intérêt commun” on the map). Based on the latest available news, some arrangements are being sought between Angola and Congo and borders should be delimited in 2022.

The current status of the maritime borders between the three countries should be clarified for the Agreement, as well as future possible arrangements.

3.1.4. Main findings

The level of ratification of IMO Conventions varies greatly between the countries. Consequently, there is no legal international common framework between the countries.

The level of implementation of the provisions of the conventions in each country is not well documented and, therefore, could not be evaluated.

It is recommended to investigate the status of the transposition of provisions of the conventions into the national legislation.

3.2. Regional framework

3.2.1. Abidjan Convention & associated instruments

This section provides an overview of the existing instruments based on available documentation provided by the GI WACAF and clarifications from the Abidjan Convention Secretariat (J. Abe 2021)⁸.

Abidjan Convention. The “Convention for Cooperation in the Protection, Management and Development of the Marine and Coastal Environment of the Atlantic Coast of the West, Central and Southern Africa Region” (Abidjan Convention in short) was adopted in 1981, under the auspices of UNEP, and in the framework of the Regional Seas program, to provide an overarching legal framework for all marine-related programmes in West, Central and Southern Africa. The three countries of the project are parties to the Convention: Angola, Benin, Cameroon, Cape Verde, Democratic Republic of Congo, Republic of Congo, Côte d’Ivoire, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mauritania, Namibia, Nigeria, Sao Tome e Principe, Senegal, Sierra Leone, South Africa and Togo.

A Conference of Parties is held every two years and a Secretariat (Abidjan, Ivory Coast) facilitates the management of activities. States contribute financially for the Secretariat.

A national authority is designated in every country for the “co-ordination of national efforts for implementing this Convention and its related protocols. It “shall serve as the channel of communication between the Contracting Party and the Organization”.

The convention applies to marine environment and coastal areas (role outlined on the website of the Abidjan convention: <https://www.abidjanconvention.org/>). Various articles relate to chronic and accidental spills. Only those related to transboundary issues and regional cooperation are reminded here. Table of content is in 📖 “Abidjan Convention content”, p.100.

Art. 12 reminds all parties to notify themselves and cooperate in case of emergency, in broad terms: “COOPERATION IN COMBATING POLLUTION IN CASES OF EMERGENCY. The Contracting Parties shall co-operate in taking all necessary measures to deal with pollution emergencies in the Convention area, whatever the cause of such emergencies, and to reduce or eliminate damage resulting therefrom.

Any Contracting Party which becomes aware of a pollution emergency in the Convention area should, without delay, notify the Organization and, either through this Organization or directly, any other Contracting Party likely to be affected by such emergency.”

Art. 14 deals with technical cooperation: “SCIENTIFIC AND TECHNOLOGICAL CO-OPERATION. The Contracting Parties shall co-operate, with the assistance of competent

⁸ Jacques ABE, Thematic Component Leader, Abidjan Convention/UN Environment, jacques.abe@un.org

international and regional organizations, in the field of scientific research, monitoring and assessment of pollution in the Convention area, and shall exchange data and other scientific information for the purpose of this Convention and its related protocols.

(...). The Contracting Parties shall endeavour to participate in international arrangements for pollution research and monitoring in areas beyond their national jurisdiction.

The Contracting Parties shall co-operate directly or through competent international or regional organizations, in the development of programmes for technical and other assistance in fields related to marine pollution and sound environmental management of the Convention area.”

Finally, Art. 16 notes the role of the UNEP secretariat to carry out some tasks (delegated to the Abidjan Secretariat): “INSTITUTIONAL ARRANGEMENTS. The Contracting Parties designate the United Nations Environment Programme as the secretariat of the Convention to carry out the following functions:

- To prepare and convene the meetings of Contracting Parties and conferences provided for in articles 17 and 18;
- To transmit to the Contracting Parties notifications, reports and other information received in accordance with articles 3, 12, and 22; (...).”

Emergency Protocol to the Abidjan Convention: the “Protocol Concerning Co-operation in Combating (marine) Pollution in Cases of Emergency in the Western and Central African Region” was also adopted in 1981 and is in force since 1996.

The text, although anterior to the OPRC 90 Convention, contains similar provisions as the OPRC 90 and the OPRC/HNS PROTOCOL 2000 (as the Emergency Protocol mentions “harmful substances”, not only oil). There is no additional (or fundamentally different) provision compared to the OPRC 90.

- Art. 1 relates to definitions
- Art. 2 relates to geographical area of protocol
- Art. 3 relates to the scope
- Art. 4 relates to overall objective
- Art. 5 relates to exchange of information (laws, regulations, plans)
- Art. 6 relates to exchange of information (R&D)
- Art. 7 relates to notification of spills
- Art. 8 relates to assistance
- Art. 9 relates to cooperation for plans & response, and timely alert procedures
- Art. 10 relates to principles for response
- Art. 11 relates to management of protocol during meetings of parties
- Art. 12 relates to rules of procedure and financial rules (for the Protocol)
- Annex . Guidelines for the report to be made pursuant to article 7 of the protocol

However, some provisions contain some details compared to the OPRC 90.

“Art. 8 (2). The assistance referred to in paragraph 1 of this article may include:

- (a) The provision and reinforcement of personnel, material, and equipment;
- (b) The provision and reinforcement of surveillance and monitoring capacity;
- (c) The provision of pollution disposal sites; or
- (d) The facilitation of the transfer of personnel, equipment and material into, out of, and through the territories of the Contracting Parties.”

“Art. 9 (2). The Contracting Parties shall co-operate in developing standing instructions and procedures to be followed by their appropriate national authorities who have responsibility for receiving and transmitting reports of pollution by oil and other harmful substances made pursuant to article 7 of this Protocol. Such cooperation shall be designed to ensure speedy and routine reception, transmission and dissemination of these reports.”

The Annex provides some guidelines for the content of the notification to be sent to countries.


⚠ The text of the convention has been updated and should be adopted by the countries during the next Conference of Parties CoP 13 (Communication J. Abe 26/04/2021). The latest version of the Abidjan Convention has not been made available to OTRA.

The Emergency Protocol of 1981 applies. It has not been updated (Communication J. Abe 26/04/2021). However, the current status of the enforcement of the Protocol is unclear at the time of writing.

The Convention and the Emergency Protocol are the only instruments related to the present project signed by all three countries (as DRC has not ratified OPRC 90). They provide a comprehensive framework, including most (yet not all) items to consider for the project of Agreement A-C-DRC.

Consequently, the Agreement A-C-DRC must take into account these instruments and their provisions.

Regional (WACAF) and Sub-Regional (GCLME) Contingency Plans.

A Regional Oil Spill Contingency Plan for the countries signatories to the Abidjan Convention was developed by the Contracting Parties (including Congo, DRC and Angola) with the support of IMO, and discussed during the Conference of the Parties (April 2011, Accra, Ghana). The summary of the (draft) plan is provided in  “WACAF Regional Oil Spill Contingency Plan content”, p.95.

A Sub-Regional Contingency Plan was also developed for the countries of the Guinea Current Large Marine Ecosystem - GCLME, in the framework of the Abidjan Convention, using the exact same structure, table of content and provisions as the Regional Plan mentioned above.

The Regional and Sub-regional Plans provide some provisions that may be considered for the Agreement A-C-DRC. However, the structure and provisions are based on the general

template for regional contingency plan drafted by IMO, used elsewhere in the world. These provisions would require further adaptations to the countries, and local context, particularly the organisational and functional aspects for the management of transboundary operations. It is also a large document, trying to consider all aspects of transboundary spills, and maybe not the most suited operational document to accompany a tri-lateral Agreement. Some items may also be included, particularly regarding the role that the O&G industry could play.

Both Regional and Sub-regional Plans are not officially in place (Communication J. Abe 26/04/2021). Furthermore, no action plan was developed for the effective implementation of these plans.

The Regional or Sub-regional Oil Spill Contingency Plans are not signed and consequently not in force. Both Plans have some useful items to operationalise an Agreement, but cannot be used “as is” for the project.

Regional Centre. With the objective to coordinate regional preparedness activities and administrate the regional plan, some Terms of References for a “Regional Coordination Centre for Marine Pollution Emergency of the Abidjan Convention” were developed and discussed during the conference in 2011. Nigeria agreed afterwards to host the Centre.

Following this, the NOSDRA national centre (Nigeria) has been officially selected by the Parties during another regional conference to act as a regional centre (Communication J. Abe 26/04/2021).

Centre	Coordinator
NOSDRA -National Oil Spill Detection & Response Agency 5th Floor, NAIC House PMB 145, Garki, Abuja Nigeria https://www.facebook.com/NOSDRANigeria/	Idriss OLUBOLA MUSA Head Oil Spill Detection Dept (NOSDRA) Tel: +234 496714928 /+234 8033153547 Email: iomusa2003@yahoo.com

This centre can be considered as a **Regional centre**, see in 📖 “Management of agreements & activities – Regional Centres **Error! Reference source not found.**”, p.109.

However, the funding mechanisms are not yet in place, and the regional activities of the centre appear very limited.

A regional centre has been officially selected by the countries of the Abidjan Convention. However, it appears that there are no funding mechanisms and no regional program of activities.

For the present project, reference can be made to the centre, but the capabilities of the centre (Nigeria) and its potential involvement in the Agreement A-C-DRC needs further assessment.

Additional protocol related to offshore O&G activities. An “Additional protocol to the Abidjan convention on environmental norms and standards for offshore oil and gas exploration and

exploitation activities” has been signed by the parties to the Abidjan Convention in 2019 but is not currently in force (Communication J. Abe 26/04/2021). It has the objectives to “to prevent, reduce or eliminate pollution or damage to the coastal zone and the marine environment resulting from offshore oil and gas exploration and exploitation”. Key provisions related to this project are reminded below.

- Art. 4 “General commitments” reminds the applicability of the “Polluter-Pays” principle.
- Art. 18: “Emergency Response Plans” reminds the countries to implement the Abidjan Convention Protocol on Cooperation in Combating Pollution in Cases of Emergency, the need to develop emergency plans for operators and for national authorities (with a minimum content detailed in Annex VII).
- Article 20: “Mutual Assistance in the event of Oil Spills” states that: “In the event of an oil spill, any Contracting Party requiring assistance to prevent, reduce or combat pollution arising from operations may request help from other Parties, either directly or through the regional or sub-regional centre for cooperation in cases of oil spills.”
- Article 24: Scientific and technical cooperation
- Article 26: Mutual Information Sharing
- Article 27: Transboundary pollution states that:
 - “1. Any Contracting Party that becomes aware of any situation in which the marine and coastal environment is in imminent danger of being damaged or has been damaged by marine pollution in the Protocol Area shall immediately notify any other Contracting Party and the regional or sub-regional emergency centre, and provide them with timely and relevant information so they can take, as the case may be, appropriate measures.
 - ^[1]_{SEP}2. Where pollution originates in the territory of a State that is not a Contracting Party to this Protocol, the affected Contracting Party shall seek to cooperate with the said State to make possible the application of this Protocol.”
- Annexes:
 - Annex VII Emergency Response Plan.
 - Annex VIII: Guidelines on Liability and Compensation for Damage resulting from Pollution of the Marine and Coastal Environment in the Area of the Abidjan Convention, which includes environmental damage (“a measurable loss to a natural resource or measurable harm caused to a natural resource service which may occur directly or indirectly”).

The additional protocol related to offshore O&G activities is not yet in force. The possible coming into force of this additional Protocol, with its provisions for the assistance and responsibilities of the O&G industry, should be reminded in the Agreement.

3.2.2. Search & rescue in WACAF region

It is noteworthy to mention the regional arrangements for Search & Rescue (SAR) in the region, promoted by the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO).

Some sources (<https://sarcontacts.info/>) mention a regional Search & Rescue Coordination centre in Luanda (Angola) covering Angolan waters, and another regional centre in Pointe-Noire (Congo).

Information is unclear. Real SAR operational capabilities in the three countries should be confirmed by the countries. The Maritime Safety and Security Department (MSD) of IMO has not received any information from the countries. It is recommended that complementary information is provided by the countries to the IMO.

3.2.3. Regional African organisations and maritime safety & security

The ECCAS (Economic Community Of Central African States or “CEEAC, Communauté économique des États d’Afrique centrale”, see <https://ceeac-eccas.org/en/#presentation>) is an Economic Community of the African Union for the promotion of regional economic co-operation in Middle region of Africa, with the overall objective to “make Central Africa a region of peace, prosperity and solidarity based on a unified economic and political space where each citizen moves freely in order to ‘thus ensures sustainable and balanced development.’”

It was created in 1983 and acquired the status of Commission in December 2019 to implement its activities with greater efficiency. The framework of ECCAS activities is defined by the Conference of Heads of States and Governments of member countries, while the programs are established by the Council of Ministers according to each specific sector. It includes eleven countries (including the three countries of this project):

- [Angola](#)
- Burundi
- Cameroon
- Central African Republic
- Chad
- [Republic of the Congo](#)
- [Democratic Republic of the Congo](#)
- Equatorial Guinea
- Gabon
- São Tomé and Príncipe
- Rwanda

In 2004, under the auspices of ECCAS, a “Protocol Relating to the Establishment of a Council for Peace and Security in Central Africa” (COPAX) was adopted and is now in force, including

an Early Warning System, a Defence & Security commission and the non-permanent Multinational Force of Central Africa.

Possible links or interfaces with, or support from, ECCAS should be investigated by GI WACAF but is beyond the scope of this report.

A protocol was signed by the ECCAS countries (in 2009): “*Protocole d’accord sur la gestion de la stratégie de sécurisation des intérêts vitaux en mer articulée autour du COPAX et favorisant une synergie avec la Commission du Golfe de Guinée (CGG) et la Communauté Économique des États de l’Afrique Occidentale (CEDEAO)*”, covering the marine area from the southern border of Angola to the northern border of Cameroon. The Protocol aims at developing and implementing a strategy to secure the vital interests of the countries in the Gulf of Guinea. The strategy is articulated in six pillars (Art. 3):

- “Information exchange and management
- Community surveillance of maritime space
- Harmonization of State action at sea
- Institutionalization of a Community tax
- Acquisition and maintenance of major equipment
- Institutionalization of a maritime conference in Central Africa.’

To implement this strategy, the CRESMAC structure is defined (Centre Régional de Sécurité Maritime de l’Afrique Centrale), attached to the General Secretary of the ECCAS, with the mission to ensure, at a strategic level, the control of the maritime areas of States of ECCAS in the Gulf of Guinea. The CRESMAC centre (<https://cresmac.org/contact/?lang=en>) is a multinational and multifunctional body composed of civil servants and representatives of military administrations of the Member States having competencies in relation to the marine environment and security. But the Centre was not set-up immediately.

In 2013 at the Yaoundé summit, the 22 Member States of the Economic Community of Central African States (ECCAS), the Economic Community of West African States (ECOWAS) and the Gulf of Guinea Commission (CGG), recognizing the increasing problems in the marine areas (piracy, illegal traffic, illegal fishing etc.) decided to initiate a process (Yaoundé process) to increase the maritime security in the area (review of regulations, patrol boats, detection equipment, trained personnel etc.), which lead to the creating of the CRESMAC structure.

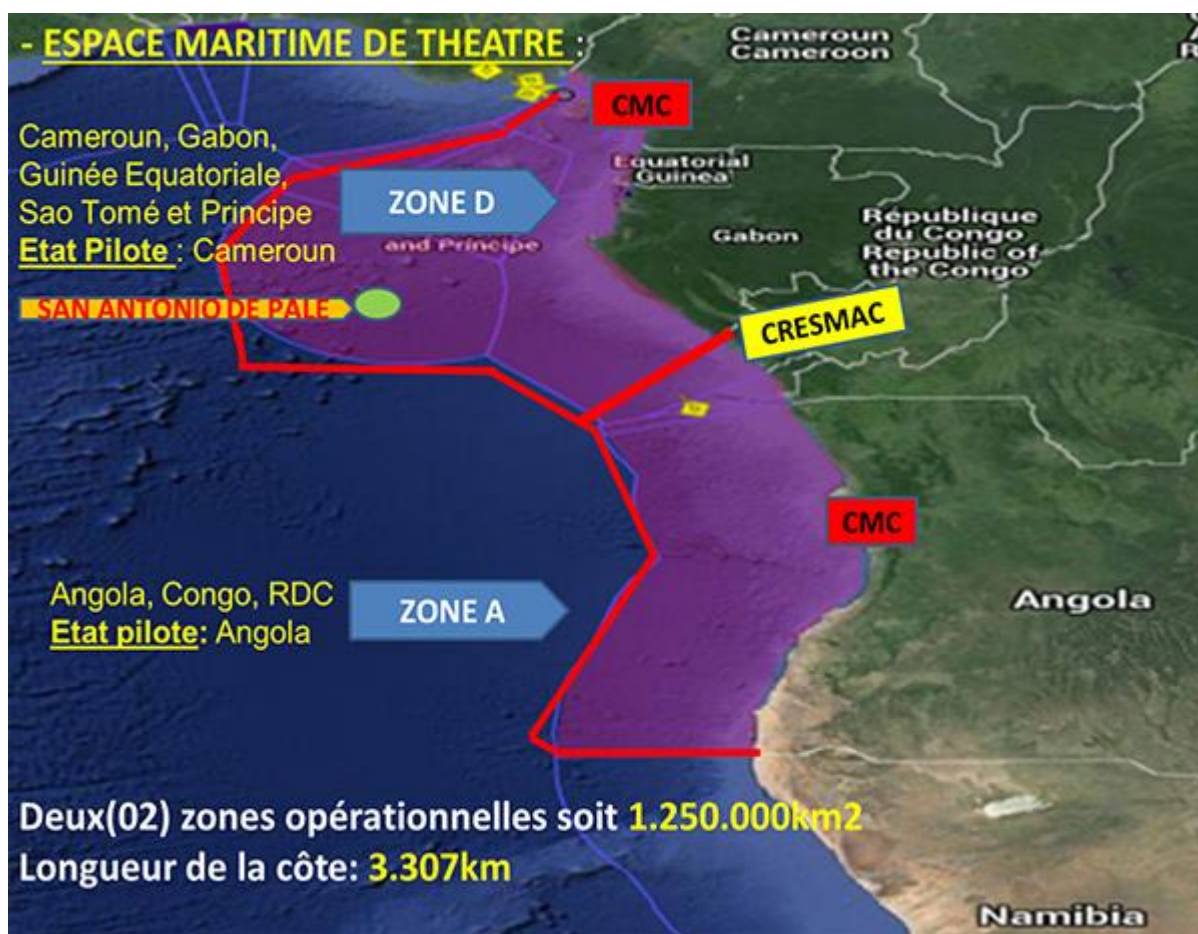
In 2014, the CRESMAC centre was opened in Pointe-Noire (Congo), with staff, with the following missions:

- “securing of marine routes;
- fight against:
 - illegal immigration;
 - drug trafficking;

- the fraudulent circulation of small-calibre arms;
- piracy and the taking of hostages at sea;
- marine pollution;
- the ships under standard;
- and any other task necessary for the implementation of the strategy.”

The maritime area of ECCAS States extends over 1.250.000 km². It is divided into two (2) areas:

- Zone A includes: Angola, Congo and DRC
- Zone D including: Cameroon, Gabon, Sao Tome And Principe and Equatorial Guinea



The CRESMAC has links with the Guinea Gulf Commission (<https://cggrps.com/>).

Today, the CRESMAC appears to be an operational entity, part of a global strategy supported by the countries through the regional organisation ECCAS. Although its mandate focuses primarily on security and safety at sea, “marine pollution” is mentioned. The actual existence and possible status of implementation of operational centres in Angola and Cameroon are unknown.

Consequently, the CRESMAC could be a part of the project with different possible contributions:

- Preparedness. Act as a secretariat of the Agreement A-C-DRC, assist to maintain the list of equipment and emergency contacts up-to-date;
- Preparedness. Use the CRESMAC website to disseminate the documents of the Agreement A-C-DRC and operational information (e.g. list of equipment and emergency contacts) in a private secured section;
- Preparedness. Facilitate and participate to alert & notification, tabletop and large-scale exercises;
- Response at-sea. Facilitate the dissemination of:
 - notification information between countries;
 - operational & situational information between countries during the response;
- Response at-sea. Consider further involvement in the operations at sea (e.g. to facilitate coordination).

The participation/integration of the CRESMAC in this project should be investigated by GI WACAF but is beyond the scope of this report.

3.2.4. Other (sub-)regional program

Other sub-regional instruments and organisation exist in the project area.

The **Benguela Current Commission** (and the associated Benguela Current Convention) includes South Africa, Namibia and Angola. It plays an active role in the region.

<https://www.benguelacc.org/index.php/en/>

The objective of the convention is to “to promote a coordinated regional approach to the long-term conservation, protection, rehabilitation, enhancement and sustainable use of the Benguela Current Large Marine Ecosystem, to provide economic, environmental and social benefits.” (Art. 2 Objective). More specifically, the parties shall “take all possible steps to prevent, abate and minimise pollution and take the necessary measures to protect the marine ecosystem against any adverse impacts;” (Art. 3 (a)).

Contacts with the Benguela Commission and enquiries of their possible actual involvement in similar projects could be carried out by GI WACAF but is beyond the scope of this report.

3.2.5. Main findings

Overall, instruments exist at the regional level, in the framework of the Abidjan Convention, and other mechanisms (CRESMAC). The Abidjan Convention and instruments provide a comprehensive framework and must be considered for the project, particularly the Emergency Protocol.

Some regional (WACAF) and sub-regional (GCLME) contingency plans were developed; but they were never enforced, are not specific enough for an operational use at a tri-lateral level and need to be completed (e.g. role of the O&G industry). These are however necessary for the agreement to go forward.

A Regional Centre was designated for oil spill preparedness and cooperation (NOSDRA centre in Nigeria), but does not appear to have a real regional (or sub-regional) reach and capacity.

Other regional instruments, mechanism and resources (centres) exist, that can be considered for this project.

3.3. National situations

Items of the current national situation for spill response preparedness in the three countries are provided below, based mainly on the country profiles, answers from the Questionnaire “Country profile” and available NCPs. Items are organised accordingly to the key items to consider for the Agreement A-C-DRC:

- Reference Nation Plan document;
- Scope & coverage;
- Alert & notification;
- National competent authorities’ details;
- Outline of organisation;
- Response policies;
- National oil spill management and response capabilities;
- Transboundary arrangements;
- O&G industry in country.

Note. The functionality of the NCPs and the accessibility and availability of response resources in case of a spill cannot be evaluated based on these documents and is beyond the scope of this report and project.

