



# **United Nations Environment Programme**



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## **MEDITERRANEAN ACTION PLAN**

Third Meeting of Government-designated Experts on  
the preparation of a Protocol on the prevention  
of pollution of the Mediterranean Sea area  
by transboundary movements of hazardous  
wastes and their disposal

Izmir, Turkey, 26-28 September 1996

## **REPORT OF THE THIRD MEETING OF GOVERNMENT-DESIGNATED LEGAL AND TECHNICAL EXPERTS ON THE PREPARATION OF A PROTOCOL ON THE PREVENTION OF POLLUTION OF THE MEDITERRANEAN SEA AREA BY TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL**

## Introduction

1. The Seventh Ordinary Meeting of the Contracting Parties (Cairo, 8-11 October 1991) requested the Secretariat to convene a meeting of a working group of technical and legal experts for the preparation of a draft protocol on the prevention of pollution of the Mediterranean Sea area by transboundary movements of hazardous wastes and their disposal. The First Meeting was held in Cervia (Italy) from 23-25 April 1993 and the Second Meeting in Rome (Italy) from 21-24 September 1994. The reports of these meetings are contained in documents UNEP(OCA)/MED WG.64/3 and UNEP(OCA)/MED WG.79/4 respectively.
2. The Ninth Ordinary Meeting of the Contracting Parties (Barcelona, 5-8 June 1995) decided to convene a third meeting of legal and technical experts to examine amendments to the draft Protocol, to be followed by a Conference of Plenipotentiaries, (UNEP(OCA)/MED IG.5/16).
3. Following consultation with the Bureau of the Contracting Parties, the Third Meeting was convened in Izmir (Turkey) from 26-28 September 1996 at the kind invitation of the Government of Turkey.

## Participation

4. Experts from the following Contracting Parties to the Barcelona Convention attended the Meeting: Albania, Algeria, Croatia, Egypt, European Community, France, Greece, Israel, Italy, Libyan Arab Jamahiriya, Malta, Monaco, Morocco, Slovenia, Spain, Tunisia and Turkey.
5. Representatives of the following United Nations bodies, specialized agency and intergovernmental and non-governmental organizations also attended the Meeting as observers: UNEP/Basel Convention Secretariat, UNEP/IMO Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC), International Atomic Energy Agency (IAEA), Ecomediterrania, Greenpeace International, International Marine Centre (IMC), Mediterranean Association to Save the Sea Turtles (MEDASSET), Turkish Marine Environment Protection Association (TURMEPA) and the World Wide Fund for Nature International (WWF).
6. The list of participants is attached as Annex II to this report.

## Agenda item 1 - Opening of the Meeting

7. Mr. Ali Ihsar Kenç, Deputy Secretary of State, Ministry of the Environment, speaking on behalf of his Ministry and the Turkish Government, welcomed the delegates to Izmir and extended to them his best wishes for the success of the Meeting. The draft Protocol on the Prevention of Pollution of the Mediterranean Sea Area by Transboundary Movements of Hazardous Wastes and their Disposal (the draft Protocol) was being prepared in the light of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the Basel

Convention), taking regional factors into account and including some more stringent measures designed to protect the Mediterranean from pollution. The application of the Protocol would give fresh impetus to the Barcelona Convention and the Mediterranean Action Plan as the world entered the twenty-first century.

8. Turkey, which had become a party to the Basel Convention on 20 September 1994, had enacted national legislation prohibiting the import of hazardous wastes and banning their export to newly developing countries. In that connection, he recalled that 90 per cent of hazardous wastes were produced by the developed countries, which shipped the bulk of them to the developing world. The Protocol would be of great assistance to countries that had no effective control mechanisms in making the necessary technical and administrative arrangements.

9. Mr. L. Chabason, Coordinator of the Mediterranean Action Plan, opening the Meeting on behalf of Ms Elizabeth Dowdeswell, Executive Director of the United Nations Environment Programme (UNEP), thanked the Deputy Secretary of State for his address and expressed the sincere gratitude and appreciation of UNEP and of the Coordinating Unit of MAP to the Government and people of Turkey, and to the authorities of Izmir, for hosting the Meeting. After outlining the background to the preparation of the draft Protocol under consideration which, he emphasized, was fully compatible with the global Basel Convention while reflecting a regional approach based on Mediterranean characteristics, he stressed the importance of the Mediterranean States taking the necessary legal measures to deal with the serious issue of hazardous waste.

10. He pointed out that the purpose of the Meeting was to review the issues still pending in the draft Protocol, namely Articles 1, 2 and 4; the Meeting might also discuss any developments that had occurred since the Second Meeting of Experts, such as the results of the meetings of the Contracting Parties to the Basel Convention. In that connection, he was pleased to note that the Executive Secretary of the Basel Convention Secretariat would attend the present Meeting.

11. Finally, he expressed the hope that the Meeting's deliberations would pave the way for a smooth adoption of the draft Protocol by the forthcoming Conference of Plenipotentiaries, thus consolidating the legal foundation for enhanced Mediterranean cooperation.

## Agenda item 2 - Rules of procedure

12. The Secretariat stated that the rules of procedure adopted for the meetings and conferences of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea against Pollution and its related Protocols (UNEP/IG/43/6/Annex XI) would apply *mutatis mutandis* to the Third Meeting of Experts.

