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Meeting of Legal Experts on the Draft
Protocol for the Protection of the
Mediterranean Sea against Pollution
from Land-Based Sources

Geneva, 25-29 June 1979

INVENTORY OF AREAS OF DISAGREEMENT
AND OF POINTS REQUIRING CLARIFICATION
REGARDING THE PRELIMINARY DRAFT PROTOCOL FOR THE
PROTECTION OF THE MEDITERRANEAN SEA
AGAINST POLLUTION FROM LAND-BASED SOURCES

Inventory of areas of disagreement and of points requiring clarification regarding the preliminary draft protocol for the protection of the Mediterranean Sea against pollution from land-based sources

Introduction

1. On the basis of discussions held during the Monaco Intergovernmental Review Meeting of Mediterranean Coastal States on the Mediterranean Action Plan, Monaco, 9 - 14 January 1978, UNEP has prepared the following inventory of areas of disagreement and of points requiring clarification regarding the preliminary draft protocol for the protection of the Mediterranean Sea against pollution from land-based sources.
2. The inventory is intended to assist Governments, WHO and UNEP in their preparations for the working groups of Governmental juridical and technical experts to be held before another intergovernmental consultation is convened to conclude negotiations on the protocol.
3. The inventory presents an article by article review, identifying those articles or paragraphs on which a consensus could not be reached, or for which a new wording was agreed upon during the Monaco meeting. The inventory also attempts to reflect those comments made by delegations at the second Intergovernmental Consultation concerning a Draft Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources, Venice, October 1977, which appeared to have been maintained by delegations at the Monaco meeting.
4. The Secretariat would like to draw to the attention of readers to paragraph 54 of UNEP/IG.11/4, "Report of the Intergovernmental Review Meeting of Mediterranean Coastal States on the Mediterranean Action Plan" where it is noted that one delegation had submitted amendments and proposals in the form of an alternative draft protocol accompanied by an explanation of text. The text of the alternative draft protocol has not been included in this inventory, since the text in its entirety was circulated to all delegations at the Monaco Intergovernmental Meeting.

Preamble

5. It was recognized by the meeting that a preamble should be drafted in the future. Some delegations supported the proposal to include in the preamble a paragraph recalling the relationship of the protocol to the Convention for the Protection of the Mediterranean Sea against Pollution, 1976.

Article 1. General Objective

6. A consensus was reached on the following wording for Article 1:

"The Contracting Parties to this Protocol (hereinafter referred to as "the Parties") shall take all appropriate measures to prevent, abate and combat pollution of the Mediterranean Sea Area originating from land-based sources within their territories."

Article 2. Coverage

7. A consensus could not be reached on the geographical coverage of the protocol. Several delegations asked that the inclusion of "internal coastal waters" be reconsidered.

Article 3. Scope

Paragraph 1

8. Some delegations believed that the enumeration of pathways by which pollutants reach the Protocol area, as put forth in paragraphs 1 (a-d), should not be exclusive: therefore, it was proposed to include the words "in particular" after "from the territories of the Parties".

9. One delegation queried the term "dépôt à la côte" ("coastal dumping") in paragraph 1 (a).

10. One delegation proposed that a specific reference to "groundwater" be included in paragraph 1 (c).

11. No common position could be reached on the inclusion of pollutants reaching the Protocol Area through the atmosphere in paragraph 1 (d).

12. One delegation proposed the following new wording for paragraph 1 of Article 3:

"The Protocol shall apply to all pollutants reaching the Protocol Area from the territories of the Parties:

- directly, from outfall pipelines discharging into the sea, or through coastal dumping;
- indirectly, through rivers, canals and other streams, underground watercourses, run-off and atmospheric agents".

Paragraph 2

13. Some delegations felt that the phrase "structures under the jurisdiction of a Party" gave rise to problems of juridical interpretation and needed to be clarified. Several delegations proposed that the entire paragraph needed to be reviewed.

Article 4. Definitions

Paragraph 1 (c)

14. "Internal coastal waters" - several delegations expressed reservations as to the use and definition of this term, in particular with reference to existing international law and any existing national definitions.

Paragraph 1 (d)

15. "Freshwater limit" - it was agreed that the definition of this term should be studied again in connexion with paragraph 1 (c).

Paragraph 1 (e)

16. Since paragraph 1 (e) was already in brackets, it was assumed that the definition would need to be reviewed by the experts. WHO informed the meeting that it had compiled related regulatory texts from a number of States in the hope that they may assist delegations in their discussions on this paragraph. The meeting welcomed WHO's proposal to circulate the results of its work before the experts meeting.

Other definitions

17. Several delegations requested that a definition of "pollution from land-based sources" be included in Article 4.

18. One delegation also suggested that a definition of "discharge" should be included in Article 4.

Article 5. Reduction of pollution from existing sources

19. Several delegations proposed that articles 5 and 6 be merged into one article dealing with "reduction of pollution".

20. One delegation proposed to insert the following additional paragraph in Article 5 in order to provide a link between articles 5 and 6:

"The Parties shall endeavour to attain the objectives laid down in Article 6 within a time-limit to be agreed during the formulation of these programmes".

Article 6. Discharges from new installations

21. Several delegations supported merging articles 5 and 6 into one article.

22. One delegation proposed the addition of the words "including environmental impact assessment" after the word "measures" in paragraph 1 of Article 6.