3.3.1. Republic of Congo

Reference document: Congo: « Plan national d’intervention d’urgence en cas de pollution par les hydrocarbures (PNIU), révisé 2009 », mise à jour suivant les recommandations des ateliers de 2006, 2007 et 2009 »⁹

- Version from the GI WACAF website (retrieved April 2021)

Questionnaire “Country Profile” – **not received** (03/05/2021)

Scope & coverage

⁹ National Oil Pollution Emergency Response Plan (PNIU), revised 2009", updated following the recommendations of the 2006, 2007 and 2009 workshops

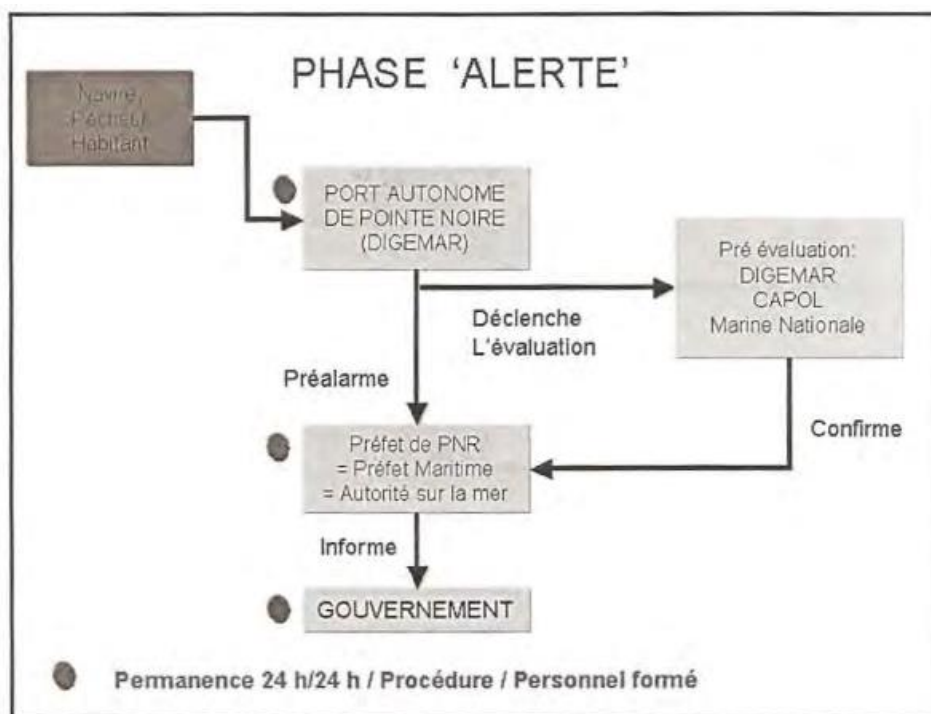
The “Plan National d’Intervention d’Urgence PNIU” applies to oil spills occurring at sea and in coastal waters. It was developed in the Framework of the Abidjan Convention by a Government-Industry working group.

- Management of spills inland is not included.
- H.N.S. are not included.

Alert & notification

The figure below (from the PNIU) outlines the alert process in country. The unique alert focal point, operational 24h/7days, identified is the “Capitainerie of the Port Autonome de Pointe-Noire”, which forwards the alert to the DIGEMAR, who informs the Préfet of Pointe-Noire, in charge of the spill evaluation and initial response.

The PNIU is activated by the CNI (see figure below).



Extract from “PNIU”

National competent authorities' details

Comité National d’Intervention (CNI or “National Intervention Committee”), led by the Prime Minister and integrating representatives of all involved ministries:

- Supervises and coordinates the preparedness and the implementation of the PNIU.
- Ensures the overall national supervision of the emergency management when the PNIU is activated.

État-Major de Commandement (EMC or “National Incident Management Team”),

- Lead by the Préfet of Pointe-Noire, assisted by the DIGEMAR and various sections (“cellules”), and placed under the authority of the CNI.
- Ensures the coordination of the response operations at sea and onshore; and mobilises the required means.

Association des Opérateurs Pétroliers du Congo (A.O.P.C. or “association of oil operators of Congo”), provides assistance as needed.

Outline of organisation

- Extracted from the PNIU (section “Organigramme des réseaux de responsabilités et de commandement”).

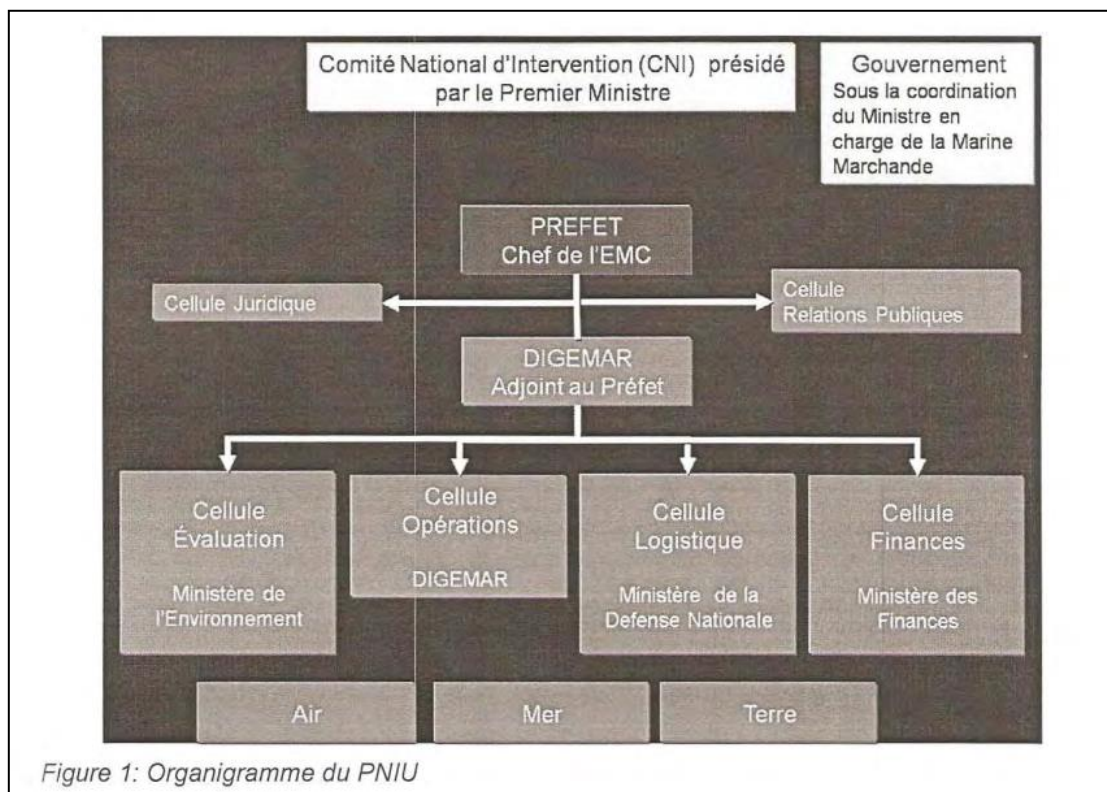


Figure 1: Organigramme du PNIU

Extract from “PNIU of the Republic of Congo”

Response policies

- Dispersant. No policy in the PNIU.
- In-Situ Burning. Not mentioned in the PNIU.
- Other cleaning products (marine/ terrestrial) and other techniques. Not mentioned in the PNIU.
- Waste management. Not mentioned in the PNIU.

National oil spill management and response capabilities

- The actual capabilities of the authorities to coordinate the response to large spills is unclear.
- Most trained personnel as well as monitoring and response equipment is held or contracted by the O&G industry, as well as vessels and aircrafts to support at-sea operations.
- Authorities and Armed Forces may have some non-specialized resources that could support shore and inland operations (storage, land transport, work forces etc.).
- The PNIU provides some list of emergency contacts, but outdated. There are no lists of equipment or other resources.
- There are no arrangements in the PNIU for the authorities to access resources from the O&G industry.

Transboundary arrangements

- There are no provisions in the PNIU about transboundary events.

O&G industry in country

- Total EP CONGO, SNPC, ENI CONGO, PERENCO, CHEVRON

3.3.2. Democratic Republic of Congo

Reference Nation Plan document: DRC: « Plan National d’Urgence contre la Pollution Marine par Hydrocarbures et Substance Nocives et Potentiellement Dangereuses (SNPD) – Plan POLMARC » Version provisoire 25/05/2010 »¹⁰

- **Draft incomplete version** from the GI WACAF website (retrieved in April 2021, draft developed by OTRA in 2010 in a very limited timeframe after a national workshop in Kinshasa in 2010),

An updated version of the Plan POLMARC is mentioned in the questionnaire but not available to OTRA “Plan POLMARC » Updated on 25th July 2019. Approved by ministerial decree (reference not provided), but not tested.

Questionnaire “Country Profile” – received on 13/05/2021

Scope & coverage

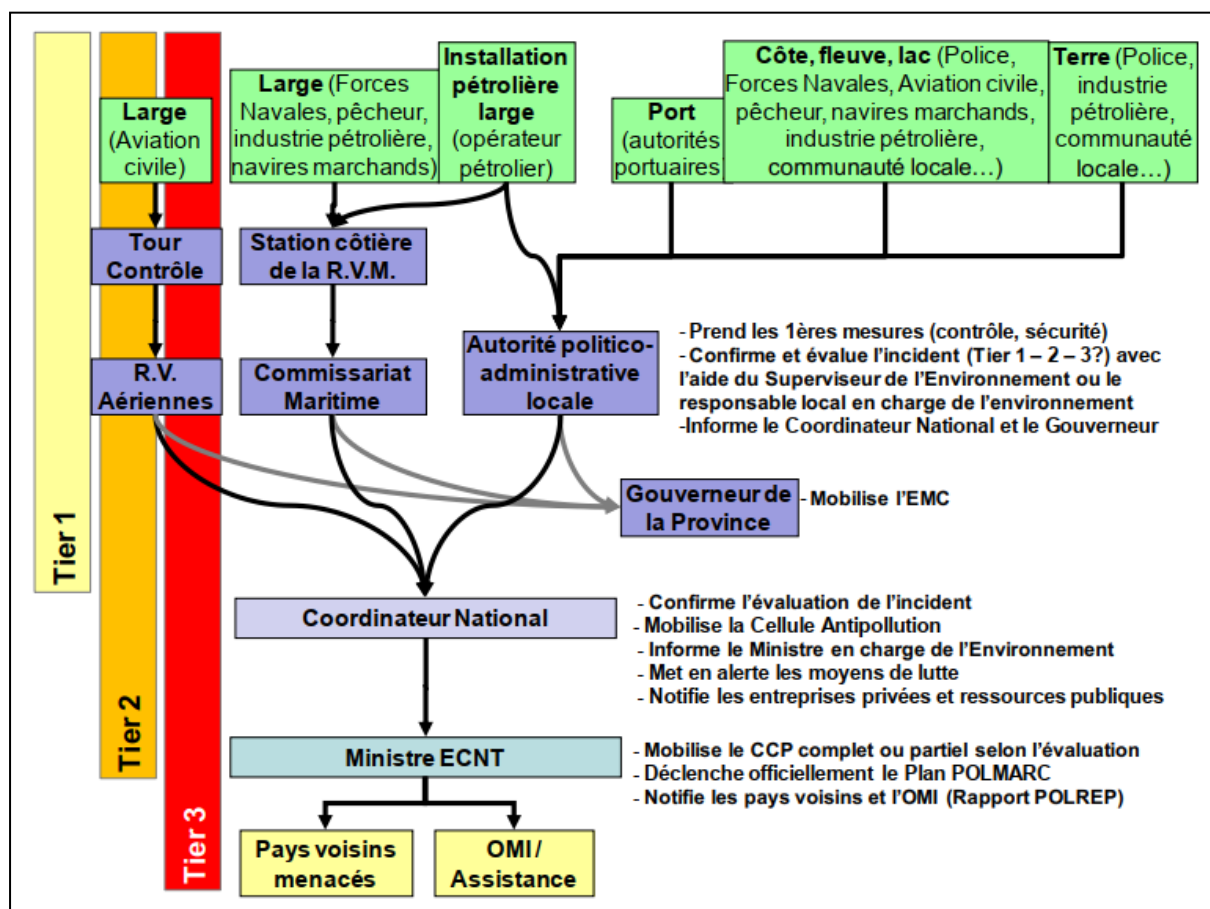
The POLMARC Plan applies to:

¹⁰ National Emergency Plan against Marine Pollution by Hydrocarbons and Harmful and Potentially Dangerous Substance (HNS) - POLMARC Plan "Provisional version 25/05/2010

- Any spills of hydrocarbons products (persistent or not) or of Hazardous & Noxious Substances HNS, in the EEZ, in territorial and coastal waters, on the shores, rivers and lakes.
- Any spill of hydrocarbons or HNS inland in areas close to facilities, installations, storage and any other areas.

Alert & notification

The Plan POLMARC provides a comprehensive flowchart for the alert & notification of the authorities (local, province and national) whatever the source of the spill.



Extract from "PLAN OPERATIONNEL", section 1 "Alerte, notification, évaluation initiale et déclenchement du Plan POLMARC"

The national coordinator must evaluate the situation and confirm the magnitude of the spill.

The Ministry in Charge of Environment confirms the activation of the Plan POLMARC and is responsible for the notification of the countries at risk as soon as possible (using the POLREP notification form, with adaptation for shore/ land spill as needed).

However, the Questionnaire "Country Profile" lists only one direct contact for alert (which is not in line with the POLMARC Plan and does not cover spills from vessels for example):

- BOPE BOPE LAPWONG Jean Marie, Coordinateur du CCPM

National competent authorities' details

Extract from "INTRODUCTION", section 2 Autorités nationales compétentes » :

"NATIONAL COMPETENT AUTHORITIES FOR RESPONSE ¹¹

- *The Ministry of Environment is the **National Competent Authority** for the response to spills of oil and/or HNS. It is in charge of activating the POLMARC Plan, in case of marine accidental pollution in RDC. It has authority for requesting or agreeing to provide international assistance in case of major incidents.*
- *The department of Maritime Affairs is the National Operational Contact, and must be notified by all (for spills at sea),*
- *The National Coordinator is (director of the CICG) is the National Operational Authority in charge of coordinating response operations*

NATIONAL COMPETENT AUTHORITIES FOR PREPAREDNESS ¹²

- *The Minister in charge of the Environment is responsible for preparing for the response to accidental pollution by hydrocarbons or HNS, including the development of the Plan and its implementation with all the Ministries concerned."*

The exact responsibilities of the different ministries and administrations are still to clarified.

Outline of organisation

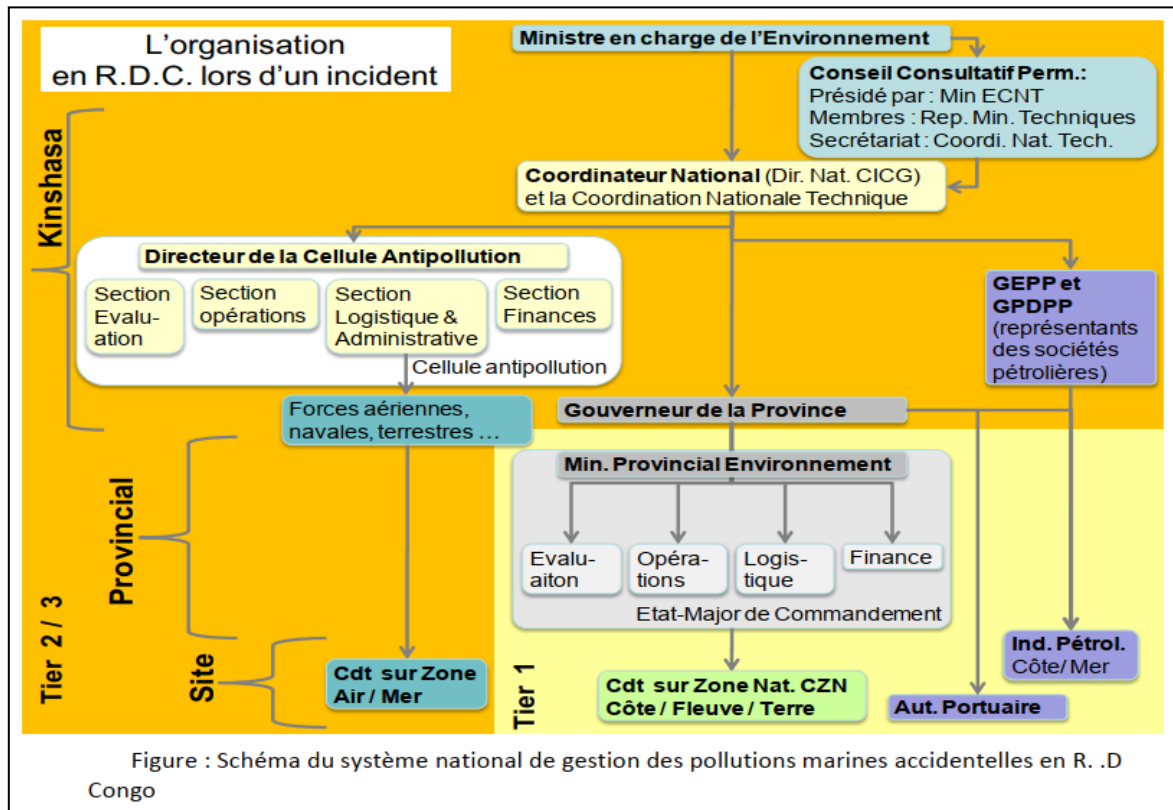
An overall national organisation is proposed in the Plan POLMARC.

¹¹ AUTORITES NATIONALES COMPETENTES POUR LA LUTTE

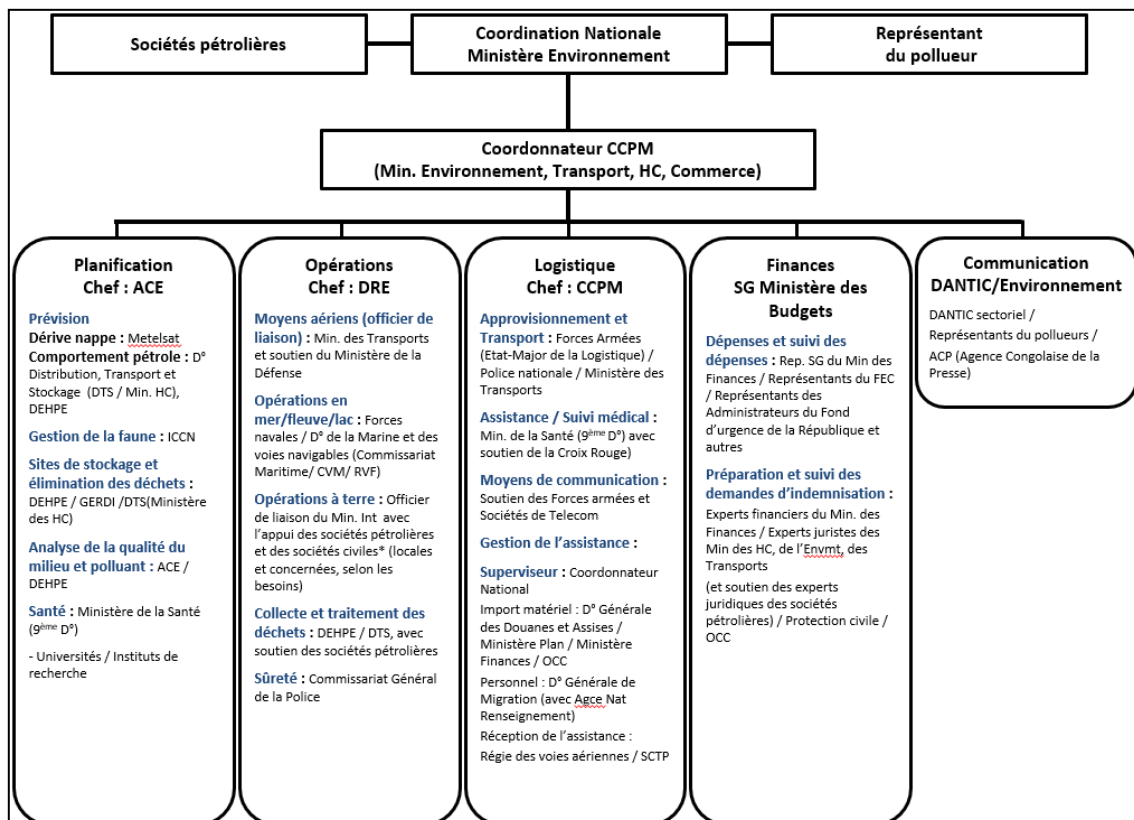
- Le Ministre chargé de l'Environnement est l'autorité Gouvernementale Nationale Compétente pour la lutte contre les pollutions marines accidentelles par hydrocarbures et SNPD. Il est chargé du déclenchement et de la mise en œuvre du Plan POLMARC en cas de situation critique provoquée par une pollution marine accidentelle en R. D. Congo (ou risque de pollution).
- La Direction des Affaires Maritimes est le point de contact opérationnel.
- Le Coordinateur National (directeur de la CICG) est l'Autorité Opérationnelle Nationale en charge de la coordination des opérations de lutte.
- Les tours de contrôle (R. V. Aériennes), Station Côtière (R. V. Maritimes) et autorités politico-administratives locales sont les points focaux nationaux en charge de recevoir toutes les alertes concernant une pollution accidentelle par hydrocarbures ou SNPD, et de notifier à l'Autorité Opérationnelle Nationale.
- Le Ministre chargé de l'Environnement est l'organisation nationale ayant autorité à requérir l'aide de l'assistance internationale au nom de la R.D. Congo en cas de pollution accidentelle majeure ou à fournir l'assistance à un pays tiers.

¹² AUTORITES NATIONALES COMPETENTES POUR LA PREPARATION A LA LUTTE

Le Ministre chargé de l'Environnement est chargé de la préparation à la lutte contre les pollutions accidentelles par hydrocarbures ou SNPD, c'est-à-dire entre-autre le développement du Plan et sa mise en place avec tous les Ministères concernés.



The organisation of the “Cellule Nationale Antipollution” (equivalent to the National Incident Management Team) is as follow.



The roles and responsibilities of each unit and the organisation of the provincial organisations (“Etat-major de Commandement provincial”) are described in the Plan POLMARC.

Response policies

- Dispersant
- A draft policy is proposed, with various items to be completed. It includes practical recommendations for dispersant spraying operations, limits for dispersant spraying (based on water depth, distance to the coast and presence of sensitive areas), list of approved products (based on products approved in France, U.K. and U.S.A.), responsibilities to authorize and items for decision-making.
- In-Situ Burning. Mentioned as possible.
- Other cleaning products (marine/ terrestrial) and other techniques. Mentioned as possible with approval.
- Waste management. Some recommendations are provided.

The questionnaire mentions “*Carte de sensibilité à actualiser, plan de réponse en milieu littoral, plan de sauvegarde de la faune souillée*”. ¹³

National oil spill management and response capabilities

- The actual capabilities of the authorities to coordinate the response to large spills are unclear.
- The Plan POLMARC mentions operators have to hold response resources, without details.
- Most trained personnel as well as monitoring and response equipment is held or contracted by the O&G industry, as well as vessels and aircrafts to support at-sea operations.
- Authorities and Armed Forces may have some non-specialized resources that could support shore and inland operations (storage, land transport, work forces etc.).
- The Plan POLMARC does not provide an overview of the response capabilities available in country and does not detail the available type & level of resources (type and amount of equipment and logistical support) or list of competent personnel.
- There are no arrangements for the authorities to access resources from the O&G industry.

Transboundary arrangements

¹³ Coastal Sensitivity maps are available (developed as part of a GIWACAF activity in 2010). They might have been updated. The Onshore Response plan and the Oiled Wildlife Response plan are not known at time of writing.

The Plan POLMARC mentions that its provisions also apply in case of transboundary event (spillage coming into or going out of DRC territory).

A specific section of the Plan POLMARC provides some (incomplete) basic items for the mobilisation of international assistance. Coordination and communication mechanisms with close countries are mentioned, with a reference to the Emergency Protocol of the Abidjan Convention, but not detailed.

O&G industry in country

- PERENCO, SOCIR, TOTAL, ENGEN, COHYDRO, LEREXCOM PETROLIUM, SEP Congo, COBIL S.A.
- There is no known O&G industry, or Government-Industry organisations for spill in country.

3.3.3. Republic of Angola

Reference document: Angola: « National Marine Oil Spill Contingency Plan – Republic of Angola »

- Version translated in English from the original NOSCP of Angola, approved in 2008, as declared in the “Diaro da Republica 22 Déc. 2008”. It was developed by a Government-Industry working group.
- Made available to OTRA during previous projects.