**Agenda item 3** - **Election of officers**

13. In accordance with rule 20 of the rules of procedure and after informal consultations, the Meeting unanimously elected the following officers:

Chairperson:	Mr Taskin Tuna	(Turkey)
Vice-Chairpersons:	Ms Amparo Rambla Gil	(Spain)
	Ms Marie-Christine Van Klaveren	(Monaco)
	Mr Messaoud Nemchi	(Algeria)
	Mr Matija Frankovic	(Croatia)
Rapporteur:	Mr Abdulfattah Mohamed Boargob	(Libyan Arab Jamahiriya)

14. The Chairperson thanked the delegates for the honour they had done him and expressed his confidence that the Meeting would be able to produce a draft Protocol ready for adoption by the Conference of Plenipotentiaries.

**Agenda item 4** - **Adoption of the agenda and organization of work**

15. The Meeting adopted the provisional agenda contained in document UNEP(OCA)/MED WG.116/1. The meeting also approved the organization of work suggested by the Secretariat as it appears in document UNEP(OCA)/MED WG.116/2.

**Agenda item 5** - **Examination and adoption of the draft Protocol on the Prevention of Pollution of the Mediterranean Sea Area by Transboundary Movements of Hazardous Wastes and their Disposal**

16. The Coordinator introduced the draft Protocol on the Prevention of Pollution of the Mediterranean Sea Area by Transboundary Movements of Hazardous Wastes and their Disposal (UNEP(OCA)/MED WG.116/3), pointing out that the Secretariat would make any editorial changes needed to harmonize the draft text with the new provisions that had been adopted or had come into effect since the second Meeting.

17. Focusing on the pending issues, the representatives made a number of proposals and counter-proposals. It was decided to add a new preambular paragraph referring to the United Nations Convention on the Law of the Sea. In a spirit of compromise, the representative of Turkey accepted the inclusion of this reference, although Turkey's approval of the text should in no way be construed as a change of its well-known position *vis-à-vis* the United Nations Convention on the Law of the Sea. In Article 1, a few drafting changes to the definitions were approved. With regard to the definition of developing and developed countries in Article 1(u) and (v), three countries raised objections. The majority, however, were in favour of retaining those definitions as they stood and the Meeting finally decided to keep the original formulation, with the addition of a footnote relating to the specific case of Monaco.

A similar footnote was also appended to Article 4.4. The representative of Israel entered a reservation on those definitions. The Meeting then agreed that the draft Protocol should include a definition of the Protocol area in a new article.

18. Turning to Article 2 and the related Annex I, two representatives stated that radioactive wastes should be excluded from the scope of the Protocol, while others strongly advocated their inclusion as an extremely hazardous form of waste. The observer for the International Atomic Energy Agency (IAEA) emphasized that radioactive substances were excluded from the scope of the Basel Convention, under the terms of Article 1.3 thereof. In this context, it should be noted that a number of related instruments and procedures had been developed under the auspices of IAEA, including an IAEA Code of Practice on Transboundary Movements of Radioactive Wastes and IAEA Regulations for the Safe Transport of Radioactive Waste. The development of a convention on the safety of radioactive waste management was at an advanced stage and the text was expected to be ready for signature in 1997. Its Article 24, transboundary movements, covered virtually all material included in the Code of Practice. For those reasons, it was IAEA's position that radioactive substances should be excluded from the Protocol. Some representatives pointed out that two regional agreements (Lomé IV and the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa) did cover radioactive wastes. The representative of France expressed a reservation to the effect that radioactive wastes should be excluded from the scope of the Protocol, pointing out that questions relating to the maritime transport of such wastes were already dealt with by such organizations as the International Maritime Organization (IMO) and IAEA, which were specifically referred to in Chapter 17 of Agenda 21 on the prevention, reduction and control of degradation of the marine environment from sea-based activities.

19. Various amendments were suggested to subparagraph 2.1(d), including a proposal by the representative of France to replace the words "hazardous substances" by "wastes of hazardous substances". A new version of the subparagraph was approved; the representative of the European Community maintained his reservation to the inclusion of banned hazardous substances in the Protocol. The representative of France also maintained his reservation concerning the inclusion of hazardous substances since Article 11 of the amended Barcelona Convention committed the Parties to drawing up a protocol on hazardous wastes and the maritime transport of hazardous substances was covered by the relevant IMO Codes. Referring to Annex I, several representatives considered that household wastes, which were not necessarily hazardous, should be listed separately. An informal open-ended working group, chaired by the Spanish Vice-Chairperson, was set up to consider the various points that had been raised. The results of its work were approved by the Meeting and are reflected in the relevant part of the draft Protocol. The representatives of France and the European Community maintained their reservations regarding the inclusion of the YO category in Annex I.

20. Discussion of Article 4 centred on the problem of transit and its relation to the Convention on the Law of the Sea, with particular reference to the concept of

innocent passage. Several representatives pointed out that Article 4.4 was basically concerned with prohibition as a general obligation, whereas movements and notification procedures fell under Article 5. Various amendments were put forward, including a proposal by the representative of France to add the words "by land" after the word "transit". The representative of Slovenia reserved his country's right to import hazardous wastes not intended for final disposal but to cover its own need for secondary raw materials, in accordance with the provisions of the Basel Convention. Following its previous reservation, the representative of Israel suggested that for the purposes of the Protocol Israel should have the same status as Member States of the European Community and OECD. After lengthy discussion, it was decided to set up a working group of representatives particularly conversant with international maritime law, chaired by the Spanish Vice-Chairperson. The Meeting discussed the working group's recommendations and finally decided to amend paragraph 4.4 by the addition of a phrase referring to passage through the territorial sea.