Article 7. Substances listed in annex I

Paragraph 2

23. Certain delegations questioned the advisability of including a deadline for the adoption of a time-table for the application of emission standards. It was proposed that for each product concerned a separate timetable would need to be developed.

Article 8. Substances listed in annex II

24. One delegation suggested that a definition and clarification of the term "authorization" would be needed.

Articles 5, 6, 7, and 8

25. One delegation proposed a total restructuring of articles 5, 6, 7 and 8. It was suggested that the substance of those articles should be contained in only two articles which focused on the substances contained in annex I and the substances contained in annex II. If it was not acceptable to restructure the articles, then the delegation proposed that the existing text should be re-ordered so that articles 7 and 8 would appear before articles 5 and 6.

Articles 7 and 8

26. It was agreed that articles 7 and 8 would have to be closely reviewed in connexion with annexes I and II.

Article 9. Common guidelines, criteria or standards

Paragraph 1 (a)

27. Several delegations proposed that the term "methods used for pretreatment of effluents" should be better worded.

Paragraph 1 (c)

28. With reference to "quality of sea-water used for specific purposes", some delegations requested that "specific" be clarified.

29. One delegation proposed that a new paragraph 1 (f) should be added which would read "the best available treatment methods for each class of agricultural, municipal, and industrial sources."

Paragraph 2

30. One delegation proposed that a reference to the need for standardization of measuring methods and intercalibration should be included in Article 9.

31. One delegation requested that, in the English text, the final words read: "the local environmental capacity of the marine environment".

32. Several delegations supported the following wording for article 9 (2):

"Without prejudice to the provisions of Article 7, such common guidelines, criteria or standards shall take into account subregional features, the economic capacity of the Parties and their need for economic development, the level of existing pollution, and the local geographical, oceanographic, hydrodynamic and physical characteristics."

Paragraph 3

33. One delegation felt that this paragraph needed clarification; in particular, the word "recommended" and the phrase "incorporated in annexes to the protocol".

Article 7, 8, and 9

34. One delegation proposed that all sources and all pathways of pollutants should be included in the Protocol and its annexes, independently of the level of knowledge of the pollutants or pathways. It was also pointed out that the annexes as prepared at present favour the adoption of emission standards, whereas one delegation had repeatedly expressed its position that the Parties should adopt recipient water quality standards to combat pollution from land-based sources. Therefore, the delegation proposed that UNEP, in collaboration with WHO and other specialized agencies, undertake the revision of the annexes to reflect the application of recipient water quality objectives.

Article 10. Specially protected areas

35. No comments.

Article 11. Monitoring

36. One delegation referred to the alternative text which it had proposed and also requested that Article 11 begin with the words "With a view to implementing the Protocol and within the framework ...".

Paragraph (a)

37. One delegation proposed that the phrase "to the extent possible" be inserted after the phrase "periodically to provide".

Paragraph (b)

38. One delegation proposed that the word "periodically" be inserted after the verb "to evaluate".

Article 12. Scientific and technological co-operation

39. Several delegations supported the proposal to delete the phrase "as far as possible" in the introductory paragraph. Other delegations were opposed to this deletion.

Paragraph (a)

40. One delegation proposed alternative wording for this phrase as follows:

"to facilitate circulation of scientific and technical information".

Article 13. Training and assistance

Paragraph 1

41. One delegation proposed the deletion of the phrase "to developing countries".

42. One delegation proposed the addition of the words "abating and combating" after the phrase "with a view to preventing" in article 13(1).

Paragraph 2

43. Several delegations noted that the term "provided on a favourable financial basis", at present in brackets, needed to be discussed at future meetings.

Article 14. Watercourses shared by several States

44. One delegation reminded the meeting of the amendments that it had submitted on this article.

45. One delegation proposed to keep the wording as it is.

Paragraph 1

46. A few delegations proposed to delete the phrase "endeavour to".

Paragraph 2

47. One delegation noted that this paragraph raised a legal question as to the affect of a treaty on a third non-party state.

Article 15. Pollution affecting other Parties

48. One delegation reminded the meeting that it had submitted an alternative text.

49. One delegation noted that this article was related to the broader issue of liability which should be studied by the committee of Government experts called for in paragraph 37 of Annex IV to document UNEP/IG.11/4.

50. Several delegations supported the suggestion that both Articles 14 and 15 needed more in-depth study.

51. Another delegation suggested that the original text of this article as contained in Principle 13 of document UNEP/IG.9/3 might be again taken into consideration when this article is discussed at the next meeting.

Article 16. Exchange of information

Paragraph 2

52. One delegation suggested that the phrase "as soon as possible" was imprecise and should be either deleted or replaced by a specific time-limit.

Paragraph 3

53. One delegation proposed that it be specified in this paragraph that if the Organization receives information from a Party, it should keep such information at the disposal of other Parties.

Article 17. Meetings of the Parties

Paragraph 2 (c)

54. One delegation noted that the distinction of "existing land-based sources" had not yet been accepted.

Article 18. Majority required for amendment or adoption of annexes

55. It was noted that this article had been kept between brackets, since it had not been decided what majority of Parties would be required to amend or adopt annexes to the Protocol.

Article 19. Final clauses

56. No comments.