Questionnaire “Country Profile” – received (17/04/2021)

Scope & coverage

- The National Marine Oil Spill Contingency Plan covers the Continental Shelf, the Exclusive Economic Zone (EEZ) of Angola, the territorial waters and the entire coastline. Any Oil spill occurring less than 12 nautical miles from the coast is under the jurisdiction of the Provincial Oil Spill Contingency Plans.
- Management of spills inland is not included.
- H.N.S. are not included.

Alert & notification in country and of close countries

SECTION V “Communication Plan” of the NOSCP provides instructions for the notification of the authorities depending on the origin of the spill. Spills inland are not dealt with.

Spills which occur or are sighted in the oil installations or surroundings	→Ministry of Petroleum	→National Incident Commander	→ National Communications and Notification centre	→ National Oil Spill Response Committee
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Spills aboard ships (commercial or otherwise)	→ Nearest port authorities	→ National Communications and Notification Centre	→ National Incident Commander	
Spills detected by aerial means	(→ Airport)			
Spills inside a port jurisdiction area	→ Port authorities			

There is no operational information about the National Communications and Notification centre (in the NOSCP), and no information is provided in the country profiles or questionnaires about the real existence of this centre.

And the Questionnaire “Country Profile” lists two direct personal contacts (which is not in line with the NOSCP and does not cover spills from vessels for example): MIREMPET - Manuel Xavier, MINAMB (Ministry in charge of Environment) - Madalena Fernando.

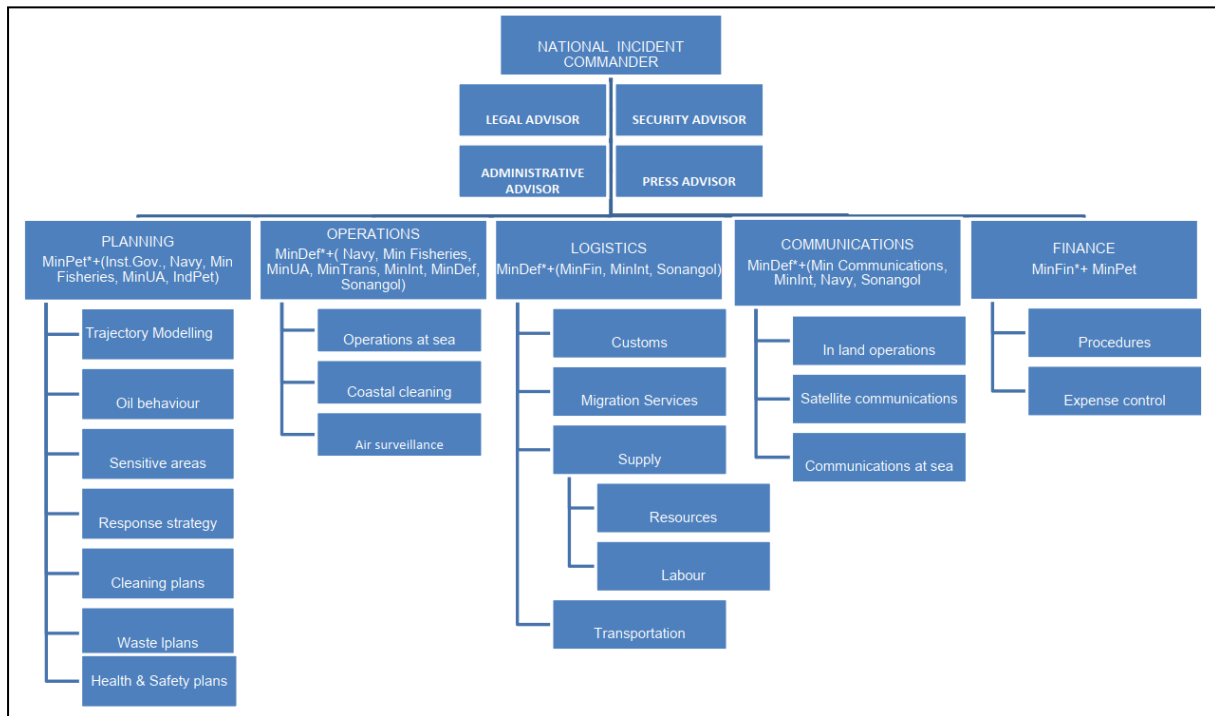
National competent authorities' details

The NOSCP (2008) lists the following authorities:

National Authority responsible for the prevention of oil spill incidents	- Ministry in charge of Petroleum (name: MIREMPET)
National Incident Commander + Incident management team	- appointed by the Ministry of Petroleum and of National Defence - Coordination of the operations execution during the crisis.
National Centre for Oil Spill Response	- Under the jurisdiction of the Ministry of Defence, where a national command structure for oil spill response, duly trained and dedicated, will be responsible for the operations
National Centre for Notification of Oil Spills	- Under the auspices of the Ministry of Defence
National Oil Spill Response Commission (or National Committee for Oil Spill Response – CNLDP)	- Composition and coordination established by Article 14 of Law n.28/03, of November 7th, the Civil Protection Act. - Overall responsibility for preparedness in country. - During emergency, high level responsibility (international assistance, national coordination with provinces, compensation funds etc.).
Technical Committee for preparedness	- Supporting the CNLDP. - Coordinated by the Ministry of Urbanism and Environment, integrated by representatives of the Ministry of Petroleum, Ministry of National Defence, Interior Ministry, Transports Ministry, Ministry of Fisheries, Ministry of Finance, and the National Oil Industry

Outline of organisation

Extract from NOSCP, Ch. II Operational Plan.



Operations at-sea are commanded by the Navy, and by the head of Provinces on land.

Response policies

- Dispersant
 - Use of dispersants without prior authorization is allowed in areas where the water depth is above 20 meters. The use of dispersants in waters less than 20 meters of depth is subject to the approval of the National Oil Spill Response Committee.
 - A list of dispersant products (appended to the NOSCP) is used as the base list of approved products. Authorization for other products can be obtained from the Ministries in charge of Petroleum and in charge of Environment.
 - A GI WACAF workshop was organized in Nov. 2011 and a draft National Dispersant Use Policy developed after the workshop in collaboration with the O&G industry in country. The status of the document is unknown today.
- In-Situ Burning. Possible but not recommended.
- Other cleaning products (marine/ terrestrial) and other techniques. Possible but subject to authorization from the National Spill Response Committee.
- Waste management. No precise requirements in the NOSCP.

National oil spill management and response capabilities & resources

- The actual capabilities of the authorities to coordinate the response to large spills are unclear.
- The NOSCP reminds operators must hold resources to respond to spills.

- Most trained personnel as well as monitoring and response equipment is held or contracted by the O&G industry, as well as vessels and aircrafts to support at-sea operations.
- Authorities and Armed Forces have non-specialized resources that could be engaged in shore and inland operations (storage areas, land transport, work forces, logistical support for operations in remote areas etc.).
- There is no overview of the response capabilities available in country. The inventory of type and amount of equipment and logistical support is outdated. There is no list of competent personnel.
- There is no clear mechanisms or arrangement (in the NCP) for the authorities to access resources from the O&G industry (apart from the requisition).

Transboundary arrangements

The NOSCP mentions the possibility (for Tier 3 spills) to request assistance from neighbouring countries or from the IMO.

O&G industry in country

The following companies operate in Angola: TOTAL, BP, EXXONMOBIL, ENI, CHEVORN, EQUINOR, SONANGOL P&P, PLUSPETROL, SOMOIL
ACEPA is the association of oil companies for HSE issues, including oil spill response preparedness.

3.3.4. Main findings

NCPs Scope & coverage

	Marine environment	Terrestrial lands and inland water bodies
Congo	Oil spills occurring at sea and in coastal waters. <i>Note. Spills of H.N.S. are <u>not</u> included.</i>	<i>Note. Oil or H.N.S. spills inland are <u>not</u> included.</i>
DRC	Spills of hydrocarbons products (persistent or not) or of Hazardous & Noxious Substances HNS, in the EEZ, in territorial and coastal waters, on the shores, rivers and lakes.	Spills of hydrocarbons or HNS inland in areas close to facilities, installations, storage and any other areas.
Angola	Oil spills in continental Shelf, Exclusive Economic Zone (EEZ) of Angola, territorial waters and entire coastline. <i>Note. Spills of H.N.S. are <u>not</u> included.</i>	<i>Note. Oil or H.N.S. spills inland are <u>not</u> included.</i>

Only the (draft) NCP of DRC includes spills of H.N.S. and spill incidents inland.

Angola NOSCP considers oil spills in “rivers and lakes”.

Congo

Congo has ratified OPRC 90, OPRC-HNS 2000, CLC 92, Fund 92, Bunker 2001. The National Plan is officially approved and defines the national competent authorities, a simple alert scheme, an organisation; and provides some response instructions and items for the relations with the O&HG industry in country.

However, the capabilities and practical arrangements for the National Plan are not known. The plan does not provide mechanisms for transboundary management or operations. There are no response policies defined in the Plan (dispersant or other).

DRC

DRC is pending the ratification of OPRC 90 and many other IMO conventions. The key competent authorities, responsibilities (in reference to OPRC 90), policies, key responsibilities, and the national organisations critical for the Agreement A-C-DRC, are not officially nominated by the respective countries.

The Plan POLMARC is a draft. It does provide some organisation, response policies and instructions but should be consolidated and approved. Latest version is unknown.

Angola

Angola has ratified OPRC 90, CLC 92, Fund 92, HNS 96. The NOSCP is officially approved. The document appears to be currently under review (Communication of focal points, 2021). New provisions and review status are unknown and may affect significantly some options for the Agreement A-C-DRC.

The status of the “National Communications and Notification centre” should be confirmed. It is unclear how spills from passing ships are notified to the Authorities. The spill evaluation process in-country (mechanisms and responsibilities) and the notification process for the close countries are unclear.

Some organisations referred to in the National Contingency Plan may be outdated as ministries and entities may have changed since 2008.

The status of the National Dispersant Use Policy is unclear (policy appears to be under development).

Overall

An official NCP is in place officially in Congo and Angola (although both appear outdated or under review), but not in DRC. All NCPs cover at least oil spills at sea. But the scope and coverage of the NCPs differ (sea/ land, oil/ HNS).

The NCPs lack various features relevant for the present project: e.g.

- Regional alert procedure;
- Interfaces of national incident management organisation between countries;
- Response policies (e.g. approved dispersant products).

The real practical arrangements in place and response capabilities of each country are unknown.

4. REVIEW OF OTHER (SUB-)REGIONAL AGREEMENTS

This section proposes an overview of the main (sub-)regional agreements in the world related to oil spill preparedness, cooperation and assistance for accidental releases of pollutants (convention, protocols, agreements with their related contingency plans or other practical arrangements). The overview is based mainly on the information provided by the GI WACAF project, other available to OTRA (from past projects) and freely available on dedicated websites. Nearly all instruments discussed here relate to incidents in the marine environment, as these have been developed since a long time. Some instruments now address inland incidents but are not as widely implemented (see UNECE Conventions, above in “Other regional or international instruments”).

Four levels of documents are identified:

- **Regional Conventions** (related to but not specific to oil / HNS spill), with their characteristics and management mechanisms;
- **Spill-specific agreements** for oil/ HNS spill (e.g. protocols or agreements), their legal framework, provisions and management mechanisms;
- **Bi- or tri-lateral spill-specific agreements;**
- **Spill contingency plans.**

The objective is not to carry out a full inventory of all existing agreements relating directly or indirectly to preparedness and response between countries, but to have a reasonably complete overview of the existing instruments in the world, compare them to those existing in the WACAF region, and identify any other items that could be relevant and useful for the project.

An inventory table is available (in an EXCEL file, tab “INVENTORY”, embedded in the Appendices: “Inventory of existing (sub-)regional agreements”, p.110) with the following information (when available): ¹⁴

- Name of Convention, protocols, agreements, plans etc.;
- Parties;
- Objective, scope and area;
- Key management mechanisms;
- Funding.

The following terminology is used:

- **Agreement.** Instrument by which states and other subjects of international law, such as certain international organizations, regulate matters of concern to them.

¹⁴ Protocols and other agreements not related to spills are mentioned but not detailed (e.g. land-based pollution, mangrove management etc.).

- **Treaty.** “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” (Source: Vienna Convention on the Law of Treaties). A treaty serves three main road functions: the development and codification of international law, the establishment of new levels of cooperation and integration between states, and the resolution of actual and potential international conflict. For an agreement to be a treaty, it must:
 - be a binding agreement, which means that the contracting parties intended to create legal rights and duties.
 - be concluded by states or international organizations with treaty-making powers.
 - be governed by international law.
 - be in writing.
- **Convention.** Type of treaty, usually negotiated under the auspices of an international or regional organisation, involving many states and usually the result of a consensus on the matter reached by the states during international meetings.
- **Protocol.** Instrument that may have five different functions:
 - Protocol of Signature, or basis for a convention or treaty.
 - Optional Protocol.
 - Protocol based on a framework agreement.
 - Protocol as a supplementary treaty.
 - Protocol to amend an existing agreement.
- **Plan.** Operational document (practical provisions and procedures), usually developed in the framework of a Convention &/ or Protocol but may be a standalone arrangement between two or more parties.
- **Less formal arrangements.** There are also single agreements that lack the formality of a treaty called agreed minute, memorandum of agreement/ understanding, or modus vivendi. Even less formal agreements include “exchange of notes” or “exchange of letters”.

4.1. Relevant provisions of the Regional Conventions related to Marine Environment compared to the Abidjan Convention

Many agreements have been developed within the framework of the UNEP Regional Seas Programme and their associated Regional Conventions, which contains some high-level provisions about spill response, cooperation, and assistance.

The UNEP Regional Seas Programme & associated Conventions are presented in the Appendices. Key findings on the other Conventions in comparison to the Abidjan Convention and Emergency Protocol, as well as fund mechanisms, are also discussed in the Appendices:

☰ “Management of conventions, associated instruments and activities”, p. 100

☰ “General funding”, p. 101

Most international Conventions for “co-operation on the protection of the marine environment from pollution”, from the UNEP Regional Seas Programme, have similar provisions as the Abidjan Convention (already discussed in ☰ “Abidjan Convention & associated instruments”, p.22), with some regional adaptations e.g. specific provision for nuclear waste in the Pacific.

Two conventions add some items, but without major changes:

- Jeddah Convention Art. 12 “Co-operation in dealing with pollution emergencies” adds that “*The Contracting Parties shall coordinate their national plans for combating pollution in the marine environment by oil and other harmful substances in a manner that facilitates full cooperation in dealing with pollution emergencies.*”
- Lima Convention (Art. 6) and Antigua Convention detail some provisions for assistance, but which can be found in dedicated Protocols in other parts of the world (discussed hereunder).

Other conventions are comparable to the Abidjan Convention (Nairobi, Kuwait, Barcelona, OSPAR, Tehran, Nouméa, etc.).

4.2. Relevant provisions of worldwide maritime spill response Agreements vs. Abidjan Instruments

Under the umbrella of the UNEP Conventions, or other agreements, or as standalone, various agreements specific to spill of oil and HNS have been developed at regional level, or as bi- or tri-partite agreements.


These agreements are presented, and their provisions and characteristics discussed and compared to the Emergency Protocol of the Abidjan Convention, in the appendices.

☰ “Types of agreements, Legal framework & Management”, p. 101

☰ “Management of agreements & activities – Regional Centres”, p. 103

This section presents some provisions found in the instruments listed above not present in the Abidjan Convention or Emergency Protocol (in force) or Offshore O&G Protocol (not in force) and that could be relevant for the project.

► Some instruments detail the **procedure to provide assistance**, information to exchange, method to evaluate the cost etc. (Supplementary Protocol to the Lima Convention Art. I).

► Some instruments specify the **responsibilities of UNEP and IMO** or the Secretariat of the Convention (when implemented) to assist countries to set-up and facilitate some activities, e.g. the Nairobi Emergency Protocol ( “Nairobi Emergency Protocol”, p. 104)

► Some Protocols include the **set-up of a regional centre** dedicated to preparedness for marine emergency, pollution control and facilitation of mutual assistance. Some centres are functional today:

- Marine Emergency Mutual Aid Centre, EMARSGA (Emergency Protocol of the Jeddah Convention)
- Marine Emergency Mutual Aid Centre, MEMAC (Emergency Protocol of the Kuwait Convention).
- REMPEC (Emergency Protocol to the Barcelona Convention)
- Others in section hereabove.

The objectives of Centre are usually to:

- Strengthen the capabilities of the states and facilitate their cooperation;
- Assist the states (for activities) and facilitate the exchange of information;
- Facilitating operations in case of spill.

Other centres are not yet set-up (e.g. in the framework of the Lisbon Agreement). A regional centre was designated in Nigeria for the WACAF region (NOSDRA centre in Nigeria) but does not seem yet to be fully operational.

► **Reimbursements of costs** is considered in various Emergency Protocols or Agreements (e.g. of the Barcelona Convention Art. 13, Bonn Agreement Art. 9, Copenhagen Agreement Art. 10, Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic Art. 10, Nouméa Convention Art. 8). Principles are usually simple: each party bears their own costs in case of joint operations, and when providing assistance, the requesting party reimburses the providing party (except “if agreed otherwise in bilateral or multilateral agreements”). Usually, the costs are “calculated according to the law and practice in the assisting country”.

Barcelona Convention Art. 13

Article 13. REIMBURSEMENT OF COSTS OF ASSISTANCE 1. Unless an agreement concerning the financial arrangements governing actions of Parties to deal with pollution incidents has been concluded on a bilateral or multilateral basis prior to the pollution incident, Parties shall bear the costs of their respective action in dealing with pollution in accordance with paragraph 2.

2. (a) If the action was taken by one Party at the express request of another Party, the requesting Party shall reimburse to the assisting Party the costs of its action. If the request is cancelled, the requesting Party shall bear the costs already incurred or committed by the assisting Party;

(b) if the action was taken by a Party on its own initiative, that Party shall bear the cost of its action;

(c) the principles laid down in subparagraphs (a) and (b) above shall apply unless the Parties concerned otherwise agree in any individual case.

3. Unless otherwise agreed, the costs of the action taken by a Party at the request of another Party shall be fairly calculated according to the law and current practice of the assisting Party concerning the reimbursement of such costs.

4. The Party requesting assistance and the assisting Party shall, where appropriate, cooperate in concluding any action in response to a compensation claim. To that end, they shall give due consideration to existing legal regimes. Where the action thus concluded does not permit full compensation for expenses incurred in the assistance operation, the Party requesting assistance may ask the assisting Party to waive reimbursement of the expenses exceeding the sums compensated or to reduce the costs which have been calculated in accordance with paragraph 3. It may also request a postponement of the reimbursement of such costs. In considering such a request, assisting Parties shall give due consideration to the needs of developing countries.

5. The provisions of this Article shall not be interpreted as in any way prejudicing the rights of Parties to recover from third parties the costs of actions taken to deal with pollution incidents under other applicable provisions and rules of national and international law applicable to one or to the other Party involved in the assistance.

► Some agreements include provisions for bi- or multi-lateral agreements for the **surveillance** of maritime areas:

- **Monitoring** regularly and in case of spill (Emergency Protocol of the Barcelona Convention);
- **Regular aerial surveillance** to detect voluntary or accidental spillage (Bonn Agreement);
- **Common monitoring** in case of spill (Copenhagen Agreement Art. 3);
- **Monitoring** (Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic 2013, Protocol of the Lima Convention Art. V)

Some mechanisms also include procedures to identify or confirm the origin of the spillage, including sampling & finger-printing, and hindcast modelling to backtrack the origin of the spill.

Emergency Protocol of the Barcelona Convention

Article 5. MONITORING. The Parties shall develop and apply, either individually or through bilateral or multilateral cooperation, monitoring activities covering the Mediterranean Sea Area in order to prevent, detect and combat pollution, and to ensure compliance with the applicable international regulations.

► Some Agreements define **Areas of joint interest** (e.g. Lisbon Agreement Art. 9) or **Zones of joint interest** (Bonn Agreement Art. 6). Within these areas located on the maritime borders of two countries, evaluation of incidents or pollution (through aerial surveillance) may be joint between countries. And in some circumstances, the neighbouring Party may assume responsibility for the coordination of the response actions.

Lisbon Agreement Art. 9

Article 9. 1. The Parties may designate areas of joint interest.

2. If pollution occurs in an area of joint interest, the Party in whose area of responsibility the incident occurs shall not merely inform the neighbouring Party immediately as required by Article 8 (3) but shall also invite that Party to take part in the evaluation of the nature of the incident and to decide whether the incident must be regarded as being of sufficient gravity and magnitude to warrant joint action by both Parties in combating it.

3. Subject to the provisions of paragraph 4 of this Article, the responsibility for initiating such joint action shall lie with the Party in whose area of responsibility the incident occurs. This Party shall designate an authority and

instruct it to coordinate action; the said authority shall then assume responsibility for action, request any aid which may be needed and coordinate all available resources. The neighbouring Party shall provide such appropriate support as its resources permit and shall likewise appoint an authority for the liaison of action.

4. The neighbouring Party may assume responsibility for coordinating action subject to an agreement with the Party in whose area of responsibility the incident occurs where:

(a) the neighbouring Party is directly threatened by the incident; or

(b) the vessel or vessels in question flies or fly the flag of the neighbouring Party; or

(c) the greater part of the resources likely to be used in the operation to combat pollution belong to the neighbouring Party.

If this paragraph is invoked, the Party in whose area of responsibility of incident occurs shall give the Party assuming responsibility for the coordination of action all requisite assistance.

The DENGERNET Tri-partite Agreement (Denmark, Germany and Netherlands) even defines **Quick Response Zones**: maritime areas extending on each side of the maritime boundaries where “immediate actions must take place in maritime accidents and each Party has the right to start response actions immediately regardless in whose National Response Zone the pollution has occurred.”

► Most instruments address action at sea in case of emergency. A limited number of instruments specifically mention cooperation for **shoreline clean-up** (Copenhagen Ministerial Declaration 2001 Art. XIV).

► Only a limited number of instruments include provisions about **responsibilities and compensation in case of damage or injury caused by the rendering of assistance** (Art. 13 Copenhagen Agreement 1993: the “Party seeking help is responsible for damage caused by the assistance and rendered in accordance with this Agreement.”).

► The issue of **place of refuge** is also considered in some instruments (e.g. Emergency Protocols of the Barcelona Convention Art. 16, Copenhagen Ministerial Declaration 2001 Art. XII) as well as **emergency salvage, towing and lightering** (Copenhagen Ministerial Declaration 2001), etc.

Emergency Protocols of the Barcelona Convention Art. 16

Article 16. RECEPTION OF SHIPS IN DISTRESS IN PORTS AND PLACES OF REFUGE. The Parties shall define national, subregional or regional strategies concerning reception in places of refuge, including ports, of ships in distress presenting a threat to the marine environment. They shall cooperate to this end and inform the Regional Centre of the measures they have adopted.