21. The Meeting considered a proposal by the representative of Italy, as modified by the Secretariat, concerning the transboundary movement of hazardous wastes through the territorial sea of the State of transit (Article 5.3). After a lengthy exchange of views, a further proposal to add three new paragraphs to Article 5 was submitted by the representatives of the European Community, France, Greece, Italy and Spain. It was pointed out that the obligation of prior notification by the State of export to the State of transit concerning transboundary movements by sea represented a major step forward compared with the position previously adopted by a number of countries. The representative of Greece stated that he regarded the original text proposed by the Secretariat as preferable since it required the prior consent of the State of transit. Nevertheless, in an effort to obtain the consensus of the Member States of the European Community, he had supported the joint proposal. The representatives of Croatia, Libya, Morocco and Turkey also expressed their preference for the original text, considering that the specific exclusion of prior consent by the State of transit weakened the Protocol in comparison with the Basel Convention. The representative of Croatia pointed out that the draft Protocol dealt essentially with transboundary movement of hazardous wastes, which had to be prohibited, and not with the means of transport of such wastes, as maintained by the authors of the joint proposal with reference to innocent passage. The means of transport were merely a tool for the transboundary movement of hazardous wastes, therefore the right of innocent passage contained in the Convention on the Law of the Sea was not applicable to the draft Protocol. Exceptional cases of transboundary movement required exceptional measures, namely, notification followed by the consent of the State of transit. The representatives of the European Community, France and Italy said it should be explicitly stated that the prior consent of the State of transit was not required for innocent passage in the territorial sea. Finally, a compromise text was approved by the Meeting.

22. The representative of Israel proposed several amendments to Article 7.2, advocating deletion of the references to generators of hazardous waste. After a number of representatives and the Executive Secretary of the Basel Convention

Secretariat had stressed the benefit to Parties of receiving information concerning the generators of hazardous wastes, the Meeting decided to maintain the original text.

23. The Meeting recommended that paragraph 2 of Article 9 concerning the establishment of a regional centre for training and technical assistance should be transferred to the Final Act of the Conference of Plenipotentiaries.

24. In response to a proposal by the representative of Israel to amend Article 12, the Executive Secretary of the Basel Convention Secretariat suggested using the same flexible wording as in the equivalent provision of the Basel Convention, which had proved very useful to Parties in solving certain problems without the need to resort to formal verification. After further discussion the Meeting approved wording which satisfied the concerns of some representatives in regard to verification while providing for consultation with the Parties concerned.

25. Concluding its examination of item 5 of the agenda, the Meeting approved a number of editorial amendments and other improvements to the text.

**Agenda item 6** - **Any other matters**

26. There were no other matters.

**Agenda item 7** - **Adoption of the report of the Meeting**

27. The Meeting adopted its report and approved the text of the draft Protocol (Annex I) for consideration by the Conference of Plenipotentiaries.

**Agenda item 8** - **Closure of the Meeting**

28. After the customary exchange of courtesies, the Chairman declared the Meeting closed on Saturday, 28 September 1996, at 19.55 hours.

# **ANNEX I**

**DRAFT PROTOCOL ON THE PREVENTION OF POLLUTION  
OF THE MEDITERRANEAN SEA BY TRANSBOUNDARY  
MOVEMENTS OF HAZARDOUS WASTES  
AND THEIR DISPOSAL**



**DRAFT PROTOCOL ON THE PREVENTION OF POLLUTION  
OF THE MEDITERRANEAN SEA BY TRANSBOUNDARY MOVEMENTS  
OF HAZARDOUS WASTES AND THEIR DISPOSAL**

**The Contracting Parties to the present Protocol,**

*Being* Parties to the Convention for the Protection of the Mediterranean Sea against Pollution, adopted at Barcelona on 16 February 1976 and amended on 10 June 1995,

*Conscious* of the danger threatening the environment of the Mediterranean Sea caused by the transboundary movements and disposal of hazardous wastes,

*Convinced* that the most effective way of protecting human health and the marine environment from the dangers posed by hazardous wastes is the reduction and elimination of their generation, for example through substitution and other clean production methods,

*Recognizing* the increased will for the prohibition of transboundary movements of hazardous wastes and their disposal in other States, especially in developing countries,

*Taking into account* the 1992 Rio Declaration on Environment and Development and especially Principle 14 which declares that States "should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities or substances that cause severe environmental degradation or are found to be harmful to human health",

*Aware* of the growing international concern regarding the need to ensure that pollution originating in one State is not transferred to other States and, consistent with this objective, of the need to reduce transboundary movements of hazardous wastes to a minimum as far as possible, with the ultimate aim of phasing out such movements,

*Recognizing also* that any State has the sovereign right to ban the entry, transit or disposal of hazardous wastes in its territory,

*Bearing in mind* the relevant provisions of the United Nations Convention on the Law of the Sea of 1982,

*Taking into account also* the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, adopted on 22 March 1989, in particular Article 11, and decisions I/22, II/12 and III/1 adopted by the First, Second and Third Meetings respectively of the Conference of the Parties to the Basel Convention,

*Taking into account further* that many States, among them Contracting Parties to the Barcelona Convention, have taken legal measures and entered into international agreements consistent with the Basel Convention to ban transboundary movements of hazardous wastes, for example, the IVth ACP/EEC Convention signed in Lomé on 15 December 1989 by the European Economic Community and the African, Caribbean and Pacific Group of States, and the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, adopted under the auspices of the Organization of African Unity on 30 January 1991,

*Recognizing further* the differences in levels of economic and legislative development among the various Mediterranean coastal States, and realizing that hazardous waste should not be allowed to be transported in order to take advantage of such economic or legislative disparities to the detriment of the environment and of the social well-being of developing countries,

*Bearing in mind also* the fact that the most effective way of dealing with the threats represented by wastes for human health and the environment consists in decreasing or even prohibiting the transfer of activities which generate hazardous wastes,

Have agreed as follows:

### *Article 1*

#### DEFINITIONS

For the purposes of this Protocol:

- (a) "Convention" means the Convention for the Protection of the Mediterranean Sea against Pollution, adopted at Barcelona on 16 February 1976 and amended on 10 June 1995;
- (b) A "Party" means a Contracting Party to this Protocol in accordance with Article 29, paragraph 1, of the Convention;
- (c) "Wastes" means substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law;
- (d) "Hazardous wastes" means wastes as specified in Article 3 of this Protocol;
- (e) "Disposal" means any operation specified in Annex III to this Protocol;
- (f) "Transboundary movement" means any movement of hazardous wastes from an area under the national jurisdiction of one State to or through an area under the national jurisdiction of another State or to or through an area not under the national jurisdiction of any State, provided at least two States are involved in the movement;
- (g) "Approved site or facility" means a site or facility for the disposal of hazardous wastes which is authorized or permitted to operate for this purpose by a relevant authority of the State where the site or facility is located;
- (h) "Competent authority" means one governmental authority designated by a Party to be responsible, within such geographical areas as the Party may think fit, for receiving the notification of a transboundary movement of hazardous waste, and any information related to it, and for responding to such a notification;
- (i) "Clean production methods" means those which reduce or avoid the generation of hazardous wastes in conformity with Articles 5 and 8 of this Protocol;

- (j) "Environmentally sound management" of hazardous wastes means taking all practicable steps to ensure that hazardous wastes are collected, transported and disposed of (including after-care of disposal sites) in a manner which will protect human health and the environment against the adverse effects which may result from such wastes;
- (k) "Area under the national jurisdiction of a State" means any land, marine area or airspace within which a State exercises administrative and regulatory responsibilities in accordance with international law in regard to the protection of human health or the environment;
- (l) "State of export" means a Party from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated;
- (m) "State of import" means a Party to which a transboundary movement of hazardous wastes is planned or takes place for the purpose of disposal therein or for the purpose of loading prior to disposal in an area not under the national jurisdiction of any State;
- (n) "State of transit" means any State, other than the State of export or import, through which a movement of hazardous wastes is planned or takes place;
- (o) "Exporter" means any person under the jurisdiction of the State of export who arranges for hazardous wastes to be exported;
- (p) "Importer" means any person under the jurisdiction of the State of import who arranges for hazardous wastes to be imported;
- (q) "Generator" means any person whose activity produces hazardous wastes or, if that person is not known, the person who is in possession and/or control of those wastes;
- (r) "Disposer" means any person to whom hazardous wastes are shipped and who carries out the disposal of such wastes;
- (s) "Illegal traffic" means any transboundary movement of hazardous wastes as specified in Article 9;
- (t) "Person" means any natural or legal person;
- (u) "Developing countries" means those countries which are not Member States of the Organization for Economic Co-operation and Development (OECD);\*
- (v) "Developed countries" means those countries which are Member States of the Organization for Economic Co-operation and Development (OECD);\*
- (w) "Organization" means the body referred to in Article 2 (b) of the Convention.

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\* For the purposes of this Protocol, Monaco shall have the same rights and obligations as Member States of the OECD.

*Article 2*

PROTOCOL AREA

The Protocol area as referred to in this Protocol shall mean the area as defined in Article 1 of the Convention.

*Article 3*

SCOPE OF THE PROTOCOL

1. This Protocol shall apply to:
  - (a) Wastes that belong to any category in Annex I to this Protocol;
  - (b) Wastes that are not covered under paragraph (a) above but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the State of export, import or transit;
  - (c) Wastes that possess any of the characteristics contained in Annex II to this Protocol;
  - (d) Hazardous substances that have been banned or are expired, or whose registration has been cancelled or refused through government regulatory action in the country of manufacture or export for human health or environmental reasons, or have been voluntarily withdrawn or omitted from the government registration required for use in the country of manufacture or export.
2. Wastes which derive from the normal operations of ships, the discharge of which is covered by another international instrument, are excluded from the scope of this Protocol.
3. The generator, the exporter or the importer, depending on the circumstances, shall bear the responsibility for checking with the competent authorities of the State of export, import or transit that a particular waste, prior to its transboundary movement, is not subject to this Protocol.

*Article 4*

NATIONAL DEFINITIONS OF HAZARDOUS WASTES

1. Each Party to the Convention shall, within six months of becoming a Party, inform the Organization of the wastes, other than those listed in Annex I to this Protocol, considered or defined as hazardous wastes under its national legislation, and of any requirements concerning transboundary movement procedures applicable to such wastes.
2. Each Party shall subsequently inform the Organization of any significant changes in information it has provided pursuant to paragraph 1 of this Article.
3. The Organization shall inform all Parties of the information it has received pursuant to paragraphs 1 and 2 of this Article.

4. The Parties shall be responsible for making the information transmitted to them by the Organization under paragraph 3 of this Article available to their exporters.

#### *Article 5*

### GENERAL OBLIGATIONS

1. The Parties shall take all appropriate measures to prevent, abate and eliminate pollution of the Protocol area which can be caused by transboundary movements and disposal of hazardous wastes.

2. The Parties shall take all appropriate measures to reduce to a minimum, and where possible eliminate, the generation of hazardous wastes.

3. The Parties shall also take all appropriate measures to reduce to a minimum the transboundary movement of hazardous wastes, and if possible to eliminate such movement in the Mediterranean. To achieve this goal, Parties have the right individually or collectively to ban the import of hazardous wastes. Other Parties shall respect this sovereign decision and not permit the export of hazardous wastes to States which have prohibited their import.