► Specific **services, tools and manuals** have been developed in the framework of some conventions, and are maintained by the Centres e.g.:

- REMPEC:
 - manuals & guidelines (Oil Preparedness and Response, HNS Preparedness and Response, Cooperation and Mutual Assistance guidelines, Manuals POSOW),

- and tools (Maritime Integrated Support Information System on Transport of Chemical Substances MIDSIS-TROCS 4.0, Waste Management Decision Support Tool, Mediterranean Integrated Geographical Information System on Marine Pollution Risk Assessment and Response MEDGIS-MAR, Country Profiles...);
 - HELCOM: Manual on Co-operation in Combatting Marine Pollution, SeaTrackWeb, Automatic Identification System, Pollution Reporting System (POLREP), GIS; etc.
- ▶ A specific **program of exercises** may be defined in the agreement, or at least the commitment to organise regularly exercises (e.g. annual exercise in the DENGERNETH plan, joint training & exercises in the Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic 2013, similar in the Supplementary Protocol to the Lima Convention Art. III etc.).
- ▶ Regarding the **O&G industry**, Protocol concerning Marine Pollution resulting from Exploration and Exploitation of the Continental Shelf (e.g. of the Barcelona convention, of the Kuwait Convention) focus mainly on chronic pollution that may result from the O&G activities, and include some provisions for accidental pollution, assistance and transboundary pollution (but do not provide new provisions compared to the similar instrument in the WACAF area).
- ▶ Various Protocols are accompanied by specific **appendices**:
- Geographic limits of the area of the Agreement, and of the Area or Zones of joint interest (Bonn Agreement);
 - Definition of Competent national authorities, National 24-hour Operational Contact Points and Authorities Entitled to Request Assistance or to Decide to Render Assistance Requested (e.g. Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic 2013)
 - “Rules of procedure”, describing the management of the Agreement, specific responsibilities of parties and meetings (Bonn Agreement);
 - Financial management of the Agreement and activities (Bonn Agreement) etc.

4.3. Bi- or Tri-lateral spill-specific Agreements


Some bi- or tri-lateral agreements re-instate the provisions of the regional agreement and designate officially the national competent authorities, e.g. “Agreement Between the Government of the Republic of Latvia and the Government of the Republic of Estonia on Co-operation in the Combating of the Effects of Marine Pollution Incidents (2014)” in the framework of the Helsinki Convention, as well as several in the Mediterranean area.

Most bi- or tri-lateral agreements enforce specific operational procedures for cooperation and assistance and are discussed in the next section.

Various instruments, not available to OTRA, could not be reviewed for this study and may contain some relevant provisions for the current project¹⁵. This includes for example the RAMOGE agreement between France, Monaco and Italy, which includes the definition of Operational zones and of respective responsibilities for the response.

4.4. Spill Contingency Plans

Some agreements are accompanied by (sub-)regional or multi-lateral contingency plans, which have the essential objective of translating the provisions of the agreement into operational procedures, and set-up additional mechanisms if needed. The contingency plans identified during the review of the existing instruments are listed in the inventory table (see the Appendices: “Inventory of existing (sub-)regional agreements”, p.110).

In the framework of the UNEP Regional seas, the same template of (sub-)regional contingency plan (endorsed by IMO) has been used in most regions where such a plan is set-up: WACAF, Eastern Africa Region (also named Western Indian Ocean), ROPME, Black Sea, Pacific region etc. (typical summary of plan in  “WACAF Regional Oil Spill Contingency Plan content”, p.95).

Some regions have used a different approach e.g. Caribbean island OPRC Plan, RAC-REMPEITC Caribe 2012 (more focused on the provision of assistance and the recovery of

¹⁵ - Agreement between the Government of the Republic of Estonia and the Government of the Republic of Finland on cooperation in combating pollution in the marine environment (1993) + Memorandum with Finland concerning the patrol flights coordinated planning and executing; signed by heads of Finnish and Estonian Border Guard (2009)
- Agreement between the Government of the Republic of Finland and the Government of the Union of Soviet Socialist Republics on co-operation in combating pollution of the Baltic Sea in accidents involving oil and other harmful substances (1989) + Joint Finnish - Russian contingency plan for combatting pollution of the Baltic Sea (added in 2003) with Finnish Environment Institute and the State Marine Pollution Control and Salvage of the Russian Federation
- Joint Swedish-Danish-German Response Plan to maritime incidents involving Oil and other Harmful Substances and Co-operation in Aerial Surveillance (SWEDENGER) + Annexes
- Sub-regional plan for Estonia, Latvia and Sweden, common waters in the northern part of the Baltic Sea (SWEESTLAT)
- Operational Agreement (working level) on Co-operation and Response Activities between the Public Services of the Republic of Poland and of the Federal Republic of Germany responsible for those activities concerning marine accidents and combating marine pollution by oil and other harmful substances (2001) to be replaced by Bilateral agreement on ministry level : Joint Polish-German Response Plan to pollution incidents on the Baltic Sea Area involving Oil and other Harmful Substances, POLGER Plan
- Bilateral agreement between Lithuania and Russia on joint actions to prevent pollution of the Baltic Sea by oil and hazardous substances (2009) + Contingency plan between Lithuania and Russia on cooperation in combating marine pollution of the Baltic Sea by oil and hazardous substances (2012)
- Agreement between the Government of the Republic of Poland and the Government of Russian Federation on cooperation in combating marine pollution of the Baltic Sea and the Vistula Lagoon by oil or other harmful substances (2010)
- SACEP - Regional Oil and Chemical Marine Pollution Contingency Plan for South Asia (between Bangladesh, India, Maldives, Pakistan and Sri Lanka; 2016)

associated costs), NOWPAP Regional Oil & HNS Spill Contingency Plan (2003, updated to include HNS in 2009 etc.

Specific contingency plans have also been developed at bi- or tri-lateral level, either using:

- the IMO template of (sub-)regional Contingency Plan (e.g. in the Mediterranean region: Croatia, Italy and Slovenia; Algeria, Morocco and Tunisia; Cyprus, Egypt, Israel),
- or using a specific format: Mediterranean region: Lion Plan and RAMOGE Plan; North Sea: DENGERNETH Plan, MANCHE Plan, NORBRIT Plan; Baltic Sea: bi- or tri-lateral plans; Arctic Sea: Operational guidelines; Americas: Canada-USA, USA-Mexico etc.

It is beyond the scope of this study to review the operational arrangements of these Contingency Plans to identify the additional provisions¹⁶ that may be relevant to this project. This work should be carried out during the next phase, accordingly to the provisions considered for the Agreement A-C-DRC.

Operational guidelines should also be considered, particularly:

- IMO/UNEP: Regional Information System - Mediterranean Guide on Cooperation and Mutual Assistance in Responding to Marine Pollution Incidents, REMPEC, January 2018.
- IMO. GUIDANCE FOR INTERNATIONAL OFFERS OF ASSISTANCE IN RESPONSE TO A MARINE OIL POLLUTION INCIDENT. Report of the Correspondence Group on the Guidelines on international offers of assistance and the IMO Dispersant Guidelines, Submitted by France and the United States. PPR 2/10 - 16 October 2014
- National Incident Management System Guideline for Mutual Aid, FEMA, 25 p., Nov. 2017
- Operational Guidelines 2017 of the Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic 2013.
- OGP. Mutual aid in large-scale offshore incidents — a framework for the offshore oil and gas industry. OGP Report No. 487, 20 p.

¹⁶ Non present in the Abidjan Convention and associated Emergency Protocol (in force) or Offshore O&G Protocol (not in force)

5. DISCUSSION & RECOMMENDATIONS

This section discusses items to consider for the Agreement A-C-DRC based on the feedback of the countries, and on the findings of the study of arrangements in the WACAF region and elsewhere in the world. The approach to develop and implement the Agreement is also discussed.

Some recommendations are proposed (highlighted by “►”) to be discussed by the Project countries for the next steps. They are based on the feedbacks received from the countries during the study (questionnaires and discussions). They therefore take into consideration the local context, as well as the specificities of the parties (presence of upstream Oil and Gas industry, limited resources at national levels, etc.).

5.1. Questionnaire overview

A questionnaire, to understand the priorities and concerns of the countries for the Agreement A-C-DRC, was sent to the countries, organized in three main sections.

Section	Aim
1. Objectives, challenges & opportunities	Identify the key objectives of the cooperation for the countries, and national authorities in charge. Assess challenges & opportunities for the development and enforcement of the cooperation.
2. Risks and requirements	Gain understanding of the specific risks and requirements in each country.
3. Items to consider for the cooperation (agreement, plan, etc.)	Understand what items the countries wish to be considered in the cooperation and their importance.

Angola and RDC have returned the questionnaires (as of 03/05/2021), not Congo. All proposed “Items to consider for the cooperation” proposed are considered “High priority” i.e.

- Set-up an alert and notification system between the countries.
- Exchange of information during incidents.
- General assistance between countries.
- Industry assistance between countries.
- Management of trans-boundary spills.
- Coordination of joint response operations between countries.
- Sustained preparedness activities organised between countries, such as trans-boundary agreement improvement meetings, provisions to share information, training and exercises.
- Situation updates and regular communication between countries during an incident.
- Termination & feedback post-incident.

Questionnaires with answers are available (as an embedded WORD file in the present document) in 📄 “Questionnaire “Approach for Agreement” & answers”, p.110.

5.2. Scope & Geographical coverage

Although NCPs generally focus on marine oil spills (particularly in the area of the present project with the significant presence of the O&G industry offshore), regional instruments usually consider “oil or other harmful substances” that may result in a pollution (defined as the “introduction by man, directly or indirectly, of substances or energy into the marine environment, coastal zones, and related inland waters resulting in such deleterious effects as harm to living resources, hazards to human health, hindrance to marine activities, including fishing, impairment of quality for use of sea-water and reduction of amenities.”). The term “Hazardous and Noxious Substances HNS” is used the OPRC-HNS 2000¹⁷.

► The Agreement A-C-DRC should consider accidental releases of oil (any hydrocarbon-based product) and any other “harmful substances” (or HNS as termed in the OPRC-HNS 2000 Protocol).

The Abidjan Convention and its Emergency Protocol apply to “actual or potential marine emergencies which constitute a substantial pollution danger to the Protocol area and related interests of the Contracting Parties” (Art. 3 Protocol).

► The Agreement A-C-DRC should also be applicable even if the pollution has not yet occurred, but there is strong evidence that such an event may occur in the (very) short term. This will allow mobilizing assistance before the incident occurs, in case of degraded situation, and anticipate the operations.

The Abidjan Convention covers “marine environment, coastal zones and related inland waters” (Art. 1) and the Emergency Protocol covers the same area (named “Protocol area”) and the “related interest” including (Art. 1): “the interests of a Contracting Party directly or indirectly affected or threatened by a marine emergency, such as:

- Maritime, coastal, port or estuarine activities, including fisheries activities;
- Historic and tourist attractions of the area concerned;

¹⁷ « any substance other than oil which, if introduced into the marine environment is likely to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea. »

- *The health and well-being of the inhabitants of the area concerned, including the conservation of living marine resources and wildlife and the protection of marine and coastal parks and reserves.”*

► The Agreement should, for the marine environment, cover at least the same area and features as the Convention and its Protocol. Furthermore, it should specify the extent of the marine geographic coverage, and explicitly mention that it includes EEZ, territorial waters, and “related internal waters” (as per the UN Convention on the Law of the Sea). The limits of the “related inland waters” should be clarified (baseline limit?).

Most NCPs in the WACAF region were developed in the framework of the Abidjan Convention with the support of IMO and GI WACAF, thus focusing on “marine and coastal environment”. However, significant accidental releases of oil/ HNS may occur in inland water bodies (e.g. Congo river between DRC and Angola, and further upstream between DRC and Congo, with the Kinshasa-Brazzaville area) and also in terrestrial areas (oil storage, oil pipelines, storage of other substances, road transport of oil and other substances etc.).

► The Agreement A-C-DRC should include provisions to be applicable for “actual or potential emergencies” that could result in accidental release of oil or HNS in inland water bodies and terrestrial areas, and potentially affect the communities, environment, activities, usage, and other features.

For spill response (at sea), and particularly aerial surveillance flights and movements of response vessels, the authorization to enter territorial waters (or airspace) must be expedited. Some maritime boundaries between the three countries are still under discussion (see [“Maritime boundaries”, p. 21](#)). Specific transboundary areas of territorial waters may be defined where pre-authorized crossing of border and entry - in case of spill or maritime emergency – is granted for crafts of the two bordering countries (as for the “Area or Zones of joint interest” in the Bonn Agreement and the Lisbon Agreement, see “Relevant provisions of worldwide maritime spill response Agreements vs. Abidjan Instruments”, p.47).

► The Agreement A-C-DRC should clarify the maritime boundaries to take into account in the Agreement (and include a map of the EEZ, territorial waters and internal waters for the three countries).

► The Agreement A-C-DRC should include precise arrangements to expedite transboundary movements at sea, with the national competent entities identified for this purpose. The extension of these arrangements to the private sector should be considered.

► The Agreement A-C-DRC may consider the possibility of defining some special transboundary areas of territorial waters (of joint interest) where border crossing for crafts of both country is pre-authorized.

5.3. Legal framework for Agreement A-C-DRC

The Abidjan convention and its Emergency Protocol are the only instruments signed by all three countries regarding oil & HNS spill response and preparedness in the marine environment (as DRC has not ratified the relevant IMO Conventions).

- ▶ Consequently, **these instruments are (by default) the legal framework for the present project, at least for the scope concerning marine environment.** The Agreement A-C-DRC will have to comply with the provisions of these instruments. A reminder of the accession of the three countries to both instruments and of their applicability for the current project, should be in the Agreement (e.g. in the preamble or similar section).
- ▶ The exact relation of dependency between the Agreement and the Abidjan Convention is to be ascertained by the countries and may also depend on the legal nature of the Agreement (discussed in the next section).
- ▶ The Agreement should also recognize the importance or relevance of the OPRC 90 Convention and OPRC-HNS 2000 Protocol for the current project, although not ratified by all countries.

The three countries are part of the ECCAS (Economic Community Of Central African States) and have signed a Protocol in 2009 (*Protocole d'accord sur la gestion de la stratégie de sécurisation des intérêts vitaux en mer articulée autour du COPAX et favorisant une synergie avec la Commission du Golfe de Guinée (CGG) et la Communauté Économique des États de l'Afrique Occidentale (CEDEAO)*). This has led to the creation of the CRESMAC centre (for maritime security, safety and pollution control), which can play a relevant operational role in the current project. Some of the related instruments also cover pollution and inland aspects.

- ▶ Consequently, the Agreement should also consider these instruments; and clarify and acknowledge the role they can play in the implementation of the present project.

Within the framework of ECCAS, a Multinational Coordination Centre (MCC) is planned to be implemented in Angola to cover "AREA A" (Angola, DRC and Congo). A CRESMAC centre also exists in Congo (Pointe Noire). Further information will need to be provided by the Project countries, to clarify the possible interactions / complementarities for the implementation and management of the Agreement.

5.4. Legal nature of Agreement A-C-DRC & Structure

As for most Agreement, it is expected that two types of documents are warranted for this project:

- An Agreement, describing the context, objectives and arrangements between the three countries, signed by the high-level representatives of the countries, either a formal agreement (legally binding) or a less formal one (e.g. Memorandum of Understanding);
- Operational documents & information, accompanying and completing the Agreement, and including specific pollution management procedures as well as any other technical information for the implementation of the Agreement in the area.

Operational documents & information are needed as:

- all procedures and information cannot be included in the text of the Agreement,
- and they must be able to be updated and disseminated regularly and therefore must not require a high-level signature which would prohibit time sensitive updates.

For discussion: Formal Agreement or Memorandum of Understanding MoU

Formal agreement	Memorandum of Understanding
Document in which two or more parties agreed upon to work together for a common objective. It contains some compulsory provisions, or obligations for the parties. A formal Agreement can be made enforceable in an international court.	Official document which describes the terms of an arrangement or agreement between two or more parties forming a bilateral or multilateral agreement. It is a statement of serious intent – agreed voluntarily by equal partners – of the commitment, resources, and other considerations that each of the parties will bring. A MoU can be considered as a non-legally binding agreement.
Often required when financial transactions, funds, shared budgets etc. are part of the provisions.	May suffice if the set-up of the Agreement does not require funds or financial transactions.
Is binding for the parties i.e. the parties have the right to go to the court in the event of non-performance of the agreement.	Is not a legally binding document. It has moral force but does not create legal obligations.
Requires (potentially long) national procedures for its acceptance, signature, enforcement and implementation (e.g. may require a signature or an endorsement from the parliament).	May be accepted by parties and set-up with a simpler (and faster) procedure compared to a formal agreement.
Usually entered into by sovereign states and international organizations, but can sometimes include individuals, business entities, and other legal persons.	Usually used between a government agency and a non-commercial, non-governmental organization, and possible between governments.
Development would require the involvement of legal expert to ensure compliance with international law, existing treaties and national legislations.	May be expressed in less constraining language with focus on operational elements.

The legal nature of an instrument depends on the process for its signature, acceptance and implementation and if legally binding provisions are included or not. It does not depend on the name of the instrument.

In the present context, the Abidjan Convention and its Emergency Protocols (and similar instruments) are “Formal Agreements” and provide obligations for each party, as well as the instruments set-up in the ECCAS framework. Most principles and obligations regarding spill response at sea, relevant for this project (e.g. cooperation, mutual assistance etc.), are already included in the provisions of the Emergency Protocol of the Abidjan Convention, signed by the countries. Consequently, the countries have already agreed on these principles. **Therefore, the Agreement A-C-DCR should detail the provisions and provide practical mechanisms to implement them.**

However, other provisions can be included: extension to inland areas, considerations for the role of the O&G industry etc. These may be obligations, or a commitment of the Parties to cooperate.

A MoU may suffice if no new obligations are planned. It may be signed by the competent ministers and can be exchanged between countries via the respective ministries of Foreign Affairs. But a formal Agreement is required for this project if for example:

- New obligations between countries, legally binding, are warranted (i.e. not already dealt with in the instruments in place).
- A shared budget is required (for Secretariat function, funding of activities etc.).
- The Parties acknowledge it is beneficial (for the overall objective of mutual assistance and cooperation) to set-up a formal type of Agreement between them (rather than a MoU).

It is reminded that a formal Agreement may include legally binding terms and non-legally binding terms (which are usually differentiated by the verbs used: “shall” vs. “may” for example).

► The **legal nature of the Agreement A-C-DRC** (formal or MoU) will be decided based on – at least – the content of the Agreement (new provisions compared to the Emergency Protocol of the Abidjan Convention), the nature of the arrangements (obligations or not for countries), the need of a legally binding instruments (for financial purposes), the advantages of a legally binding Agreement, and the acceptance process in country.

► Each country will designate the high-level representatives of the **competent national authorities or entities**, with the authority and responsibility to approve and sign the Agreement (Ministers or others). The countries will also define the acceptance and signature process and decide if a Meeting of Parties is necessary to sign the Agreement, or if each party can sign it independently, in its own country.

► The **involved ministries, national agencies and other national stakeholders** should be informed of the planned provisions of the Agreement A-C-DRC and accept them before the Agreement can be signed between the countries.

► Whatever legal nature of the Agreement, as it will refer to the Abidjan Convention, and address maritime spillage (amongst others), the document should be provided to the Secretariat of the Convention and to IMO.

For discussion: Operational procedures and information attached to the Agreement

An agreement is usually completed with additional documents:

- **Operational procedures** or instructions for incident notification, provision of assistance, operational coordination, reimbursement of costs etc. with check lists, forms etc.
- **up-to-date information:** documentation, maps of boundaries and other areas, list of emergency contacts, of equipment etc.

These are official documents complementing the agreement, listed in and endorsed by the Agreement, and linked, attached or appended to the Agreement. These documents are usually in the form of:

- A **Full Contingency Plan**, instated by the agreement and including all operational procedures and up-to-date information;
- **Separated documents** appended to the agreement.

The development of separated documents is a more focused and flexible approach:

- Each procedure addresses a key area of concern (i.e. alert and notification, mutual assistance, etc.);
- The specific procedures (e.g. alert & notification procedure) and information documents required in priority can be developed immediately and completed at a later stage with additional ones.
- A procedure can be updated independently from the other documents;
- The relevant set of procedures can be disseminated to each user (depending on his role) instead of a long document (e.g. Alert procedure to the National Focal Points, Transboundary movement procedures to the Customs agency etc.).

► The Agreement needs to be first developed, and the required operational procedures and information are identified depending on the specific content of the Agreement (discussed below in “Content of Agreement”). Countries should then discuss if a comprehensive Contingency Plan is warranted, or if specific procedures might be a better suited alternative.

► The countries will define a specific review/ update/ acceptance/ signature/ dissemination process for the procedure and information attached to the Agreement, less constraining than the one used for the Agreement, to allow the rapid and regular dissemination of approved updates (for example signed by the designated focal points).

5.5. Management of Agreement

► **National Focal Points from the authorities** (for the Agreement A-C-DRC) should be designated. They can be the Abidjan Convention national focal point, or IMO focal point, or GI WACAF focal point or other. The focal point is mainly the regular channel of communication between countries to exchange about the preparedness activities related to the Agreement.

► **Focal points from the O&G industry** in each country should also be designated, to participate in discussions and bring the industry point of view for consideration by the authorities.

A **secretariat function** is required to maintain and disseminate regularly the up-to-date operational procedures and information attached to the Agreement, maintain other documentation, post information on a website, issue reports (after meetings and activities), prepare the meetings (Meetings of parties or working technical meetings), assist to plan and prepare the activities, workshops, trainings, exercises and others as needed. The Secretariat will also be essential to support and coordinate the implementation work of the Agreement. The Secretariat function may not warrant a dedicated staff full-time but at least few days or one-two weeks per month. A full-time position may be ultimately warranted depending on the scope of work of the Agreement.

► A first option is to designate and fund a position with a deputy (for example half-time). This would require specific funding mechanisms to be developed by the Parties to the Agreement. The implementation of funding mechanisms should be legally binding to ensure its sustainability and therefore shall be done under the framework of a formal Agreement between the Parties.

► Alternative options, relying on existing positions and organisations, can be evaluated. They have the advantage of not requiring the set-up of specific funding.

- An option is to have a rotating Secretariat function between the countries to allow an equitable participation of the Parties (with reasonably short rotation cycles to maintain the Secretariat working processes in the countries, e.g. every 1 to 1.5 years), managed by the national focal points or another designated person responsible for the function, supervised by the National focal points. However, this option has the clear disadvantage of not allowing technical competency building.
- Another option is for the countries to identify a position within a national organisation of one of the countries to fulfil this role.
- Another option is to use an existing organisation with a (sub-)regional mandate to fulfil the role of Secretariat, either (and preferably) located in one of the three countries (e.g. CRESMAC in Pointe-Noire, Multinational Coordination Centre in Angola etc.).

Whatever option is chosen by the parties, a careful evaluation of its operational capabilities should be undertaken. The Secretariat must have some organisational capabilities and technical competencies related to the Agreement (accidental spillage).

The Secretariat must not rely on one person only. At least one deputy should be designated.

The Secretariat should have some support in the initial stage of the implementation of the Agreement (discussed after).

► **The Agreement A-C-DRC and associated documents** must be updated regularly (and timely when needed, i.e. in case of a significant change in a country or following an exercise).

The Agreement should be regularly reviewed in-depth and improvements proposed when relevant. However, as the Agreement provides the general provisions, it should not require major changes every year. And amendments must be officially approved by the parties, which may be a long process. Therefore, it is recommended to plan updates of the Agreement at a reasonable frequency (e.g. every 4 to 5 years).

Operational procedures and information should be updated more frequently, as their details may change and are critical for operational purposes (e.g. contacts details).

- The critical operational procedures and information, e.g. Alert procedure with contact details, should be reviewed at least every year and whenever necessary (i.e. following an exercise). And parties should inform the other parties and Secretariat of any change in between reviews.
- The non-critical procedures and information should be reviewed regularly, e.g. every 1 to 2 years.

5.6. Content of Agreement A-C-DRC

This section proposes items to consider by the Parties during the next phase for the Agreement A-C-DRC and the attached documents. These items cover all issues to consider in an agreement as the focal points rated all possible topics for the Agreement as “high priority” (“Questionnaire overview“, p.54). It is reminded that the objective – overall – is not to rewrite or duplicate the general provisions of the Emergency Protocol (of the Abidjan Convention) but to:

- Specify and operationalise the provisions of the Emergency Protocol;
- Add provisions to complement the Emergency Protocol, based on the relevant items identified from the review of similar agreements existing in the world (“Relevant provisions of worldwide maritime spill response Agreements vs. Abidjan Instruments”, p.47);

- Add considerations on the role of the O&G (exploration and production) industry, present offshore and onshore in the countries;
- Add considerations to extend the Agreement to inland areas and others as needed.

The items proposed hereunder are to be reviewed, specified, amended, completed or discarded by Angola, DRC and Congo authorities. Items for the Agreement are in the left column. And operational procedures and up-to-date information and other documents, that should complement the Agreement (as annexes or as a contingency plan) are noted in the right column.

Items are categorized in seven sections:

- 5.6.1 - Items for framework, scope and coverage;
- 5.6.2 - Items for notification and information;
- 5.6.3 - General conditions for the provision of assistance
- 5.6.4 - Items specific to the involvement of the O&G industry
- 5.6.5 - Items for operational coordination of response & assistance;
- 5.6.6 - Items for cost recovery between countries;
- 5.6.7 - Items for the termination of response;
- 5.6.8 - Items for preparedness & regular activities;
- 5.6.9 - Items for the management & funds of the Agreement.

The items (or category) to be included in the Agreement should be clearly linked to an article of the Emergency Protocol (if and when applicable).

5.6.1. Items for framework, scope and coverage

Items for the Agreement

Corresponding items for Operational procedures / Information

Items for the Agreement	Corresponding items for Operational procedures / Information
FRAMEWORK & PREAMBLE	
<ul style="list-style-type: none"> ▶ Specify the relation of this Agreement with the Abidjan Convention and its Emergency Protocol. ▶ Consider a reference to the Additional protocol related to offshore O&G activities (finalized – not yet in force) of the Abidjan Convention. 	N/ A
<ul style="list-style-type: none"> ▶ Consider a reference to the OPRC 90 Convention and OPRC-HNS 2000 Protocol, and acceptance of its provisions (particularly for DRC, having not ratified OPRC 90 or OPRC-HNS 2000). ▶ Consider a reference to other IMO Conventions as needed. 	N/ A
<ul style="list-style-type: none"> ▶ Consider a reference to other international instruments in force. E.g. UNCLOS, Basel Convention 	N/ A

<p>► Consider a reference to other regional instruments or mechanisms or organisations in force, if relevant. E.g. ECCAS, COPAX, and set-up of CRESMAC.</p>	N/ A
<p>► Consider a reference to other instruments not in force in the region, but that may be relevant information. E.g. Conventions from UNECE (Transboundary Watercourses and International Lakes and industrial transboundary incidents)</p>	N/ A
<p>► Specify the legal nature of the Agreement (and if it is legally binding or not, and ensure consistency with the acceptance and signatory process).</p>	N/ A
<p>► Specify the definition of the key terms used in the Agreement (use of the Abidjan Convention and Emergency Protocols terms. Define other terms used, e.g. requesting or assisting country, assistance, services, resources etc.</p>	N/ A
SCOPE	
<p>► Specify the type of substances considered:</p> <ul style="list-style-type: none"> • Oil <u>and</u> HNS products ? • spills <u>and</u> risk of spills or other accidental releases of substances in bulk or other forms. 	N/ A
<p>► Provide an overview of the Metocean circulation in the area, areas of oil exploration & production, and likely circulation of spilled products at sea and in coastal waters. ► Provide similar information for inland areas as needed.</p>	<p>Prevailing wind and currents at sea. Map of oil offshore production and exploration areas (on-going and planned). Key characteristics of produced oils. Modelling studies/ maps of likely drift & behaviour of spilled oil / HNS based on probable and worst-case scenarios. Indication of timeframe (i.e. for product to reach territorial waters of neighbouring country). Maps and studies for inland areas.</p>
<p>► Provide examples of the type of operations (monitoring, response and others) at-sea, on shore, on inland water bodies and on land that are considered in the Agreement. ► Add exceptions if needed (i.e. situations where the Agreement is not applicable or operations not included). Option. Consider also place of refuge, emergency salvage, towing and lightering.</p>	N/ A
GEOGRAPHIC COVERAGE	
<p>► Specify the geographic coverage of the Agreement:</p> <ul style="list-style-type: none"> • marine: e.g. EEZ, territorial waters, shoreline, internal waters, with applicable maritime boundaries; • inland: e.g. inland water bodies, terrestrial areas etc. (i.e. extend the scope of the Abidjan Convention & Protocol) • add excluded areas as necessary (e.g. military areas). 	<p>Maps of EEZ, territorial waters (with maritime boundaries) and internal waters of the three countries and internal waters. Map of the inland coverage of the Agreement.</p>
<p>► Specify if some transboundary areas of territorial seas warrant specific procedures (e.g. pre-authorized entry for crafts of neighbouring countries under pre-defined circumstances, such as maritime emergency, aerial surveillance etc.).</p>	Maps of transboundary areas of territorial waters with specific status – if applicable.
<p>► Specify if some terrestrial transboundary areas warrant specific procedures (e.g. river between Angola and DRC, and between Congo and DRC).</p>	Maps of specific terrestrial area – if applicable.
COMPETENT NATIONAL ENTITY FOR AGREEMENT	
<p>► Designate the competent national authority(ies) or entity(ies), with the authority and responsibility to approve and sign the Agreement.</p>	Full contacts details of authorities (with names & positions if and when applicable)

NATIONAL FOCAL POINTS	
<p>► Designate the Authority National Focal Points (i.e. regular channel of communication between countries to exchange about the preparedness activities related to the Agreement).</p> <p><i>Note. Can be Abidjan Convention, or IMO, or GI WACAF focal point or other.</i></p>	Full contacts details (with names & positions if and when applicable)
<p>► Designate the O&G National Focal Points (i.e. regular channel of communication with the industry in countries to exchange about the Agreement).</p>	Full contacts details (with names & positions if and when applicable)
OTHER POSSIBLE PARTIES	
<p>► Designate the other possible parties to the agreement including international organizations, Conventions, etc. if applicable.</p>	Full contacts details (with names & positions if and when applicable)
OTHER	
<p>► Other provisions to consider?</p>	

5.6.2. Items for notification and information

Terminology

- “**Alert**” is understood as the initial verbal information about the incident (e.g. by phone), from an observer to an authority, between authorities or from a country to another.
- “**Notification**” is understood as the sending of a written document with the initial details of the incident, using or not a template, within an organisation, between organisations or countries. Notification usually implies specific actions to be carried out by the notified Party upon reception of the notification, as per the agreed procedures.

Items for the Agreement

Items for Operational procedures / Information

ALERT & NOTIFICATION	
<p>► Designate the national authority(ies)/ organisation(s) in charge of:</p> <ul style="list-style-type: none"> • alerting and notifying the close countries; • receiving alert calls and notification forms from the close countries. <p><i>Note. Authorities may differ depending on the origin of the spill.</i></p>	<p>Full contacts details of authorities (with names & positions if and when applicable).</p> <p>Must be operational 24hr/ 7 days.</p>
<p>► Define the procedures for the national Authorities to:</p> <ul style="list-style-type: none"> • receive, validate, evaluate accidental spillage reports and decide about the need to inform close countries of any significant spill. • timely alert and notify the authorities of close countries in case of potentially transboundary spill or significant spill with possible upcoming request for assistance. 	<p>Practical considerations for the procedure – if needed.</p> <p>Template of “Notification form” (e.g. based on the POLREP form advocated by IMO, including the recommendations of the Emergency Protocol to the Abidjan Convention and with adaptations for onshore and inland events).</p>
SITUATIONAL UPDATES DURING INCIDENTS	
<p>► Designate the national authority(ies)/ organisation(s) in charge of producing or receiving the incident situation reports (from close countries).</p> <p><i>Note. Authorities may differ depending on the origin of the spill.</i></p>	<p>Full contacts details of authorities (with names & positions if and when applicable)</p>

<p>► Define the procedures for the national Authorities to regularly inform close countries about the incident, activated plans, mobilized teams and on-going operations.</p>	<p>Practical considerations for the procedure – if needed.</p> <p>Template of “Situation information form” (e.g. SITREP form advocated by IMO, with adaptations for onshore and inland events).</p>
<p>OTHER</p>	
<p>Option. Some countries may have regular access to monitoring information (e.g. RADAR satellite imagery), which may cover part of the territory of other countries and could be exchanged.</p>	

5.6.3. General conditions for the provision of assistance

Assistance between country is required when:

- A significant spill occurs in country A, which request assistance from country B.
- Resources are sent from country B to A, and deployed in country A, under supervision of country A.

This requires trans-boundary movements of personnel, equipment, consumables, logistical support and others.

This section discusses the general provision of assistance:

- Some are obviously limited to the national authorities (e.g. designation of the national competent authority to request assistance);
- Most provisions are applicable to public and private assistance, including the O&G industry.

Four categories of items are identified:

- General items for the provision of assistance
- Provision of personnel
- Provision of equipment
- Provision of logistical support (Note. “Unit”: vessel, aircraft, land transport or other)

The coordination transboundary movements (assistance) and operations is discussed after, in section “Items for operational coordination of response & assistance”. Terminology is presented in the Appendices.

5.6.3.1. General items for the provision of assistance

GENERAL ITEMS FOR THE PROVISION OF ASSISTANCE	
<p>▶ Designate the authorities in charge of:</p> <ul style="list-style-type: none"> • Sending requests for assistance; • Receiving assistance requests and issuing assistance offers; • Accepting assistance offers. 	<p>Full contacts details of authorities (with names & positions if and when applicable)</p>
<p>▶ Define the procedures:</p> <ul style="list-style-type: none"> • For the requesting country to timely request assistance using a pre-agreed form; • For the assisting country to timely receive, review and offer assistance (or reject the request); • And for both countries to agree on the assistance to provide with a written agreement. 	<p>Practical considerations for the procedures. Template(s) of form(s) to request assistance, offer assistance and accept offers. <i>Note. The template should remind of the importance of clear specifications in the request (to issue adequate offers) and in the offer (to evaluate the offers).</i></p> <p>Refer to existing approved documentation¹⁸.</p>
<p>▶ Include pre-agreed Terms & Conditions for the provision of assistance to expedite the acceptance process, e.g.:</p> <ul style="list-style-type: none"> • General Terms & Conditions or principles for the transfer of assistance (sending, responsibility and transfer of responsibility, return of equipment); • Approach or methods to calculate the costs of assistance (transport, use, repair, other fees); • Provisions to ensure timely payments. <p><i>Note. The industry has (usually) Terms & Conditions already in place for the provision of assistance.</i></p>	<p>Refer to the above mentioned existing approved documentation.</p>
<p>▶ Other provisions to consider?</p>	

5.6.3.2. Provision of personnel

Items for the Agreement

Items for Operational procedures / Information

PROVISION OF PERSONNEL	
<p>▶ Specify the type of personnel and competencies that can be provided.</p>	<p>List of personnel that can assist:</p> <ul style="list-style-type: none"> • names, contacts, • competencies and home organisation (public/ private). <p><i>Note. List may include industry personnel.</i></p>
<p>▶ Include principles to define the “point of transfer of responsibility” for the personnel coming from the assisting country, i.e. from which location and date does the requesting country take the responsibility for the personnel’s safety & security, working conditions in country etc.</p>	

¹⁸ - IMO “Guidance for international offers of assistance in response to a marine oil pollution incident” (2014)
 - REMPEC: “Mediterranean guide on cooperation and mutual assistance in responding to marine pollution incidents” (2018)
 - FEMA “National Incident Management System Guideline for Mutual Aid” November 2017

<p>▶ Include the principle of “waiver of indemnity” for the assisting personnel, while assisting the requesting country, i.e. assisting personnel cannot be held responsible for any action, damage, counter-effect or other resulting from their advice or involvement in the response (except in case of gross negligence or wilful misconduct). Or consider other responsibilities and compensation in case of damage or injury caused by the rendering of assistance.</p>	<p>Template of detailed legal terms for assisting personnel or seconded personnel. Refer to existing templates¹⁹.</p>
<p>▶ Include provisions regarding responsibilities stating that:</p> <ul style="list-style-type: none"> • Assisting personnel supports and advises the requesting country but is not engaged in command or supervising or decision-making or other tasks that are normally the responsibility of the authorities of the requesting country (except if both countries agree otherwise). • Assisting personnel commits to carry out the service as per the instructions and guidance received from the supervisors of the requesting country. • Assisting personnel commits to not disclose any information about the incident, damages, response operations, etc. to external entities (except their own home hierarchy). 	<p>Practical additional considerations – if needed, e.g. job descriptions of personnel involved.</p>
<p>▶ Specify the administrative arrangements to facilitate the travel and arrival in requesting country of the assisting personnel and expedite administrative procedures (e.g. visas and immigration procedure).</p>	<p>Practical considerations for the arrangements – if needed.</p>
<p>▶ Include provisions to define how the assisting personnel is:</p> <ul style="list-style-type: none"> • Informed of the situation and local conditions, safety & security measures in place, etc. • Assigned to a supervisor, • Briefed about his tasks and expected deliverables etc. 	<p>Practical additional considerations – if needed.</p>
<p>▶ Include provisions to guarantee that the requesting country will provide safe and efficient working conditions for the assisting personnel, including but not limited to safety & security, medical support/ evacuation (if needed), working conditions in country, food, lodging, local transport, personal protective equipment, Tel & internet communications etc.</p>	<p>Practical additional considerations – if needed.</p>
<p>▶ Include some methods to calculate the (daily) service cost of the personnel while performing service in the requesting country (to be reimbursed to the assisting country), or at least items to consider calculating the cost. <i>Note. Costs may also cover travel and standby time.</i></p>	<p>Detailed method – if applicable.</p>
<p>▶ Include provisions for the reimbursement of local expenditures incurred by the personnel on service in the requesting country, or the direct management of these costs by the requesting country (food, lodging, local transport, Tel & internet communications etc.). <i>Note. Representatives from a country sent to another country as “Liaison Officer” to help interfacing between the national incident management teams are not considered as assistance. Therefore, the daily service cost of Liaison officer is supported by the country sending the Officer. However, the receiving country, after accepting the arrival of these Liaison officer(s), should provide local support including but not limited to lodging, food, local transport, security, safety, medical support (if needed), access to the sites and facilities etc.</i></p>	<p>Practical additional considerations – if needed.</p>
<p>▶ Other provisions to consider?</p>	

¹⁹ Template of “Emergency Personnel Secondment Agreement EPSA” in the IPIECA/OGP “Finding 13: Mutual Aid Indemnification and Liability”

5.6.3.3. Provision of equipment

Items for the Agreement

Items for Operational procedures / Information

PROVISION OF EQUIPMENT	
<p>► Specify the type of equipment and consumables that can be provided.</p>	<p>Inventory of the public/ private main equipment that could be proposed for assistance, with details, e.g.:</p> <ul style="list-style-type: none"> • Owner/ contractor/ subscriber, • Location, • Type and amount, with key specifications and capacities, • Dimension, weight, packaging, other. <p><i>Note. List may include industry equipment.</i></p>
<p>► Include the principle of “point of transfer of responsibility” for equipment coming from the assisting country, i.e. from which location and date does the requesting country takes responsibility for the equipment.</p>	
<p>► Include the principle of “review and acceptance” of equipment by the requesting country, i.e. upon arrival of the equipment, the requesting country checks the received equipment (status, inventory compared to the request), and accepts or rejects the equipment. Rejected equipment is returned. Assisting country is notified of accepted/ rejected equipment.</p>	<p>Practical additional considerations – if needed.</p>
<p>► Include the principle of “waiver of indemnity” for the use of equipment by the requesting country, i.e. the equipment is used on a “as-is” basis by the requesting country, once accepted. Or consider other responsibilities and compensation in case of damage or injury caused by the rendering of assistance.</p>	<p>Refer to existing documentation (mentioned above)</p>
<p>► Specify the administrative arrangements to expedite and facilitate the sending, transfer and reception of equipment between countries, e.g. Customs Clearance, security check and other administrative procedures. ► Specify the sanitary measures for the personnel (vaccination and others).</p>	<p>Practical considerations for the arrangements – if needed.</p>
<p>► Include provisions to return the equipment cleaned and in a similar state as upon arrival (except normal “wear and tear”). <i>Note. If maintenance, repairs, replacement, etc. are needed, assisting and requesting countries will agree case-by-case on the most efficient and cost-effective method to carry out the work.</i></p>	<p>Practical additional considerations – if needed.</p>
<p>► Include some methods to calculate the cost associated to the provision of equipment (to be re-imbursed by the requesting country):</p> <ul style="list-style-type: none"> • transport between countries, • standby and use by the requesting country, • maintenance/ repair and return transport, • management fees (paper-work) and administrative fees (Customs, other procedures). <p><i>Note. Some costs can be supported by the assisting (to be defined on a case-by-case basis) e.g. preparation of equipment in assisting country, part of the transport, etc.</i></p>	<p>Detailed method – if applicable.</p>

▶ Other provisions to consider?	
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5.6.3.4. Provision of logistical support

Items for the Agreement

Items for Operational procedures / Information

PROVISION OF LOGISTICAL SUPPORT (Note. "Unit": vessel, aircraft, land transport or other)	
<p>▶ Specify the type of logistical support and units that can be provided.</p>	<p>Inventory of the logistical support accessible to the authorities that could be proposed for assistance, with details, e.g.</p> <ul style="list-style-type: none"> • Category: offshore vessel, aircraft, land transport, other • Owner, Location, • Type and amount, with key specifications, other. <p><i>Note. List may include items from the industry, but these have precise restrictions for potential use outside of the contract conditions.</i></p>
<p>▶ Include the principle of "point of joining operations" for the units coming from the assisting country, i.e. from which location and date do these units integrate the response organisation of the requesting country, and follow its tactical instructions.</p> <p><i>Note. The person in charge of the unit (captain, pilot, driver, other) remains the ultimate responsible for the safety of his unit and personnel.</i></p>	
<p>▶ Include the principle of "waiver of indemnity" for the actions carried out by the units while engaged in the response coordinated by the requesting country, i.e. personnel of assisting units cannot be held responsible for any action, damage, counter-effect or other resulting from their actions carried while assisting (except in case of gross negligence or wilful misconduct). Or consider other responsibilities and compensation in case of damage or injury caused by the rendering of assistance.</p>	Refer to existing documentation (mentioned above)
<p>▶ Include provisions regarding responsibilities stating that:</p> <ul style="list-style-type: none"> • Assisting personnel commits to carry out the service as per the instructions received from the Authority of the requesting country coordinating the operations. • Assisting personnel commits to not disclose any information about the incident, damages, response operations, etc. to external entities (except his hierarchy in his home organisation). 	Practical additional considerations – if needed (e.g. "form of confidentiality" to be signed by the personnel involved).
<p>▶ Specify the administrative arrangements to facilitate the entry into the territory of units from the assisting country (e.g. flight permit, sailing into territorial sea, port entrance, sanitary check, Customs, security and others). ▶ Include procedures detailing the arrangements to expedite the arrival in the requesting country of the personnel on the units (e.g. visa). ▶ Specify the sanitary measures for unit personnel (vaccination and others).</p>	Practical considerations for the arrangements – if needed.
<p>▶ Include provisions to ensure assisting units and their personnel for every day of the incident:</p>	Practical additional considerations – if needed.

<ul style="list-style-type: none"> • Informed of the situation and local conditions, safety & security measures in place, • Assigned to a supervisor or commander on site, • Briefed about their tasks and area of operation. 	
<p>▶ Include provisions to guarantee that the requesting country will provide:</p> <ul style="list-style-type: none"> • Support for the assisting crew, pilots, drivers (as in “Provision of personnel/ Working environment”); • Logistical support for the units (parking at airport, ground power and maintenance, quayside, fuelling, food and water supply etc.); • All sailing, flight and circulation authorizations and permits to carry out the service. 	<p>Practical additional considerations – if needed.</p>
<p>▶ Include provisions to return the units cleaned and in a similar state as upon arrival (except the normal “wear and tear”).</p> <p><i>Note. If maintenance, repairs, replacement, etc. are needed, assisting and requesting countries will agree case-by-case on the most efficient and cost-effective method to carry out the work.</i></p>	<p>Practical additional considerations – if needed.</p>
<p>▶ Include some methods to calculate the (daily) cost of units and personnel while performing service in the requesting country (to reimburse to the assisting country).</p> <p><i>Note. Costs may also cover the transit/ travel time from the assisting country to the area of operation/ support and the standby time (i.e. when mobilized but not carrying the service).</i></p> <p><i>Note. Some local costs can be directly managed by the requesting country case-by-case (e.g. food and lodging for crews, local transport, fuelling, airport/ port fees, some administrative fees etc.).</i></p>	<p>Detailed method – if applicable.</p>
<p>▶ Other provisions to consider?</p>	

5.6.4. Items specific to the involvement of the O&G industry

Preamble.

In the WACAF region, most oil spill response assistance equipment and logistical support are owned, contracted or subscribed by the O&G industry operators, which also have access to services (monitoring and modelling). Trained personnel are available from authorities, industry, port, etc.

Resources from the industry of a country may be mobilized to assist the industry in another country (and under specific circumstances, to assist for spills from other origin). Response operations involving the O&G industry may also be transboundary (and resources moved from a country to another) in case of large spill, for example in case of blow-out event.

Accordingly, the Agreement should give special consideration to the different situations where the O&G industry may be involved.

Cases.

Two main situations are identified:

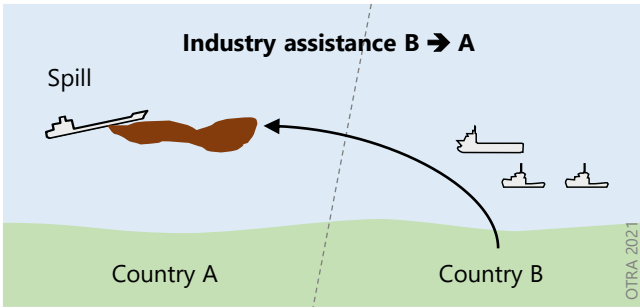
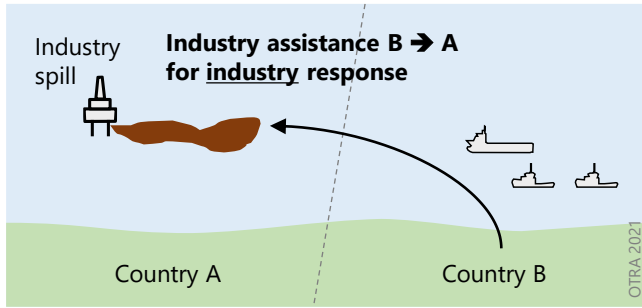
- I. Industry assistance (from a country to another), and
- II. Trans-boundary operations with industry resources, with a difference for both cases: does the spill originates from the industry?