4. Subject to the specific provisions relating to the transboundary movement of hazardous wastes through the territorial sea of a State of transit, referred to in Article 6.4 of this Protocol, all Parties shall take appropriate legal, administrative and other measures within the area under their jurisdiction to prohibit the export and transit of hazardous wastes to developing countries, and Parties which are not Member States of the European Community\* shall prohibit all imports and transit of hazardous wastes.

5. The Parties shall cooperate with other United Nations agencies, relevant international and regional organizations in order to prevent illegal traffic, and shall take appropriate measures to achieve this goal, including criminal punishment measures in accordance with their national legislation.

#### *Article 6*

### TRANSBOUNDARY MOVEMENT AND NOTIFICATION PROCEDURES

In exceptional cases, unless otherwise prohibited, when hazardous wastes cannot be disposed of in an environmentally sound manner in the country in which they originated, transboundary movements of such wastes can be allowed if:

1. The special situation of the Mediterranean developing countries which do not have the technical capabilities nor the disposal facilities for the environmentally sound management of hazardous wastes is taken into consideration.

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\* For the purposes of this Protocol, Monaco shall have the same rights and obligations as Member States of the European Community.

2. The competent authority of the State of import ensures that the hazardous waste is disposed of in an approved site or facility with the technical capacity for its environmentally sound disposal.

3. The transboundary movement of hazardous wastes only takes place with the prior written notification of the State of export as specified in Annex IV to this Protocol, and the prior written consent of the State(s) of import and the State(s) of transit. This paragraph does not apply to conditions of passage through the territorial sea, which are governed by paragraph 4 of this Article.

4. The transboundary movement of hazardous wastes through the territorial sea of a State of transit only takes place with the prior notification by the State of export to the State of transit, as specified in Annex IV to this Protocol. After reception of the notification, the State of transit brings to the attention of the State of export all the obligations relating to passage through its territorial sea in application of international law and the relevant provisions of its domestic legislation adopted in compliance with international law to protect the marine environment. Where necessary, the State of transit may take appropriate measures in accordance with international law. This procedure must be complied with within the delays provided for by the Basel Convention.

5. Every State involved in a transboundary movement ensures that such movement is consistent with international safety standards and financial guarantees, in particular the procedures and standards set out in the Basel Convention.

#### *Article 7*

### DUTY TO REIMPORT

The State of export shall reimport the hazardous wastes if the transboundary movement cannot be completed by reason of impossibility of performance of the contracts relating to the movement and disposal of the wastes. To this end, any State of transit shall not oppose, hinder or prevent the return of those wastes to the State of export after being properly informed by the State of export.

#### *Article 8*

### REGIONAL COOPERATION

1. In conformity with Article 13 of the Convention, the Parties shall cooperate as far as possible in scientific and technological fields related to pollution from hazardous wastes, particularly in the implementation and development of new methods for reducing and eliminating hazardous waste generated through clean production methods.

2. To this end, the Parties shall submit annual reports to the Organization regarding the hazardous wastes they generate and transfer within the Protocol area in order to enable the Organization to produce a hazardous waste audit.

3. The Parties shall cooperate in taking appropriate measures to implement the precautionary approach based on prevention of pollution problems arising from hazardous

wastes and their transboundary movement and disposal. To this end, the Parties shall ensure that clean production methods are applied to production processes.

### *Article 9*

#### ILLEGAL TRAFFIC

1. For the purpose of this Protocol, any transboundary movement of hazardous wastes in contravention of this Protocol or of general principles of international law shall be deemed to be illegal traffic.
2. Each Party shall introduce appropriate national legislation to prevent and punish illegal traffic, including criminal penalties on all persons involved in such illegal activities.
3. In the case of illegal traffic due to the conduct of the generator or the exporter, the State of export shall ensure that the wastes in question are taken back by the exporter or the generator or, if necessary, by itself, into the State of export within 30 days from the time the illegal traffic has come to its attention and that appropriate legal action is taken against the contravenor(s).
4. In the case of illegal traffic due to the conduct of the importer or disposer, the State of import shall ensure that the wastes in question are eliminated according to environmentally sound methods by the importer within 30 days from the time the illegal traffic has come to the attention of the State of import; if not possible, the State of export shall ensure that the wastes are taken back by the exporter, the generator or, if necessary, by itself into the State of export. The competent authorities of the importing or exporting States shall ensure that legal proceedings according to this Protocol are taken against the contravenor(s).
5. In cases where the responsibility for the illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer, the Parties concerned or other Parties, as appropriate, shall ensure, through cooperation that the wastes in question are disposed of as soon as possible in an environmentally sound manner either in the State of export or the State of import or elsewhere as appropriate.
6. The Parties shall forward, as soon as possible, all information relating to illegal traffic to the Organization, which shall distribute the information to all Contracting Parties.
7. The Parties shall cooperate to ensure that no illegal traffic takes place. Upon request, the Organization shall assist Parties in their identification of cases of illegal traffic and shall circulate immediately to the Parties concerned any information it has received regarding illegal traffic.
8. The Organization shall undertake the necessary coordination with the Secretariat of the Basel Convention in relation to the effective prevention and monitoring of illegal traffic in hazardous wastes. Such coordination shall be mainly based on:
  - (a) Exchange of information on cases or alleged cases of illegal traffic in the Mediterranean and coordination of action to remedy such cases;
  - (b) Providing assistance in the field of capacity-building, including development of national legislation and of appropriate infrastructure in the Mediterranean States with a view to the prevention and penalization of illegal traffic in hazardous wastes;

- (c) The establishment of a mechanism to prevent and monitor illegal traffic in hazardous wastes in the Mediterranean.