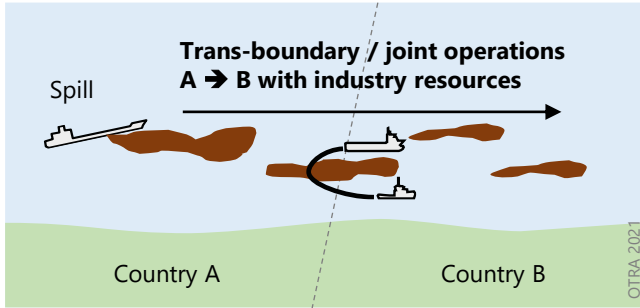
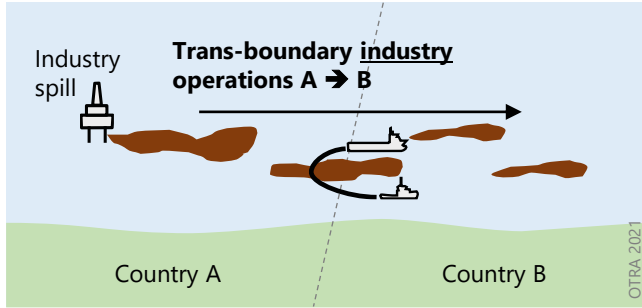
This results in four cases:

I. INDUSTRY ASSISTANCE (from a country to another) A significant spill occurs in a country A, whose Authorities requests assistance from a country B (offshore, onshore, inland). This requires <u>movements</u> from a country to another of personnel, equipment, consumables, support etc.	
↳ CASE I. a. FOR SPILLS <u>NOT</u> ORIGINATING FROM THE INDUSTRY	↳ CASE I. b. FOR SPILLS ORIGINATING FROM THE INDUSTRY

II. TRANS-BOUNDARY OPERATIONS A significant spill occurs in a country A (at sea, or in rivers) and migrates into country B. This requires <u>transboundary operations</u> , transfer of operations from A to B and possibly joint operations.	
↳ CASE II. a. FOR SPILLS <u>NOT</u> ORIGINATING FROM THE INDUSTRY	↳ CASE II. b. FOR SPILLS ORIGINATING FROM THE INDUSTRY

Situations, options and possible actions for these cases, to consider for the Agreement A-C-DRC, are illustrated next page. Note. Entry into territorial sea, airspace and land requires authorization while passage in the EEZ is freely possible.

I. INDUSTRY ASSISTANCE - A significant spill occurs in a country A, whose Authorities requests assistance from a country B (offshore, onshore, inland).	
<p>↳ CASE I. a. FOR SPILLS <u>NOT</u> ORIGINATING FROM THE INDUSTRY</p> <ul style="list-style-type: none"> ▶ Overall management, and coordination on site, by authorities. ▶ Assistance of the industry. 	<p>↳ CASE I. b. FOR SPILLS ORIGINATING FROM THE INDUSTRY</p> <ul style="list-style-type: none"> ▶ Response management, and coordination on site, by the industry. ▶ Overall supervision/ management by authorities.
 <p style="font-size: small;">- Authorities in A activate their NCP, coordinate response operations and request assistance from Authorities in B.</p> <p>↳ Authorities in B assists Authorities in A, with assistance of industry from B.</p> <p>Possible items to consider for the Agreement</p> <ul style="list-style-type: none"> - Industry in B assesses the assistance they can provide and <u>the acceptability</u> of providing assistance (lesser capabilities + operational, logistical, safety and contractual issues). - Industry notifies the Authorities in B of the options, conditions and degradation of their response capabilities if they provide assistance out of country. - Authorities in B acknowledges the industry assistance options, the conditions and the degradation of capabilities; and inform the Authorities in A. - Industry assistance is formalized in a written agreement, e.g. Authorities of B signs agreements with the industry in B and with Authorities in A (for the conditions of industry assistance). - Industry in B assists Authorities in A accordingly to the signed agreement. - Authorities in A facilitates the arrival of assistance from the industry in B. <p>Option to expedite the process: direct discussions between (assisting) industry in B and requesting country A, about technical issues (only).</p> <p><i>Note. Industry cannot move contracted or subscribed resources (vessels, aircrafts, etc.) for exceptional operations, outside of country, without the approval of the contractor company.</i></p>	 <p style="font-size: small;">- Responsible industry (in A) activates their response system and responds to the spill (possibly with the assistance of the O&G industry in A).</p> <p>- Authorities in A activate their NCP, to oversee and coordinate the response.</p> <p>↳ Responsible industry in A requests assistance of O&G industry in B.</p> <p><i>Note. Industry assistance in B may be from the same O&G company or other companies.</i></p> <p>Possible items to consider for the Agreement</p> <ul style="list-style-type: none"> - Responsible industry in A requests the mobilization of assistance from other industry in close countries (through Mutual Assistance sub-regional agreements if in place – beyond the scope of the present document). - Authorities in A and B cooperate to facilitate the trans-boundary movements of industry resources from B to A. <p><i>Note. All costs related to the operations and mobilization etc. are supported by the responsible industry.</i></p>

II. TRANS-BOUNDARY OPERATIONS - A significant spill occurs in a country A (at sea, or in rivers) and migrates into country B.	
<p>↳ CASE II. a. FOR SPILLS <u>NOT</u> ORIGINATING FROM THE INDUSTRY</p> <p>Same management as Case I. a.</p>	<p>↳ CASE II. b. FOR SPILLS ORIGINATING FROM THE INDUSTRY</p> <p>Same management as Case I. b.</p>
 <p style="text-align: center;">Trans-boundary / joint operations A → B with industry resources</p> <p>Country A Country B</p> <p style="text-align: right; font-size: small;">OTRA-2021</p>	 <p style="text-align: center;">Trans-boundary industry operations A → B</p> <p>Country A Country B</p> <p style="text-align: right; font-size: small;">OTRA-2021</p>
<ul style="list-style-type: none"> - Authorities in A activate their NCP and coordinate response, with possible industry assistance (from A). - Authorities in B activate their NCP and coordinate response operations in their territory. 	<ul style="list-style-type: none"> - Responsible industry in A activates their response system and responds to the spill. - Authorities in A activate their NCP, to oversee and coordinate the response. - Authorities in B activate their NCP if needed, to oversee and coordinate the response. - Industry in country B activates their response system and responds to the spill (if and when requested by the authorities) and may mobilize assistance.
<p>↳ Response operations initiated by Authorities in A are pursued into country B.</p> <p><i>Note. This is applicable mainly to aerial, maritime and riverine operations.</i></p>	<p>↳ Response operations initiated by responsible industry in A are pursued into country B, with resources engaged by industry of A.</p>
<p>Possible items to consider for the Agreement</p> <ul style="list-style-type: none"> - Authorities in A coordinate the maritime and aerial response operations in its territory (and may mobilize some assistance of industry in A). - Operations by Authorities in A may move to seas of B (when slicks drift into B), then: <ul style="list-style-type: none"> * Authorities in B authorize the passage of (industry) resources from A to B. * Industry of A authorizes the transfer of their resources out of the country and notify authorities A of the degradation of their response capabilities. <p><i>Note. Operational command is discussed later.</i></p>	<p>Possible items to consider for the Agreement</p> <ul style="list-style-type: none"> - Authorities in B facilitates the continuation of operations (coordinated on-site by the industry) from A to B, and entry of industry resources of A into B following: <ul style="list-style-type: none"> * direct request from industry of A to authorities in B, or * the request of Authorities in A. <p><i>Note. All costs related to the operations and mobilization etc. are supported by the responsible industry.</i></p> <p><i>Note. Operational command is discussed later.</i></p>

Items for the Agreement

Items for Operational procedures / Information

INDUSTRY ASSISTANCE & TRANS-BOUNDARY MOVEMENTS OF INDUSTRY RESOURCES	
▶ Specify the general provisions regarding industry assistance between countries.	Practical additional considerations.
▶ Detail the different possible cases . Use the four cases proposed above and adapt. Specify: - Other cases? - Inland cases?	Practical additional considerations. Templates. Include specific request forms for each possible case
▶ Specify the procedure to manage each case. Or note that specific procedures will be set-up in the countries.	Practical additional considerations.
▶ Other provision to consider?	

5.6.5. Items for operational coordination of response & assistance

Case I and II (previous sections) are considered, with the distinction of transboundary and joint transboundary operations for Case II:

- **Provision of assistance** (public and/ or industry) from a country to another.
 - Resources are moved from country A to country B.
- **Trans-boundary operations** (e.g. aerial surveillance and maritime operations):
 - Authorities/ industry of country A start response in country A.
 - Response is extended into country B:
 - possibly still executed by Authorities/ industry of A in liaison with Authorities of B,
 - or implemented by Authorities of B.
 - Each country manages the operations into its area of responsibility;
 - *Note. Some transboundary response operations may be very limited: few aerial surveillance missions to check the possible presence of slicks in the territorial seas of the neighbouring country.*
- **Trans-boundary Joint operations** (e.g. for maritime operations):
 - Authorities / industry of country A carry out joint operations with authorities / industry of country B (in areas close to maritime borders of territorial sea or EEZ, or overlapping).
 - An overall on-site response coordinator is designated, e.g. from country A or alternatively from the industry (principle of “joint command”).
 - The responsibility for the on-site coordination can shift from country A to B if most operations are transferred to B (principle of “transfer of command”).

Response operations in a territory are implemented accordingly to the policies of the NCP of that country, or accordingly to common policies of available.

Items for the Agreement

Items for Operational procedures / Information

OPERATIONAL COORDINATION OF RESPONSE & ASSISTANCE	
<p>▶ Differentiate and define the terminology for the following situations:</p> <ul style="list-style-type: none"> • Provision of assistance • Trans-boundary response operations • Trans-boundary Joint response operations 	See proposal above.
<p>▶ Specify the procedures to allow timely and coordinate transboundary aerial surveillance flights between countries and share the results between countries.</p>	Operational procedures
<p>▶ Specify the procedures to identify or confirm the origin of a spillage.</p>	Operational procedures for sampling and finger-printing, hindcast modelling to backtrack the origin of the spill etc.
<p>▶ Specify the operational interfaces and mechanisms between the national incident management organisations to coordinate the transfer of assistance from a country to another.</p> <p>▶ Specify the operational interfaces and mechanisms between the national incident management organisations to coordinate:</p> <ul style="list-style-type: none"> • trans-boundary response operations; • trans-boundary joint response operations. 	<p>Operational procedures to:</p> <ul style="list-style-type: none"> • manage joint response operations (mainly for maritime operations); • transfer command between countries during joint response operations. <p>Contacts and communication channels, networks and tools (fixed line/ mobile/ satellite phone, E-mails, FAX, radio etc.).</p>
<p>▶ Specify the operational interfaces and mechanisms to coordinate the mobilisation of assistance from the industry between countries.</p> <p>▶ Specify the operational interfaces and mechanisms to coordinate the trans-boundary / joint operations involving the industry.</p>	Practical additional considerations – if needed.
<p>▶ Specify the procedure to guarantee frequent and regular exchanges of information between national Authorities in charge of response operations.</p>	Practical additional considerations – if needed.
<p>▶ Other provisions to consider?</p>	

5.6.6. Items for cost recovery between countries

The OPRC 90 lays down the general principles governing reimbursement between countries (but does not provide a method to evaluate the costs).

The general principle is that the requesting party reimburses the assisting party of all costs related to the provision of assistance (except if agreed otherwise). Regarding response operations (transboundary or not), the general principle is that each party bears its own costs. However, if joint transboundary operations are carried out at the request of a party, this party will bear the costs.

For spills from vessels (particularly spills of persistent oil from tankers) and accordingly to the relevant Conventions ratified by the country, some costs may be recovered by the affected and assisting parties (private or public) by claiming compensation from the shipowner (under CLCL

92) and specific additional fund (Fund 92). Other convention can apply in case of spill of bunker (persistent) fuel from other types of vessels.

For spills from the O&G industry, and sources other than vessels (at sea and inland), costs may also be recovered depending on how the “Polluter Pays” principle is incorporated into the national regulations.

The cost recovery and reimbursement mechanisms will also depend on the origin of the spill and type of operations implemented (see 📖 “IMO conventions”, p.15).

An assisting party can claim directly compensation to recover costs, or be reimbursed by the requesting party (which would have previously recovered costs for the assistance).

The project of “REGIONAL OIL SPILL CONTINGENCY PLAN” for the WACAF countries contains some provisions that can be adapted to the local context of this project. Consequently, they are also in the “SUB-REGIONAL OIL SPILL CONTINGENCY PLAN” for the GCLME countries as both documents are based on the same IMO template of (sub-)regional plan.

Using the provisions of the IMO template for cost recovery has a double advantage:

- They have already been discussed and (technically) agreed by the countries,
- And they are accepted elsewhere in the world.

Other international guidelines have been developed since and provide some additional practical procedures, guidelines and forms²⁰ that are relevant for this project. These guidelines could be used to develop instructions and forms according to the different situations identified (Cases I.a, I.b, II.a and II.b, detailed hereabove).

The Caribbean Island OPRC Plan 2012 (RAC-REMPEITC) has also relevant provisions regarding cost recovery.

The proposal of detailed cost recovery mechanisms for the three countries is beyond the scope of this study.

Items for the Agreement

Items for Operational procedures / Information

COST RECOVERY

- ▶ Specify the **general principles** regarding cost recovery for the provisions of assistance.
- ▶ Specify if some cost recovery mechanisms may apply for transboundary (joint) operations or other situations (than provision of assistance).

Practical additional considerations.

²⁰ - IMO “Guidance for international offers of assistance in response to a marine oil pollution incident” (2014)
 - REMPEC: “Mediterranean guide on cooperation and mutual assistance in responding to marine pollution incidents” (2018)
 - FEMA “National Incident Management System Guideline for Mutual Aid” November 2017

▶ Specify the procedures regarding reimbursement of assistance between countries, when providing public resources (or some private resources directly available to the authorities – other than resources from the O&G industry).	Practical additional considerations. Templates and forms for cost recovery.
▶ Specify the procedures regarding reimbursement of assistance between countries and O&G industry, when involving the provision of O&G industry.	Practical additional considerations. Templates and forms for cost recovery.
▶ Specify the procedures regarding costs recovery (according to compensation mechanisms or local mechanisms in application of the “polluter pays” principles) and the subsequent reimbursement of assistance between countries and O&G industry.	Practical additional considerations.
▶ Other provision to consider?	

5.6.7. Items for the termination of response

Items for the Agreement

Items for Operational procedures / Information

TERMINATION & FEEDBACK POST-INCIDENT

▶ Specify how parties are informed of the termination of the response and of the status of the demobilisation.	Practical additional considerations – if needed.
▶ Include provisions to develop, between countries, a post-incident report , addressing issues relevant to the Agreement, lessons learnt, positive items and points to improve.	Practical additional considerations – if needed.
▶ Other provisions to consider?	

5.6.8. Items for preparedness & regular activities

Items for the Agreement

Items for Operational procedures / Information

INFORMATION

▶ Specify the procedure to share information regularly about national spill response arrangements (national organization, competent authorities, contact details, inventory of equipment, etc.) and the Agreement (with operational procedures and Information). Example: <ul style="list-style-type: none"> - Email regularly (e.g. every 6 months) key information on status of arrangements and any changes (at national and Agreement levels) and updated operational procedures / Information. - Post on a dedicated website (with secured access) the Agreement with operational procedures / Information. 	Practical additional considerations – if needed. Set-up a website or use an existing one (e.g. website of the CRESMAC).
▶ Specify when and how Focal points (or other designated representatives) can discuss the provisions of the Agreement, potential problems and improvements: <ul style="list-style-type: none"> - remotely (teleconferences planned at least every year) - in presence, during meetings. <p><i>Note. Meetings can be combined with GI WACAF activities or other sub-regional activities and/ or training & exercises.</i></p>	Practical additional considerations – if needed. Indicate how language barrier will be managed.

▶ Specify the procedure to share information on lessons learnt after spill incidents, effectiveness of response, incident management etc.	Practical additional considerations – if needed.
YEARLY PREPAREDNESS PLANNING – INCLUDING TRAININGS & EXERCISES	
▶ Define a yearly plan of activities encompassing: <ul style="list-style-type: none"> - Specific objectives and strategy for the coming year - Routine activities of the Secretariat - Technical meetings of focal points - Planned trainings and exercises - Related activities (GI WACAF and others) ▶ Define the approval process of the yearly plan of activities.	Practical additional considerations – if needed.
▶ Remind to organize periodically – if and when possible – joint trainings .	Practical additional considerations – if needed.
▶ Specify how to organize periodically joint exercises and the level of exercise : alert & notification, table-top (to test interfaces between countries, joint response at sea, trans-boundary movements etc. <i>Note. Exercises can involve industry. Some may be supported by GI WACAF.</i>	Practical additional considerations – if needed.
▶ Other provisions to consider?	

5.6.9. Items for the management of the Agreement

Items for the Agreement

Items for Operational procedures / Information

LANGUAGES	
▶ Specify the valid languages used for the Agreement (French? Portuguese? English?).	<i>Note. According to the questionnaires and meetings with the authorities from DRC and Angola, the Agreement must be in the official language of the country, i. e. Portuguese and French.</i>
▶ Specify the valid language(s) used for the Annexes (French? And/ or Portuguese? And/ or English?)	
▶ Specify the valid language(s) used for the yearly plan of activities, reports, Emails and regular communication between countries.	
SECRETARIAT	
▶ Specify the mechanisms set-up to ensure the Secretariat function.	
▶ Specify the official relationships of the Agreement with the existing entity, if such entity is used for the Secretariat function.	
▶ Specify the responsibilities of the Secretariat , main tasks and resources allocated.	
ACCEPTANCE & LEGAL CLAUSES	
▶ Specify the procedure for the parties to accept and sign the Agreement.	Practical additional considerations – if needed.
▶ Specify the mechanisms for the entry into force of the Agreement.	
▶ Specify the procedure for the parties to retrieve from the Agreement. <i>Note. These mechanisms will set the legal nature of the document.</i>	
UPDATE OF AGREEMENT & DOCUMENTATION	

<ul style="list-style-type: none"> ▶ Specify the procedure to review the Agreement, frequency and responsibilities, meetings etc. ▶ Specify the procedure to approve the amendments and updates of the Agreement. 	Practical additional considerations – if needed, e.g. timeline for updates.
<ul style="list-style-type: none"> ▶ Specify the (simplified) procedure to review and update the Operational Procedures and Information, frequency and responsibilities. ▶ Specify the (simplified) procedure to approve the updated Operational Procedures and Information and disseminate them. 	Practical additional considerations – if needed.
RELATIONSHIPS	
<ul style="list-style-type: none"> ▶ Specify the interfaces/ relationships/ expected role or support from the key organisations (IMO, Abidjan Convention Secretariat). ▶ Specify the possible support from other organisations or initiatives (GI WACAF). 	Practical additional considerations – if needed.
<ul style="list-style-type: none"> ▶ Specify the procedure to regularly inform the key organisations (IMO, Abidjan Convention Secretariat). 	Practical additional considerations – if needed.
FUNDING	
<ul style="list-style-type: none"> ▶ Specify how the Secretariat function and the regular activities (meetings, workshops, others) are funded by the countries. 	
<ul style="list-style-type: none"> ▶ Other provisions to consider? 	

5.7. Development of Agreement

It is reminded that a robust National Contingency Plan in place is a fundamental building block for the Agreement.

5.7.1. Logical steps & activities

The next steps to develop the Agreement A-C-DRC are proposed hereunder and detailed after:

- ▶ Preparatory study for the development of a subregional agreement for oil spill preparedness and response between Rep. of Angola, Rep. of Congo & D. R. Congo;
- ▶ Specific engagement with potential stakeholders to discuss involvement in the Project;
- ▶ Definition of key stakeholders, process, timeframe and deliverables to develop the Agreement;
- ▶ Development of the draft Agreement & sub-regional workshop (all items presented in the tables in the preceding paragraphs are designed to assist in achieving this objective);
- ▶ Consolidation of the Agreement document and Agreement Implementation Plan;
- ▶ Approval of the Agreement and Agreement Implementation Plan.

All steps are beyond the scope of this study except the first one (delivery of the present preparatory study).

► **Preparatory study for the development of a subregional agreement for oil spill preparedness and response between Rep. of Angola, Rep. of Congo & D. R. Congo.**

This step is important as it will be the basis for the later stages. It will include:

- Finalization of the present report (with feedback from IMO and GI WACAF), and approval by GI WACAF and IMO;
- Dissemination of the finalized report to the countries (focal points);
- Written feedback from countries on the study with recommendations for items for the Agreement, development and implementation;
- **Teleconferences with the focal points to discuss the feedbacks, priorities for each country and way forward.**

► **Specific engagement with potential stakeholders to discuss their possible involvement in the Project**

The O&G industry should be informed and engaged as soon as possible – discussed hereunder.

Other parties/stakeholders may include:

- ECCAS and CRESMAC
- National (and regional?) industry Focal Points
- Abidjan Convention Secretary
- Benguela Current Commission
- Other Parties as necessary?

► **Definition of key stakeholders and timeframe to develop the Agreement**

Expected role and responsibilities of each entity (GIWACAF? Countries? Technical assistance? Others?) must be defined, e.g.

- Drafting and review process of the Agreement;
- Technical validation and official approval of the draft Agreement.

The focal points to be involved in the development of the Agreement should be designated (or confirmed) in each country. Focal points from the O&G industry in each country should also be designated. To facilitate exchanges for the development of the Agreement, it is recommended that one of the three O&G industry focal points acts as the “global” O&G industry focal point for the project.

Other stakeholders (e.g. intergovernmental entities) should be designated as well as details of their involvement in the development and approval of the Agreement.

A timeframe to develop the Agreement should be developed (with support of GI WACAF), to identify the activities and entities in charge e.g.:

- Initial teleconferences with countries, and with other identified entities as needed;

An initial sub-regional workshop may be considered (or convene a meeting back-to-back with a GI WACAF Regional conference). However, considering the burden and costs to organize a sub-regional workshop, a better alternative is to organize a workshop once a draft agreement is available to be discussed with and reviewed by the parties.

- Drafting of the agreement;
- Intermediate review by the countries (remote review & teleconferences to discuss the first draft);
- Review of the draft Agreement with the feedback of countries;
- Drafting of the first (priority) related documents (operation procedures and Information);
- Preparation of an Agreement **implementation plan – key step to ensure the project to be operational**;
- Workshop for the presentation, consolidation and technical approval of the Agreement and Agreement Implementation Plan;
- Official approval of the Agreement and of the Agreement Implementation Plan by the Parties;
- Implementation of the Agreement.

The timeline should be submitted to the countries, with their respective responsibilities. Work is detailed hereafter.

► Development of the draft Agreement & sub-regional workshop

Technical assistance. Because the national focal points will probably not have time to develop the Agreement internally (considering their daily tasks and responsibilities), and to bring external competencies to the project, a Technical Assistance is recommended to develop a draft Agreement. Support from GI WACAF and/or other initiatives or organisations, may be sought to develop some Terms of References, contract and fund this Technical Assistance. The Technical assistance should be independent (i.e. not related to the O&G industry), familiar with spill response, transboundary issues, national contingency planning and industry planning, and if possible have some knowledge of the WACAF region. The Technical assistance must combine operational experience of spill response and legal competencies for multi-lateral agreements (particularly of the Agreement is legally binding), which implies that two or more persons may be involved.

Draft Agreement. Considering the written feedback of countries on the study, and discussions between GI WACAF, Technical Assistance and the focal points (National Focal Points are key stakeholders for the project, to ensure feasibility and future implementation in the countries, as well as other governmental entities who will later sign or participate in the operationalisation of the agreement). The Technical Assistance should prepare a draft Agreement with all issues to be clarified clearly identified.

The provisions and items of the draft Agreement, as well as the operational procedures to develop in priority, can be discussed with countries during teleconferences, and maybe during GI WACAF or other national or (sub)-regional activities planned in the countries. Another option is for the Technical Assistance to have missions in the country to discuss the draft with the focal points. The feedback of the O&G industry should also be sought at this stage.

The draft Agreement can be reviewed and improved with these feedbacks.

Agreement Implementation Plan. The Technical assistance, with the parties, should also identify the key steps and mechanisms to implement and sustain the Agreement (after its official approval). These steps should be consolidated in a document: an Agreement Implementation Plan defining the key objectives, actions to set-up the provisions of the Agreement, planning, person/ entity in charge overall and for each activity and progress indicators. The Plan will also identify the potential blocking points and anticipate work-around options. Planning the implementation of the Agreement and allocating adequate resources are essential to ensure the Agreement becomes effective and does not remain yet another document.

Workshop. Once a complete draft Agreement is available, a sub-regional workshop should be organised with the countries (and other entities if involved) to present, discuss, review and consolidate (and technically validate – if possible) the draft, and validate the operational procedures to develop in priority. The Technical Assistance can help facilitating the workshop.

The workshop should result in:

- A consolidated draft Agreement with confirmed scope, framework, legal nature, provisions, signature and acceptance process – technically approved by the parties if possible;
 - Some items may remain to be finalized after to the workshop.
- Identified operational procedures and Information to develop in priority,
 - with the practical arrangements to include in them²¹;

²¹ Not all operational procedures and related information should be developed in one stage. This would result in a long process, and numerous documents, maybe not focused or operational. A modular (more flexible) approach may be relevant, i.e. develop in priority the most critical three to four operational procedures e.g.

- Alert and notification between countries;
- Regular exchanges of information between countries;

- Identified interfaces with other organisations if applicable (e.g. for Secretariat function);
- Identified Funding & management mechanisms for the yearly functioning of the Agreement;
- Validated key items for the Agreement Implementation Plan: roadmap, key steps, activities, management and funding, and scope of work to finalize the document.

⚠ The draft Agreement may require multiple reviews, discussions and working sessions between parties between the party to finalize the document. One workshop may not suffice.

► Consolidation of the Agreement and Agreement Implementation Plan

Agreement document & Agreement Implementation Plan. The draft agreement will be finalized by the Technical assistance, based on the recommendations of the workshop (if this stage was not completed during the workshop). The Technical assistance will also develop the first (priority and critical) operational procedures and information, in collaboration with the focal points.

The Technical assistance will finalize, with the focal points and GI WACAF, the Agreement Implementation Plan.

The finalized Agreement and Implementation Plan will be circulated to the parties for a final review, prior to the signature.

Funding & management mechanisms. Funding includes;

- Specific set-up costs for the activities and the Technical Assistance for implementation during the first 2-3 years (discussed hereunder);
- Running yearly costs for the activities and the Secretariat (from the first year onwards).

Parties will confirm and secure the funding mechanisms or assistance or support (or other) to set-up and sustain the Agreement. It is a common practice that each country bears his own costs for activities (participation to meetings, trainings, exercises, and other activities). Meetings and working sessions for the Agreement can also be integrated into activities carried out in the framework of other projects, such as the GI WACAF Project, meetings of the Abidjan Convention etc.

-
- General provisions for mutual assistance, and considerations for O&G industry assistance;
 - Transboundary monitoring.

Afterwards, building on the experience of these first operational procedures and the lessons learnt, additional operational procedures can be developed in a second stage and added to the Agreement.

However, funding mechanisms are required for the technical assistance, for the first years, and for – at least – for the Secretariat function on a yearly basis.

► Approval of the Agreement and Agreement Implementation Plan

Once the documents are consolidated (Agreement, first operational procedures and Agreement Implementation Plan), and funding & management mechanisms confirmed, a second workshop, or meeting, can be organized with the objective to:

- Sign the Agreement and approve the first operational procedures;
- Sign the Agreement Implementation Plan;
- Approve the yearly activity plan to set-up the Agreement;
- (Option. Practice the agreement during a table-top exercise).

5.7.2. Challenges, threats & opportunities

Challenges & threats for the project

The challenges & threats highlighted by the focal point of DRC and Angola are as follow (extracted from the questionnaires):

Challenges	Threats
<ul style="list-style-type: none"> • National legislation which needs to be revised in order to integrate/ endorse the provisions of the reviewed contingency plans and Agreement. • Financial availability to fund the implementation of the Agreement. • Approval and signature process for the Agreement that differ between countries. • The perception of the Agreement and project in each country. • Approval of the Agreement by the high-level Authorities/ ministries. • Organizing meetings of focal points and specialists to develop the Agreement. • Potentially lengthy discussions in country and between countries to define the provisions of the Agreement and management mechanisms. 	<ul style="list-style-type: none"> • Lack of political willingness • Political instability (in countries with elections of a new government that may not agree with the implementation of such plan • Covid-19 restrictions

In summary, the main common challenges and threats identified by the Focal Points are the limited resources (for the project, and overall) and the need for effective and continuous support throughout the hierarchy and at Ministerial level.

Opportunities

The opportunities highlighted by the focal point (also extracted from the questionnaires) are:

Opportunities for development	Opportunities for sustainment
<ul style="list-style-type: none"> • Good sub-regional climate between the three countries • Strong relationships between the current parties leading the countries • Regional and sub-regional projects and approach advocated by the African Union. 	<ul style="list-style-type: none"> • No feedback from countries on the topic.

5.7.3. Involvement of the O&G industry

All countries have recognized the need to inform and consult the O&G industry for the present project as the O&G industry:

- does create a risk due to its activity but also has significant monitoring and response resources in the countries and further resources accessible through international assistance;
- has extensive knowledge about their produced oil (characterization, finger-printing, etc.) that are key to identify spilled oil.
- will set-up, in case of large incident, transboundary operations, and can provide operational input to develop the Agreement.
- may provide assistance in-country, and possibly to close country.

Being a key player of the GI WACAF, present in the three countries, it is also legitimate that the O&G industry is involved in the project.

It is reminded that the O&G industry, acknowledging it can benefit from clearer trans-boundary mechanisms, can also support the project by e.g.

- Supporting the facilitation of and participate to some workshops (in the framework of GI WACAF or other);
- Participating in exercises and trainings;
- Providing comments on the Agreement and Operational procedure, and support information (e.g. list of contacts, list of equipment), etc.

5.8. Implementation & sustainability mechanisms

Implementation work. The Agreement implementation will be carried out accordingly to the signed Agreement Implementation Plan. It is key that a person/ an entity is designated to coordinate this implementation during the first years (e.g. 2 to 3 years). This will also illustrate

the commitment of the countries to effectively implement the Agreement. The implementation activities of the coordinator may include:

- regular contacts with the focal points to evaluate the progress of the implementation, and with the industry focal points (collect information, discuss the progress etc.);
- assistance to develop the documentation: operational procedures and information of the Agreement (list of contacts, equipment etc.);
- assistance to disseminate the documentation (with possible translation);
- awareness raising sessions in the countries with representatives of authorities and O&G industry about:
 - the provisions of the Agreement and practical arrangements,
 - the role and responsibilities of each entity in the country in case of activation.
- workshops with representatives of authorities and of O&G industry about:
 - practical considerations on role and responsibilities of each entity,
 - implementation of operational procedures and possible blocking points,
- assistance to prepare and facilitate regular exercises:
 - alert & notification,
 - table-top exercises,
 - large scale exercise with deployment of equipment etc.

Initially, a full-time support may be required, or at least a minimum numbers of days per month (e.g. one or two weeks per month in the initial stages), with additional regular missions in the countries for the various activities. This evaluation should be reviewed depending on the scope of the Agreement and the Implementation Plan.

Technical assistance. The coordinator function can be assumed by a member of the Secretariat (with sufficient technical competencies) or a national representative of one of the countries. It is not recommended that the coordinator function is assumed by an external body. The designated coordinator must have at least one deputy (more preferably). However, the designated coordinator will (probably) require some technical assistance in the early stages of the implementation, to perform some work and help to carry out the missions in the countries, organize trainings, exercises and awareness raising sessions etc. For this purpose:

- The Technical Assistance contracted for the Agreement development may be prolonged.
- Another external assistance may be contracted.

The Technical Assistance should aim to support and re-enforce the competencies of the coordinator and deputy, and not to do the work (which would reduce or even threaten the appropriation process by the countries). It will be strongly involved at the inception of the project but should seek to reduce as soon as possible its support, to become more a “spot” support for the Secretariat for specific purpose.

Sustainability. The sustainability mechanisms should be identified and confirmed before the implementation, as well as the blocking points to overcome (remaining from the implementation phase).

The Secretariat will be the key player to sustain the implemented provisions.

6. CONCLUSION

The situational analysis carried out (section 3) allowed to better understand the relevant items for the countries at three levels: international, regional and national.

The level of accession to the international conventions is very different between the three countries and the level of their implementation into the national regulations appears to be in progress in all countries. The Abidjan Convention and its Emergency Protocol provides the only common framework (for spillage at sea and potentially on the shores) for the three countries. The Protocol, although an old document with gaps, appears as a sound basis for the project. Therefore, the Agreement should be developed to “operationalise” and complement the existing principles of the Abidjan Convention and Emergency Protocol and possibly extend the scope to land and inland water bodies.

Congo and Angola have an approved NCP in place (although their response system is still under development) while the NCP is still pending approval in DRC. It is reminded that the NCPs remain the fundamental building blocks for any sub-regional agreement. Without approved and robust NCPs, a sub-regional Agreement is probably not viable. NCPs should be updated and potential blocking points, that would prevent the implementation of the Agreement, identified and dealt with (e.g. terminology, organization, management principles).

It is also reminded that the situational analysis was carried out only based on available documentation (from countries, GI WACAF and other sources). This analysis therefore does not claim to be an assessment of the actual level of preparedness and of spill response capacities in the countries.

The Regional Conventions related to Marine Environment and other arrangements with similar objectives elsewhere in the world were reviewed (Section 4 “Review of other (sub-)regional agreements”); and relevant items, not present in the Emergency Protocol of the Abidjan Convention, identified. Some more specific bi- or tri-lateral agreements were also considered.

Based on the feedback of the countries and findings of this study, key items for the Agreement are presented for the consideration of the countries (in section 5 “Discussion & Recommendations”): scope & geographical coverage, legal framework for the Agreement and its legal nature, management of Agreement, etc.). The legal nature of the Agreement (binding / non-binding) is discussed and should be based on the provisions of the Agreement.

A list of items to consider for the Agreement is also proposed, to be reviewed and adapted by the countries:

- Items for framework, scope and coverage
- Items for notification and information
- General conditions for the provision of assistance
- Items specific to the involvement of the O&G industry
- Items for operational coordination of response & assistance

- Items for cost recovery between countries
- Items for the termination of response
- Items for preparedness & regular activities
- Items for the management of the Agreement

The provisions of the (sub-)Regional Contingency Plan developed in the framework of the Abidjan Convention can also be considered at a later stage (even if the documents are not in force).

The involvement of the upstream O&G industry is discussed, as it is critical for this project regarding the significant activity of the upstream Oil & Gas Industry in the countries.

Recommendations and logical steps (section 5.7) are then proposed for the development and approval of the Agreement. The subsequent implementation of the Agreement is finally discussed, with the identification of coordination and sustainable funding mechanisms.

The key next steps to consider could be:

- **Preparatory study for the development of a subregional agreement for oil spill preparedness and response between Rep. of Angola, Rep. of Congo & D. R. Congo (present document):**
 - o Finalization, review, approval, translation and dissemination of the present report to the countries;
 - o Organization of a teleconference with the three countries to discuss the propositions, priorities and way forward, after review of the document by the countries;
 - o Possibility of organizing a workshop to discuss the development of the Agreement (for example benefiting from a GI WACAF Biennium Conference, if organized next year).
- **Specific engagement with potential stakeholders to discuss involvement in the Project:**
 - o Involvement of the O&G industry present in the countries as soon as possible;
 - o Identification and engagement of other stakeholders (CRESMAC, ECCAS, Abidjan Convention Secretary, Benguela Current Commission...).
- **Definition of key stakeholders, process, responsibilities in each country, timeframe and deliverables:**
 - o To draft and consolidate the Agreement;
 - o To develop the implementation plan to set-up the Agreement between countries – key step to ensure the project is operational and sustainable.
- **Development of the draft Agreement, Agreement implementation plan & sub-regional workshop, and assessment of the possible need for external technical assistance;**
- **Consolidation of the Agreement document and Agreement Implementation Plan** (with responsible parties and fundings mechanisms);
- **Approval of the Agreement and Agreement Implementation Plan and initiation of the implementation of the provisions.**

7. APPENDICES

7.1. IMO conventions full name

The list below provides the full name of the IMO conventions related to spillage, maritime incidents and compensation (in dark red):

- INTERNATIONAL CONVENTION ON MARITIME SEARCH AND RESCUE, 1979 as amended by resolution MSC. 70(69)
- International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL) and
 - Annex I Prevention of pollution by oil & oily water
 - Annex II Control of pollution by noxious liquid substances in bulk
 - Annex III Prevention of pollution by harmful substances carried by sea in packaged form
 - Annex IV Pollution by sewage from ships
 - Annex V Pollution by garbage from ships
 - Annex VI Prevention of air pollution from ships
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 London (LC 1972)
- 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (LC PROT 1996)
- International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 (INTERVENTION 1969)
- Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973 (INTERVENTION PROT 1973)
- Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC PROT 1992)
- Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND PROT 1992)
- Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (FUND PROT 2003)
- Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 1976)
- Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC PROT 1996)
- International Convention on Salvage, 1989 (SALVAGE 1989)
- International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990 (OPRC 1990)
- International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS 1996)
- Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS PROT 2010)

- 2000 Protocol on Preparedness, Response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances (OPRC/HNS PROT 2000)
- International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (BUNKERS 2001)
- Nairobi International Convention on the Removal of Wrecks, 2007

7.2. Abidjan Convention content

- Article 1: GEOGRAPHICAL COVERAGE
- Article 2: DEFINITIONS
- Article 3: GENERAL PROVISIONS
- Article 4: GENERAL OBLIGATIONS
- Article 5: POLLUTION FROM SHIPS
- Article 6: POLLUTION CAUSED BY DUMPING FROM SHIPS AND AIRCRAFT
- Article 7: POLLUTION FROM LAND-BASED SOURCES
- Article 8: POLLUTION FROM ACTIVITIES RELATING TO EXPLORATION AND EXPLOITATION OF THE SEA-BED
- Article 9: POLLUTION FROM OR THROUGH THE ATMOSPHERE
- Article 10: COASTAL EROSION
- Article 11: SPECIALLY PROTECTED AREAS
- Article 12: COOPERATION IN COMBATING POLLUTION IN CASES OF EMERGENCY
- Article 13: ENVIRONMENTAL IMPACT ASSESSMENT
- Article 14: SCIENTIFIC AND TECHNOLOGICAL CO-OPERATION
- Article 15: LIABILITY AND COMPENSATION
- Article 16: INSTITUTIONAL ARRANGEMENTS
- Article 17: MEETINGS OF THE CONTRACTING PARTIES
- Article 18: ADOPTION OF ADDITIONAL PROTOCOLS
- Article 19: AMENDMENT OF THE CONVENTION OR PROTOCOLS
- Article 20: ANNEXES AND AMENDMENTS TO ANNEXES
- Article 21: RULES OF PROCEDURE AND FINANCIAL RULES
- Article 22: REPORTS
- Article 23: COMPLIANCE CONTROL
- Article 24: SETTLEMENT OF DISPUTES
- Article 25: RELATIONSHIP BETWEEN THE CONVENTION AND ITS RELATED PROTOCOLS
- Article 26: SIGNATURE
- Article 27: RATIFICATION, ACCEPTANCE AND APPROVAL
- Article 28: ACCESSION
- Article 29: ENTRY INTO FORCE
- Article 30: WITHDRAWAL
- Article 31: RESPONSIBILITIES OF THE DEPOSITARY

7.3. WACAF Regional Oil Spill Contingency Plan content

DRAFT REGIONAL OIL SPILL CONTINGENCY PLAN. Same structure for the Sub-regional Plan for GCLME

1. INTRODUCTION	1.1	Context
	1.2	Purpose and objectives
	1.3	Scope and geographic coverage
	1.4	Definitions and abbreviations
2. POLICY AND RESPONSIBILITIES	2.1	Joint policy
	2.2	Responsibilities of competent national Authorities
	2.3	Designation of national operational and Contact Points
	2.4	Mechanism for activating the Plan
	2.5	Meetings of national operational Authorities
	2.6	Exchange of information
	2.7	Joint training and exercises
	2.8	Regional co-ordination centre
3. RESPONSE ELEMENTS AND PLANNING	3.1	Assumption of Lead role
	3.2	On-Scene Commander
	3.3	Emergency Response Centres
	3.4	Support teams
	3.5	Command structure
	3.6	Communications arrangements
	3.7	Response planning
	3.8	Response strategy
4. RESPONSE OPERATIONS	4.1	Response phases
	4.2	Spill surveillance
	4.3	Requests for assistance within the framework of the Plan
	4.4	Joint response operations
	4.5	Use of dispersants
	4.6	Termination of joint response operations and deactivation of the Plan
	4.7	Contacts with compensation regimes
5. COMMUNICATIONS AND REPORTING	5.1	Communication system
	5.2	Initial Warning system
	5.3	Pollution reporting system (POLREP)
	5.4	Post incident reports
	5.5	Relations with the Centre
6. LOGISTICS, FUNDING AND ADMINISTRATION	6.1	Logistics
	6.2	Financial procedures
	6.3	Transboundary movements of personnel, equipment, products and self-contained units
	6.4	Medical insurance and medical assistance
	6.5	Responsibility for injury and damage
	6.6	Documentation of response operation and related costs
7. PUBLIC INFORMATION	7.1	Public Relations Officer (PRO)
	7.2	Press releases
	7.3	Press conferences

7.4. Extracts from OPRC 90 relevant for cooperation

Article 5: Action on receiving an oil pollution report

(1) Whenever a Party receives a report referred to in article 4 or pollution information provided by other sources, it shall:

- (a) assess the event to determine whether it is an oil pollution incident;
- (b) assess the nature, extent and possible consequences of the oil pollution incident; and
- (c) then, without delay, inform all States whose interests are affected or likely to be affected by such oil pollution incident, together with
 - (i) details of its assessments and any action it has taken, or intends to take, to deal with the incident, and
 - (ii) further information as appropriate, until the action taken to respond to the incident has been concluded or until joint action has been decided by such States.

(2) When the severity of such oil pollution incident so justifies, the Party should provide the Organization directly or, as appropriate, through the relevant regional organization or arrangements with the information referred to in paragraph (1)(b) and (c).

(3) When the severity of such oil pollution incident so justifies, other States affected by it are urged to inform the Organization directly or, as appropriate, through the relevant regional organizations or arrangements of their assessment of the extent of the threat to their interests and any action taken or intended.

Article 6: National and regional systems for preparedness and response

(1) Each Party shall establish a national system for responding promptly and effectively to oil pollution incidents. This system shall include as a minimum:

- (a) the designation of:
 - (i) the competent national authority or authorities with responsibility for oil pollution preparedness and response;
 - (ii) the national operational contact point or points, which shall be responsible for the receipt and transmission of oil pollution reports as referred to in article 4; and
 - (iii) an authority which is entitled to act on behalf of the State to request assistance or to decide to render the assistance requested;
- (b) a national contingency plan for preparedness and response which includes the organizational relationship of the various bodies involved, whether public or private, taking into account guidelines developed by the Organization.

(2) In addition, each Party, within its capabilities either individually or through bilateral or multilateral cooperation and, as appropriate, in cooperation with the oil and shipping industries, port authorities and other relevant entities, shall establish:

- (a) a minimum level of pre-positioned oil spill combating equipment, commensurate with the risk involved, and programmes for its use;
 - (b) a programme of exercises for oil pollution response organizations and training of relevant personnel;
 - (c) detailed plans and communication capabilities for responding to an oil pollution incident. Such capabilities should be continuously available; and
 - (d) a mechanism or arrangement to coordinate the response to an oil pollution incident with, if appropriate, the capabilities to mobilize the necessary resources.
- (3) Each Party shall ensure that current information is provided to the Organization, directly or through the relevant regional organization or arrangements, concerning:
- (a) the location, telecommunication data and, if applicable, areas of responsibility of authorities and entities referred to in paragraph (1)(a);
 - (b) information concerning pollution response equipment and expertise in disciplines related to oil pollution response and marine salvage which may be made available to other States, upon request; and
 - (c) its national contingency plan.

Article 7: International co-operation in pollution response

- (1) Parties agree that, subject to their capabilities and the availability of relevant resources, they will cooperate and provide advisory services, technical support and equipment for the purpose of responding to an oil pollution incident, when the severity of such incident so justifies, upon the request of any Party affected or likely to be affected. The financing of the costs for such assistance shall be based on the provisions set out in the Annex to this Convention.
- (2) A Party which has requested assistance may ask the Organization to assist in identifying sources of provisional financing of the costs referred to in paragraph (1).
- (3) In accordance with applicable international agreements, each Party shall take necessary legal or administrative measures to facilitate:
- (a) the arrival and utilization in and departure from its territory of ships, aircraft and other modes of transport engaged in responding to an oil pollution incident or transporting personnel, cargoes, materials and equipment required to deal with such an incident; and
 - (b) the expeditious movement into, through, and out of its territory of personnel, cargoes, materials and equipment referred to in subparagraph (a).

Article 9: Technical co-operation

- (1) Parties undertake directly or through the Organization and other international bodies, as appropriate, in respect of oil pollution preparedness and response, to provide support for those Parties which request technical assistance:

- (a) to train personnel;
- (b) to ensure the availability of relevant technology, equipment and facilities;
- (c) to facilitate other measures and arrangements to prepare for and respond to oil pollution incidents; and
- (d) to initiate joint research and development programmes.

(2) Parties undertake to co-operate actively, subject to their national laws, regulations and policies, in the transfer of technology in respect of oil pollution preparedness and response.

Article 10: Promotion of bilateral and multilateral co-operation in preparedness and response

Parties shall endeavour to conclude bilateral or multilateral agreements for oil pollution preparedness and response. Copies of such agreements shall be communicated to the Organization which should make them available on request to Parties.

7.5. Regional Conventions related to Marine Environment

7.5.1. UNEP Regional Seas Programme & associated conventions

“The UNEP Regional Seas Programme is UNEP’s most important regional mechanism for conservation of the marine and coastal environment since its establishment in 1974. It is an action-oriented programme that implements region-specific activities, bringing together stakeholders including governments, scientific communities and civil societies. These Multilateral Environmental Agreements are governed by their own meetings of the Contracting Parties.

The Regional Seas conventions and action plans provide inter-governmental frameworks to address the degradation of the oceans and seas at a regional level, initially focusing on pollution at sea, such as oil spills and movement of hazardous waste, as well as land-based sources of pollution, for example plastics, wastewater and excess nutrients. Now, many have embraced the ecosystems approach to managing marine resources and have protocols on protected areas, marine litter, combating oil spills, pollution from ships, transboundary movement of waste including their disposal, integrated coastal zone management (ICZM) and land-based sources of pollution (LBS) through which disaster reduction, climate change adaptation and sustainable consumption and production issues can be addressed. The focus is on promoting regional oceans governance to deliver the global oceans agenda and respond to emerging issues, new policies and initiatives such as the Blue Economy. (...)