*Article 10*

**ASSISTANCE TO DEVELOPING COUNTRIES**

The Parties shall, directly or with the assistance of competent or other international organizations or bilaterally, cooperate with a view to formulating and implementing programmes of financial and technical assistance to developing countries for the implementation of this Protocol.

*Article 11*

**TRANSMISSION OF INFORMATION**

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

*Article 12*

**INFORMATION TO AND PARTICIPATION OF THE PUBLIC**

1. In the exceptional cases in which transboundary movement of hazardous wastes is permitted under Article 6 of this Protocol, the Parties shall ensure that adequate information is made available to the public, transmitted through such channels as the Parties deem appropriate.
2. The State of export and the State of import shall, in accordance with the provisions of this Protocol and whenever possible and appropriate, give the public an opportunity to participate in relevant procedures with the aim of making known its views and concerns.

*Article 13*

**VERIFICATION**

1. Any Party which has reason to believe that another Party is acting or has acted in breach of its obligations under this Protocol informs the Organization thereof, and, in such an event, *simultaneously and immediately informs, directly or through the Organization, the Party against whom the allegations are made.*
2. The Organization shall carry out a verification of the substance of the allegation through consultation with the Parties concerned and submit a report thereon to the Parties.



*Article 14*

## LIABILITY AND COMPENSATION

The Parties shall cooperate with a view to setting out, as soon as possible, appropriate guidelines for the evaluation of the damage, as well as rules and procedures in the field of liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes.

*Article 15*

## MEETINGS

1. Ordinary meetings of the Parties shall take place in conjunction with ordinary meetings of the Contracting Parties to the Convention held pursuant to Article 18 of the Convention. The Parties to this Protocol may also hold extraordinary meetings in conformity with Article 18 of the Convention.
2. The functions of the meetings of the Parties shall be, *inter alia*:
  - (a) To keep under review the implementation of this Protocol, and consider any additional measures, including in the form of annexes;
  - (b) To revise and amend this Protocol and any annex thereto, as appropriate;
  - (c) To formulate and adopt programmes, methods and measures in accordance with the relevant Articles of this Protocol;
  - (d) To consider any information submitted by the Parties to the Organization or to the meetings of the Parties in accordance with the relevant Articles of this Protocol;
  - (e) To perform such other functions as may be appropriate for the application of this Protocol.

*Article 16*

## ADOPTION OF ADDITIONAL PROGRAMMES AND MEASURES

The meeting of the Parties shall adopt, by a two-thirds (2/3) majority, any additional programmes and measures for the prevention and elimination of pollution from transboundary movements of hazardous wastes and their disposal.

*Article 17*

## FINAL CLAUSES

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

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

3. This Protocol shall be open for signature at Izmir on 1 October 1996, and at Madrid from 2 October 1996 to 1 October 1997 by any State Party to the Convention. It shall also be open on the same dates for signature by the European Community and by any similar regional economic grouping of which at least one member is a coastal State of the Protocol area and which exercises competence in the fields covered by this Protocol.

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

5. As from 2 October 1997, this Protocol shall be open for accession by the States referred to in paragraph 3 above, by the European Community and by any grouping referred to in that paragraph.

6. This Protocol shall enter into force on the thirtieth (30) day following the deposit of at least six (6) instruments of ratification, acceptance or approval of, or accession to, the Protocol by the Parties referred to in paragraph 3 of this Article.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

DONE at Izmir on this first day of October 1996 in a single copy in the Arabic, English, French, and Spanish languages, the four texts being equally authoritative.

**ANNEX I****CATEGORIES OF WASTES SUBJECT TO THIS PROTOCOL****A. HAZARDOUS WASTES**

- Y0 All wastes containing or contaminated by radionuclides, the radionuclide concentration or properties of which result from human activity
- Y1 Clinical wastes from medical care in hospitals, medical centres and clinics
- Y2 Wastes from the production and preparation of pharmaceutical products
- Y3 Waste pharmaceuticals, drugs and medicines
- Y4 Wastes from the production, formulation and use of biocides and phytopharmaceuticals
- Y5 Wastes from manufacturing, formulation and use of wood preserving chemicals
- Y6 Wastes from the production, formulation and use of organic solvents
- Y7 Wastes from heat treatment and tempering operations containing cyanides
- Y8 Waste mineral oils unfit for their originally intended use
- Y9 Waste oils/water, hydrocarbons/water mixtures, emulsions
- Y10 Waste substances and articles containing or contaminated with polychlorinated biphenyls (PCBs) and/or polychlorinated terphenyls (PCTs) and/or polybrominated biphenyls (PBBs)
- Y11 Waste tarry residues arising from refining, distillation and any pyrolytic treatment
- Y12 Wastes from production, formulation and use of inks, dyes, pigments, paints, lacquers, varnishes
- Y13 Wastes from production, formulation and use of resins, latex, plasticizers, glues/adhesives
- Y14 Waste chemical substances arising from research and development or teaching activities which are not identified and/or are new and whose effects on man and/or the environment are not known
- Y15 Wastes of an explosive nature not subject to other legislation
- Y16 Wastes from production, formulation and use of photographic chemicals and processing materials
- Y17 Wastes resulting from surface treatment of metals and plastics
- Y18 Residues arising from industrial waste disposal operations

Wastes having as constituents:

- Y19 Metal carbonyls
- Y20 Beryllium; beryllium compounds
- Y21 Hexavalent chromium compounds
- Y22 Copper compounds
- Y23 Zinc compounds
- Y24 Arsenic; arsenic compounds
- Y25 Selenium; selenium compounds
- Y26 Cadmium; cadmium compounds
- Y27 Antimony; antimony compounds
- Y28 Tellurium; tellurium compounds
- Y29 Mercury; mercury compounds
- Y30 Thallium; thallium compounds
- Y31 Lead; lead compounds
- Y32 Inorganic fluorine compounds excluding calcium fluoride
- Y33 Inorganic cyanides
- Y34 Acidic solutions or acids in solid form
- Y35 Basic solutions or bases in solid form
- Y36 Asbestos (dust and fibres)
- Y37 Organic phosphorus compounds
- Y38 Organic cyanides
- Y39 Phenols; phenolic compounds including chlorophenols
- Y40 Ethers
- Y41 Halogenated organic solvents
- Y42 Organic solvents excluding halogenated solvents
- Y43 Any congener of polychlorinated dibenzo-furan

Y44 Any congener of polychlorinated dibenzo-p-dioxin

Y45 Organohalogen compounds other than substances referred to in this Annex (e.g. Y39, Y41, Y42, Y43, Y44)

**B. HOUSEHOLD WASTES**

Y46 Wastes collected from households, including sewage and sewage sludges

Y47 Residues arising from the incineration of household wastes.

## ANNEX II

## LIST OF HAZARDOUS CHARACTERISTICS

<u>UN</u> <u>Class*</u>	<u>Code</u>	<u>Characteristics</u>
1	H1	Explosive  An explosive substance or waste is a solid or liquid substance or waste (or mixture of substances or wastes) which is in itself capable by chemical reaction of producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings.
3	H3	Flammable liquids  The word "flammable" has the same meaning as "inflammable". Flammable liquids are liquids, or mixtures of liquids, or liquids containing solids in solution or suspension (for example paints, varnishes, lacquers, etc., but not including substances or wastes otherwise classified on account of their dangerous characteristics) which give off a flammable vapour at temperatures of not more than 60.5 degrees C, closed-cup test, or not more than 65.6 degrees C, open-cup test. (Since the results of open-cup tests and of closed-cup tests are not strictly comparable and even individual results by the same test are often variable, regulations varying from the above figures to make allowance for such difference would be within the spirit of this definition.)
4.1	H4.1	Flammable solids  Solids, or waste solids, other than those classed as explosives, which under conditions encountered in transport are readily combustible, or may cause or contribute to fire through friction.
4.2	H4.2	Substances or wastes liable to spontaneous combustion  Substances or wastes which are liable to spontaneous heating under normal conditions encountered in transport, or in heating up on contact with air, and being liable to catch fire.
4.3	H4.3	Substances or wastes which, in contact with water, emit flammable gases  Substances or wastes which, by interaction with water, are liable to become spontaneously flammable or to give off flammable gases in dangerous quantities.

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\* Corresponds to the hazardous classification system included in the United Nations Recommendations on the Transport of Dangerous Goods (ST/SG/AC.10/1/Rev.5, United Nations, New York, 1988)

- 5.1 H5.1 **Oxidizing**
- Substances or wastes which, while in themselves not necessarily combustible, may generally by yielding oxygen, cause or contribute to the combustion of other materials.
- 5.2 H5.2 **Organic peroxides**
- Organic substances or wastes which contain the bivalent-O-O-structure are thermally unstable substances which may undergo exothermic self-accelerating decomposition.
- 6.1 H6.1 **Poisonous (Acute)**
- Substances or wastes liable either to cause death or serious injury or to harm human health if swallowed or inhaled or by skin contact.
- 6.2 H6.2 **Infectious substances**
- Substances or wastes containing viable microorganisms or their toxins which are known or suspected to cause disease in animals or humans.
- 8 H8 **Corrosives**
- Substances or wastes which, by chemical action, will cause severe damage when in contact with living tissue, or in the case of leakage, will materially damage, or even destroy, other goods or the means of transport; they may also cause other hazards.
- 9 H10 **Liberation of toxic gases in contact with air or water**
- Substances or wastes which, by interaction with air or water, are liable to give off toxic gases in dangerous quantities.
- 9 H11 **Toxic (Delayed or chronic)**
- Substances or wastes which, if they are inhaled or ingested or if they penetrate the skin, may involve delayed or chronic effects, including carcinogenicity.
- 9 H12 **Ecotoxic**
- Substances or wastes which if released present or may present immediate or delayed adverse impacts on the environment by means of bioaccumulation and/or toxic effects upon biotic systems.
- 9 H13 **Capable, by any means, after disposal, of yielding another material, e.g. leachate, which possesses any of the characteristics listed above.**

### ANNEX III

#### DISPOSAL OPERATIONS

The list of disposal operations contained in this Annex reflects those which occur or have occurred in practice. It does not necessarily reflect a list of acceptable disposal operations. Pursuant to Articles 5 and 6 of this Protocol, hazardous wastes must in any event be managed in an environmentally sound manner.

**A. Operations which do not lead to the possibility of resource recovery, recycling, reclamation, direct reuse or alternative uses.**

Section A encompasses all such disposal operations which occur in practice.

- D1 Deposit into or onto land (e.g. landfill, etc.)
- D2 Land treatment (e.g. biodegradation of liquid or sludgy discards in soils, etc.)
- D3 Deep injection (e.g. injection of pumpable discards into wells, salt domes or naturally occurring repositories, etc.)
- D4 Surface impoundment (e.g. placement of liquid or sludge discards into pits, ponds, lagoons, etc.)
- D5 Specially engineered landfill (e.g. placement into lined discrete cells which are capped and isolated from one another and the environment, etc.)
- D6 Release into a water body except seas/oceans
- D7 Release into seas/oceans including sea-bed insertion
- D8 Biological treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations in Section A
- D9 Physico-chemical treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations in Section A (e.g. evaporation, drying, calcination, neutralization, precipitation, etc.)
- D10 Incineration on land
- D11 Incineration at sea
- D12 Permanent storage (e.g. emplacement of containers in mines, etc.)
- D13 Blending or mixing prior to submission to any of the operations in Section A
- D14 Repackaging prior to submission to any of the operations in Section A
- D15 Storage pending any of the operations in Section A



**B. Operations which may lead to resource recovery, recycling, reclamation, direct reuse or alternative uses.**

Section B encompasses all such operations with respect to materials legally defined as or considered to be hazardous wastes and which otherwise would have been destined for operations included in Section A.