To date, UNEP’s Regional Seas Programme consists of three types of Regional Seas Conventions and Action Plans RSCAPs, across 18 different regions:”²²

<p>1 - UNEP-administered – These RSCAP have been established and are directly administered by UNEP. Secretariat functions, managing of finances and technical assistance are all provided by UNEP. The Ecosystems Division administers six Regional Seas Conventions and Action Plans.</p> <p>These are:</p>	<p>Western Africa Region → Abidjan Convention Eastern Africa Region → Nairobi Convention Mediterranean Region → Barcelona Convention Caribbean Region → Cartagena convention East Asian Seas → East Asian Seas Action Plan North-West Pacific Region → Action Plan for the Northwest Pacific Region (NOWPAP)</p> <p>The Regional Office for Europe administers the Tehran Convention (Caspian Sea) → Tehran Convention</p>
<p>2 - Non-UNEP administered – These RSCAP have been established under the auspices of UNEP, but another regional body provides the Secretariat and administrative functions.</p> <p>These are:</p>	<p>Red Sea and Gulf of Aden → Jeddah Convention ROPME Sea Area → Kuwait Convention Black Sea Region → Bucharest Convention North-East Pacific Region → Antigua Convention South Asian Seas → Colombo Declaration South-East Pacific Region → Lima Convention Pacific Region → Noumea Convention</p>
<p>2 - Independent – These RSCAP have not been established by UNEP but cooperate with the Regional Seas Programme and attend regular meetings.</p> <p>These are:</p>	<p>Arctic Region → Declaration on the establishment of the Arctic council – Ottawa declaration 1996 Antarctic Region (*) Baltic Sea → Helsinki Convention North-East Atlantic Region → OSPAR Convention</p>

(*) These following Regional Seas Programme do not have known specific arrangements for oil spill response, preparedness and transboundary cooperation, and will not be considered further.

“Most of the Regional Seas Programmes function through action plans, which are adopted by member governments in order to establish a comprehensive strategy and framework for protecting the environment and promote sustainable development. An action plan outlines the strategy and substance of the programme, based on the region's particular environmental challenges as well as its socio-economic and political situation.

Fourteen of the Regional Seas Programmes have also adopted legally binding conventions that express the commitment and political will of governments to tackle their common environmental issues through joint coordinated activities. Most conventions have added protocols, legal agreements addressing specific issues such as protected areas or land-based pollution.

In the regions, the Regional Seas programmes work through Secretariats or Regional Coordinating Units (RCUs) and Regional Activity Centres (RACs). The RCU is the nerve centre and command post of the action plan's activities and has the overall and practical responsibility

²² <https://www.unep.org/explore-topics/oceans-seas/what-we-do/regional-seas-programme>

for the implementation of the decisions of member countries (or contracting parties) regarding the operation of the action plan.”²³

Some arrangements are developed in the framework of other conventions, and finally some are standalone.

7.5.2. Management of conventions, associated instruments and activities

The management mechanisms and organisations are comparable between the different UNEP Conventions.

A Meeting of Parties, or Conference of Parties (CoP), is held regularly (frequently every two years), with high level representatives (ministers or representatives), to review and amend the instruments or add new ones, review the past activities and progress in the region, and set the strategic priorities for the next years and budget. This applies for the Abidjan Convention.

Each country designates some representatives (of the competent ministries or national agencies) to act as National Focal Point for the Convention and as a regular channel of communication. This applies for the Abidjan Convention.

A permanent Secretariat assists to maintain documentation and website, issue reports, prepare the different meetings (CoPs and other working meetings), assist to prepare the activities, workshops and others, and administers the yearly budget. The Secretariat can be staffed with a person or a team, e.g. General Secretariat, technical staff or officers and administrative staff, with dedicated facilities (as for the Abidjan convention and Jeddah Convention, Nairobi Convention, etc.).

Some Convention have different or additional items.

- Bureau of Contracting Parties, smaller group of representatives of the contracting parties that meet between the CoPs to address issues related to the implementation of the Convention & to supervise the secretariat (e.g. Barcelona Convention, Nairobi Convention).
- Commission (e.g. Barcelona Convention, Helsinki Convention and Baltic Marine Environment Protection Commission – HELCOM, Bucharest convention and Black Sea Commission or BSC, etc.).
- Working groups commissioned by the plenary meeting to carry out various tasks, and in exercises and participate in actual response operations.
- Technical expert groups or Expert groups or Task Forces.

²³ <https://www.unep.org/explore-topics/oceans-seas/what-we-do/working-regional-seas/regional-seas-programmes>

All these entities help to coordinate the activities and ensure progress of the implementation work.

In some regions, a Regional Co-ordinating Unit (CAR/RCU) and its associated Regional Activity Centres (RACs) coordinate the activities (e.g. Mediterranean, Caribbean etc.).

7.5.3. General funding

Funding of the organisations and activities is agreed during the CoPs and usually combines contributions from:

- Contracting countries;
- International or regional organisations;
- others.

7.6. Maritime spill response Agreements

Under the umbrella of the UNEP Conventions, or other agreements, or as standalone, various agreements specific to spill of oil and HNS have been developed at regional level, or as bi- or tri-partite agreements.

This section presents these agreements and discusses their provisions and characteristics, compared to the Emergency Protocol of the Abidjan Convention.

7.6.1. Types of agreements, Legal framework & Management

The main types of agreements reviewed are as follow, developed in the framework of an UNEP Regional Seas Convention or other Convention or as a standalone. ²⁴

Instrument in the framework of UNEP Regional Seas Convention	Convention or regional instrument
Protocol Concerning Cooperation in Combating Marine Pollution in Cases of Emergency Or Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea (Barcelona Convention) Or Protocol concerning regional preparedness, response and co-operation in combating oil pollution incidents Or similar instrument	Abidjan Convention, Nairobi Convention, Jeddah Convention, Kuwait Convention, Barcelona Convention, Declaration on the establishment of the Arctic council, Bucharest Convention, Tehran Convention, Nouméa Convention, Lima Convention, Cartagena Convention

²⁴ Note. Agreements simply officialising the set-up of a (sub-)regional contingency plan are discussed in the section on “Bi- or Tri-lateral spill-specific agreements”.

Instrument in the framework of UNEP Regional Seas Convention	Convention or regional instrument
Memorandum of Understanding on Regional Co-operation Regarding Preparedness and Response to Oil Spills in the Marine Environment of the Northwest Pacific Region	Action Plan for the Protection, Management and Development of the Marine and Coastal Environment of the Northwest Pacific Region (NOWPAP)
Protocol concerning Marine Pollution resulting from Exploration and Exploitation of the Continental Shelf (and the seabed and its subsoil) Or similar instrument	Kuwait Convention, Barcelona Convention,
Protocol Concerning Technical Cooperation to Borrow and Transfer Experts, Technicians, Equipment and Materials in Cases of Emergency.	Jeddah Convention
Convention Annexes: - Annex IV Prevention of pollution from ships - Annex V Exemptions from the general prohibition of dumping of waste and other matter in the Baltic Sea Area - Annex VI Prevention of pollution from offshore activities - Annex VII Response to pollution incidents	Helsinki Convention
Declaration on the safety of navigation and emergency capacity in the Baltic Sea area (Copenhagen Declaration)	Helsinki Convention
Agreement Between the Government of the Republic of Latvia and the Government of the Republic of Estonia on Co-operation in the Combating of the Effects of Marine Pollution Incidents	Helsinki Convention
Instrument in the framework of other Convention or standalone	Convention or regional instrument
Cooperation Agreement for the Protection of the coasts and waters of the North-East Atlantic against Pollution (Lisbon Agreement)	N/ A - standalone
Agreement for cooperation in dealing with pollution of the North Sea by oil and other harmful substances (Bonn Agreement) (And associated DenGerNeth Tripartite Agreement)	
Agreement between Denmark, Finland, Iceland, Norway and Sweden for cooperation in dealing with pollution in the North Sea by oil and other harmful substances ("the Copenhagen agreement 1993")	
"Agreement Between the Government of the Republic of Latvia and the Government of the Republic of Lithuania on the Mutual Support in the Event of Natural Disasters and other Large Scale Accidents (2001)	Convention on the Transboundary Effects of Industrial Accidents (TEIA) + UN/ OCHA
Agreement Between The Government Of The Republic Of Latvia And The Government Of The Kingdom Of Sweden On Collaboration Within The Field Of Emergency Prevention, Preparedness And Response (2002)	

Nearly all instruments address:

- Spillage of oil, Hazardous and Noxious substances (HNS) or “harmful substances” (any substances that may cause a pollution, i.e. affect the environment, activities or usage).
- Spillage or emergencies at sea, and that may affect the coastline.

The provisions of the Emergency Protocol of the Abidjan Convention (particularly those related to the present project) are found in most of the other instruments i.e.:

- Recommendation to develop bi- or multi-lateral agreement to facilitate the implementation of the Protocol at a sub-regional level.

- Engagement to share information about national response competent authorities, alert focal points, arrangements in country and preparedness (technical information);
- Engagement to notify countries “without delay” in case of spill threatening the area or interests of another country;
- Facilitation of the movement of personnel, equipment, aircrafts, seacrafts, etc. between countries (by sea or by land); etc.

Most Protocols also include provisions reminding contracting parties to develop their own in-country system for alert and response, and ensure the shipping, industry, ports etc. have response systems in place commensurate to their risk (which is consistent with the OPRC 90 Protocol, but not reminded in the Abidjan Protocol).

7.6.2. Management of agreements & activities – Regional Centres

Protocols developed in the framework of an UNEP Regional Seas are administered according to the relevant provisions of the Convention, see [\[1\]](#) “Management of conventions, associated instruments and activities”, p.100.

In some areas, a centre manages the activities. P. Taylor from Petronia discussed the four different types of regional centres in the report “Oil Spill Preparedness Regional Cooperation in East Africa and Western Indian Ocean” (Jan. 2020). A centre is “a financially sustainable institution that has been designated by the Contracting Parties to a Regional Seas Convention, or Member Governments Parties to a non-UN Environment regional Convention or a regional agreement, to carry out specific functions and activities. This is typically in support to a Protocol to a Convention or the regional agreement addressing emergencies resulting in oil pollution.” (full extract in [\[1\]](#) “**Error! Not a valid bookmark self-reference.**”, p.98).

The four types of centres identified are:

Type	Framework	Example	Funds *
Intergovernmental UN Regional Centres (type A) administered by IMO in cooperation with a UN Environment Regional Coordination Unit (RCU), on the basis of the decisions of the Contracting Parties to the relevant regional seas Convention.	UN Environment Regional Seas Action plans	= REMPEC (under Barcelona Convention)	Regional Trust Fund and other sources of funding; including projects signed between the centres and donor countries/organizations
Intergovernmental non-UN regional Centres (type B) specific local arrangements	Regional conventions or agreements with no IMO or UN Environment involvement in their operation and administration.	= Marine Emergency Mutual Aid Centre (MEMAC), Bahrain under the Regional Organization for the Protection of the Marine Environment (ROPME) in the Gulf	Member Governments, Parties to the regional agreement/Convention through their own specific financing mechanism
Light Secretariat Arrangements (type C) new or an existing institution (e.g. regional intergovernmental institution) which acts as secretariat for a regional convention and which will be used to act as a secretariat for the regional agreement on preparedness, response and co-operation	No direct involvement of IMO in the operation and management of the centre (MoU with IMO is possible).	= Secretariats is the Bonn Agreement (cooperation on marine pollution for the North Sea and the English Channel), which uses the Paris/Oslo secretariat. = HelCom Secretariat	Member Governments
National centres with a regional mandate, Regional Activity Centres (RAC) (type D) national institution (new or existing), which is established within the framework of a UN Environment Regional Seas Convention or another instrument as a Regional Activity Centre with a regional mandate	Signing of a MOU between the host country, IMO and UN Environment within the framework of a regional seas Convention or between the host country and IMO if the regional Convention is a non-UNEP one	= Regional Marine Pollution Emergency Information and Training Centre for the Caribbean region (RAC/REMPEITC - Carib.) Cartagena Convention. = Marine Environmental Emergency Preparedness and Response Regional Activity Centre (MERRAC), RAC of the NOWPAP	Partly through a regional Trust Fund and mainly through voluntary contributions in cash or in-kind from governments and industry. + IMO

(*) Funds: operational costs of the centre and funding of the activities.

The Centre selected by the WACAF countries as a regional centre, the NOSDRA agency (Nigeria), can be considered as **Type D Centre**. However, the Centre is not operational yet, as no Memorandum of Understanding (MoU) has been signed so far between NOSDRA and the IMO.

7.7. Nairobi Emergency Protocol

“(a) assisting Contracting Parties, upon request, in the following areas: (contingency plans and trainings)

- (b) assisting the Contracting Parties, upon request, on a regional basis, in the following areas: (co-ordination of regional response, and provision of a forum for discussion).
- (c) establishing and maintaining liaison with:
 - (i) competent regional and international organizations, and
 - (ii) appropriate entities conducting activities in the Eastern African region (...).
- (d) maintaining a current inventory of equipment, materials and expertise readily available in Eastern Africa (...);
- (e) disseminating information on the prevention and combating of marine pollution incidents;
- (f) identifying or maintaining means for marine emergency response communications;
- (g) encouraging research by the Contracting Parties, competent international organizations and appropriate entities on marine pollution-related matters, (...);
- (h) assisting the Contracting Parties in the exchange of information pursuant to article 4; and
- (i) preparing reports and carrying out other duties assigned to it by the Contracting Parties”.

7.8. Regional Centres – Extract from report “Oil Spill Preparedness Regional Cooperation in East Africa and Western Indian Ocean”

Extract from the report of P. Taylor “Oil Spill Preparedness Regional Cooperation in East Africa and Western Indian Ocean” by (Jan. 2020).

4.3 OTHER REGIONS’ APPROACHES TO REGIONAL COORDINATION / CO-OPERATION

4.3.1 Objective and functions of a regional centre

A regional centre can be defined as a financially sustainable institution that has been designated by the Contracting Parties to a Regional Seas Convention, or Member Governments Parties to a non-UN Environment regional Convention or a regional agreement, to carry out specific functions and activities. This is typically in support to a Protocol to a Convention or the regional agreement addressing emergencies resulting in oil pollution.

The objectives of a centre can be summarized as follows:

- a) To develop co-operation in the region in the field of preparedness and response to pollution incidents which require emergency actions or other immediate response.
- b) To assist the countries of the region, which so request, in the development of their own national capabilities for response to pollution incidents and to facilitate information exchange, technical co-operation and training.
- c) To assist in establishing regional systems and to promote dialogue aimed at conducting co-ordinated actions at national, regional and global levels for the implementation of the sub-regional/regional contingency plans.

The functions of a regional centre can be summarized as follows:

- i. To collect and disseminate relevant information.
- ii. To initiate, design and assist in the running of national and regional training courses and exercises.
- iii. To assist the countries in ensuring the sustainability and revision of their national plans and of the sub-regional/regional contingency plan.
- iv. To facilitate and co-ordinate international assistance in case of emergency.
- v. To have a role of secretariat as regards the regional agreement and the regional contingency plan, including the organizing of regular meetings.

These functions may reach different levels of development depending on available resources. Regional centres do not directly own or provide response capability or equipment for pollution combatting activities.

4.3.2 Types of centre

There are different approaches to the governance, organization and financing of regional centres. Four types are described, that may be considered as models in the WIO and eastern Africa.

Intergovernmental UN Regional Centres (type A)

Such centres are established within the framework of the UN Environment Regional Seas Action plans by the decision of the Parties to the Action Plans and are reflected in the Emergency Protocol to the parent Regional Convention. They are administered by IMO in cooperation with a UN Environment Regional Coordination Unit (RCU), on the basis of the decisions of the Contracting Parties to the relevant regional seas Convention.

One example is the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC) under the Barcelona Convention. A host country agreement was signed between IMO and the Government of Malta. The staff of the centre are UN staff members recruited by IMO in consultation with UN Environment and the RCU and funded by the Trust Fund under the relevant regional seas Convention (i.e. by the Contracting Parties to the Convention). The host country provides office buildings and facilities.

The operational costs and activities of such centres are financed through the regional Trust Fund and other sources of funding; including projects signed between the centres and donor countries/organizations.

In addition to management of the centre, IMO provides a continuous technical backstopping, including the provision of documentation and publications. IMO, under its Integrated Technical Co-operation Programme (ITCP), also supports financially a number of the capacity building activities implemented by the centre.

Intergovernmental non-UN regional Centres (type B)

Such centres can be established within the framework of regional conventions or agreements with no IMO or UN Environment involvement in their operation and administration. They are funded by the Member Governments, Parties to the regional agreement/Convention through their own specific financing mechanism. An example for such arrangement is the Marine Emergency Mutual Aid Centre (MEMAC), Bahrain under the Regional Organization for the Protection of the Marine Environment (ROPME) in the Gulf.

Light Secretariat Arrangements (type C)

It might be a new or an existing institution (e.g. regional intergovernmental institution) which acts as secretariat for a regional convention and which will be used to act as a secretariat for the regional agreement on preparedness, response and co-operation. The Secretariat's main task and activity will be the provision of support for the organizing of the meetings of the Contracting Parties to the regional Agreement.

The bulk of all activities required under the regional agreement are carried out by and under the responsibility of the individual member countries. The staff of the Secretariat is the regular staff of the regional institution. An example for such Secretariats is the Bonn Agreement (cooperation on marine pollution for the North Sea and the English Channel), which uses the Paris/Oslo secretariat. Another example is the Helsinki Commission.

National centres with a regional mandate, Regional Activity Centres (RAC) (type D)

This is a national institution (new or existing), which is established within the framework of a UN Environment Regional Seas Convention or another instrument as a Regional Activity Centre with a regional mandate by a decision of Parties to a regional Agreement following an offer by a Member Government. The Centre operates under the management of a Director appointed by the host country, who collaborates closely with IMO and UN Environment. IMO provides technical guidance and support to the Centre's staff, as required. UN Environment supervises the operation of the centre with respect to its integration into the overall regional environment programme.

The establishment of such regional activity centres is done through the signing of a Memorandum of Understanding (MOU) between the host country, IMO and UN Environment within the framework of a regional seas Convention or between the host country and IMO if the regional Convention is a non-UNEP one. The regional activity centre is established under the laws and regulations of the host country to undertake regional activities in accordance with established functions and terms of reference for the centre as approved by the Contracting Parties to the regional Agreement. Office buildings, facilities, initial and recurring capital and operating costs of the centre would be borne by the host government or the institution itself. The staff would be the regular staff of the national institution and secondments through IMO of experts from governments and industry. The host country, in consultation with IMO and UN Environment, nominates the Director of the Centre.

The activities of such a centre including part of the running costs are financed partly through a regional Trust Fund and mainly through voluntary contributions in cash or in-kind from governments and industry. That includes projects signed between the centre and donor countries/organizations. IMO, through its technical co-operation programme, finances activities implemented by such centres, as appropriate. A typical example is the Regional Marine Pollution Emergency Information and Training Centre for the Caribbean region (RAC/REMPEITC - Carib.) established under the Cartagena Convention. The Marine Environmental Emergency Preparedness and Response Regional Activity Centre (MERRAC), one of four Regional Activity Centres (RACs) of the Northwest Pacific Action Plan (NOWPAP), is a further example. The programme and budget of such centres is prepared by a Steering Committee comprising of IMO/UN Environment and other donor countries and organizations.

4.3.3 Funding

Centres must be financially sustainable. In general terms, the funding requirement of a centre can be split into two main categories:

- Operational costs, including office space, staffing, material and equipment and initial and recurring operational costs needed for the work of the centre; and
- Funding of the centre's programme of activities, including related running costs.

4.3.4 Operation and management

The way the centres operate and are managed depends on their status.

The first scenario sees IMO's full involvement in the management is best illustrated by the Regional Marine Pollution Emergency Centre for the Mediterranean (REMPEC). Type A situation.



The second scenario refers to type B or C situation. It provides for no direct involvement of IMO in the operation and management of the centre. An MOU may be signed specifying the co-operation between IMO and the centre or secretariat.

The third scenario refers to a Type D situation.

In such cases, following a decision of the Intergovernmental meeting and/or the Contracting Parties to the regional Convention/Agreement to establish a regional activity centre, a Memorandum of Understanding (MOU) is signed between the host government and IMO/UN Environment. Although the MOU may vary from centre to centre, in general it should specify the nature and type of contribution being offered by the host government in addition to the relationship between the centre and the Contracting Parties to the Convention. A further IMO with IMO and UN Environment/RCU may specify mechanisms for transfer of funding and provide for privilege and immunities for any international staff, if appropriate.

7.9. Questionnaire “Country profile” & answers

Click on the icon below to open the file containing the Country profile questionnaire sent to the countries, with their answers.

Congo	DRC	Angola
Not available	 Profil pays prérempli RDC 20210208.docx	 Country profile Angola prefiled 20210

7.10. Questionnaire “Approach for Agreement” & answers

Click on the icon below to open the file containing the questionnaire on the Agreement sent to the countries, with their answers.

Congo	DRC	Angola
Not available	 Questionnaire FR étude accord tripartit	 Questionnaire EN study trilateral agreer

7.11. Inventory of existing (sub-)regional agreements



Click on the icon below to open the file containing the inventory.

7.12. Terminology for assistance & resources

Terminology

- “**Requesting country**” is the country requesting assistance from other countries.
- “**Assisting country**” is the country providing assistance to another country, at the request of the latter.
- “**Assistance**” (for oil spill response) includes:
 - **Services:** Technical advice (e.g. for at-sea response strategy, shoreline clean-up etc.) and specialized services (e.g. satellite imagery, MetOcean models, oil fate & behaviour models etc.).
 - **Resources**, including at least:
 - **Personnel** with competencies for oil spill response or incident management (on the field and in the incident management teams),
 - **equipment** (offshore boom, skimmers, pumps etc.) and **consumables** (dispersant product, personal protective equipment etc.)

- **Logistical support**, mainly vessels, aircrafts, land transport or others with their crew, pilot, driver (also termed “self contained units – SCUs”) to carry out operations (e.g. deployment of equipment) or support operations (e.g. transport personnel and equipment).

Note. Services can be provided on-site or remotely (i.e. from the assisting country).

Nature of resources. Resources can be:

- **public** (e.g. state-owned or owned by local authorities) or **private or industry** (e.g. O&G industry, port operator, mining industry, other industry) - referred to as “**industry**” in the present document.
- **specific to oil spill response** (e.g. boom, skimmers, chemical dispersant product etc.) or **non-specific to oil spill response** (e.g. aircrafts, vessels, personal protective equipment, etc.).
- **owned, contracted or subscribed** by public or private stakeholders (authorities, industry or other stakeholders).

	Authorities (in WACAF region)	Industry (in WACAF region)	Mobilization
<p>Resources owned The owner is the proprietary of the resources. Normally located in country.</p>	<p>Examples: Personnel all country (civil and military), facilities, management centres and rooms, ministries, administrations, services, regulating agencies, specialized agencies, Police and army, vessels, aircrafts, land transport, staging/ storage areas, logistical support, etc.</p>	<p>Non-specific: Personnel, offices, emergency management rooms, etc. Specific: spill response equipment & specialized personnel <i>Note. Operator or mother company may own additional resources in affiliates located in other countries</i></p>	<p>Resources owned are directly accessible and can be mobilized directly by their owners.</p>
<p>Resources contracted The contractor has contracted a company to provide some resources and services in country for its normal operations and/ or emergency. Normally located in country.</p>	<p>Examples: Various services in country (e.g. port operator, airport operator etc.)</p>	<p>Non-specific: personnel, vessels, aviation services, drilling rigs, barges, maintenance, general waste management, land transport, other services etc. Specific: personnel, equipment, local response companies, or resources accessible through mutual assistance agreement.</p>	<p>Contracted resources may be engaged in response with possible restrictions/ delays <u>or not engaged</u> (depending on the terms and conditions of each contract).</p>
<p>Resources subscribed The subscriber has signed contracts to access additional resources and services, as needed for emergency or other purpose.</p>	<p>To be defined per country.</p>	<p>Non-specific: Access to cargo planes, additional vessels, etc. Specific: Tier 3 response personnel and equipment, spill response equipment,</p>	<p>Subscribed resources are accessible through pre-established contracts (with delays as they are normally not in country).</p>

Normally not located in country.		well blow-out intervention systems etc.	
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