- R1 Use as a fuel (other than in direct incineration) or other means to generate energy
- R2 Solvent reclamation/regeneration
- R3 Recycling/reclamation of organic substances which are not used as solvents
- R4 Recycling/reclamation of metals and metal compounds
- R5 Recycling/reclamation of other inorganic materials
- R6 Regeneration of acids or bases
- R7 Recovery of components used for pollution abatement
- R8 Recovery of components from catalysts
- R9 Used oil re-refining or other reuses of previously used oil
- R10 Land treatment resulting in benefit to agriculture or ecological improvement
- R11 Uses of residual materials obtained from any of the operations numbered R1-R10
- R12 Exchange of wastes for submission to any of the operations numbered R1-R11
- R13 Accumulation of material intended for any operation in Section B

## ANNEX IV (A)

### INFORMATION TO BE PROVIDED ON NOTIFICATION

1. Reason for waste export;
2. Exporter of the waste 1/;
3. Generator(s) of the waste and site of generation 1/;
4. Importer and disposer of the waste and actual site of disposal 1/;
5. Intended carrier(s) of the waste or their agents, if known 1/;
6. Country of export of the waste  
Competent authority 2/;
7. Expected countries of transit  
Competent authority 2/;
8. Country of import of the waste  
Competent authority 2/;
9. Projected date(s) of shipment(s) and period of time over which waste is to be exported and proposed itinerary (including point of entry and exit) 3/;
10. Means of transport envisaged (road, rail, sea, air, inland waters);
11. Information relating to insurance 4/;
12. Designation and physical description of the waste including Y number and UN number and its composition 5/ and information on any special handling requirements including emergency provisions in case of accidents;
13. Type of packaging envisaged (e.g. bulk, drums, tanker);
14. Estimated quantity in weight/volume 6/;
15. Process by which the waste is generated 7/;
16. Code according to ANNEX I, classifications according to ANNEX II, H number, and UN class;
17. Method of disposal as per ANNEX III;
18. Declaration by the generator and exporter that the information is correct;

19. Information transmitted (including technical description of the plant) to the exporter or generator from the disposer of the waste upon which the latter has based his assessment that there is no reason to believe that the waste will not be managed in an environmentally sound manner in accordance with the laws and regulations of the country of import;
20. Information concerning the contract between the exporter and the disposer.

### NOTES

The Organization should make use of a Notification Form and accompanying documents such as those developed within the framework of the Basel Convention, the OECD and the European Community.

- 1/ Full name and address, telephone, telex or telefax number and the name, address, telephone, telex or telefax number of the person to be contacted.
- 2/ Full name and address, telephone, telex or telefax number.
- 3/ In the case of a general notification covering several shipments, either the expected dates of each shipment or, if this is not known, the expected frequency of the shipments will be required.
- 4/ Information to be provided on relevant insurance requirements and how they are met by exporter, carrier and disposer.
- 5/ The nature and the concentration of the most hazardous components, in terms of toxicity and other dangers presented by the waste both in handling and in relation to the proposed disposal method.
- 6/ In the case of a general notification covering several shipments, both the estimated total quantity and the estimated quantities for each individual shipment will be required.
- 7/ Insofar as this is necessary to assess the hazard and determine the appropriateness of the proposed disposal operation.

## ANNEX IV (B)

### INFORMATION TO BE PROVIDED ON THE MOVEMENT DOCUMENT

1. Exporter of the waste 1/;
2. Generator(s) of the waste and site of generation 1/;
3. Disposer of the waste and actual site of disposal 1/;
4. Carrier(s) of the waste 1/ or his agent(s);
5. The date the transboundary movement started and date(s) and signature on receipt by each person who takes charge of the waste;
6. Means of transport (road, rail, inland waterway, sea, air) including countries of export, transit and import, also point of entry and exit where these have been designated;
7. General description of the waste (physical state, proper UN shipping name and class, UN number, Y number and H number as applicable);
8. Information on special handling requirements including emergency provision in case of accidents;
9. Type and number of packages;
10. Quantity in weight/volume;
11. Declaration by the generator or exporter that the information is correct;
12. Declaration by the generator or exporter indicating no objection from the competent authorities of all States concerned which are Parties;
13. Certification by disposer of receipt at designated disposal facility and indication of method of disposal and of the approximate date of disposal.
14. The insurance documents, bond or other guarantee as may be required by the Parties, as provided in Article 6, paragraph 5.

### NOTES

The Organization should make use of a Movement Document and accompanying documents such as those developed within the framework of the Basel Convention, the OECD and the European Community.

The information required on the Movement Document shall where possible be integrated in one document with that required under transport rules. Where this is not possible, the information should complement rather than duplicate that required under the transport rules. The Movement Document shall carry instructions as to who is to provide information and fill out any form.

- 1/ Full name and address, telephone, telex or telefax number and the name, address, telephone, telex or telefax number of the person to be contacted in case of emergency.

# **ANNEX II**

## **LIST OF PARTICIPANTS**

**ANNEX II**  
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