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MEDITERRANEAN ACTION PLAN

Meeting of the National Legal and Technical Experts
on the Amendments to the Emergency Protocol to the
Barcelona Convention

Monaco, 2-6 April 2001

**REPORT OF THE SECOND MEETING OF NATIONAL LEGAL AND
TECHNICAL EXPERTS ON THE AMENDMENTS TO THE
EMERGENCY PROTOCOL TO THE BARCELONA CONVENTION**

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Introduction

1. The Second Meeting of National Legal and Technical Experts on the Amendments to the Emergency Protocol to the Barcelona Convention was held in Monaco from 2 to 6 April 2001 at the kind invitation of the Monegasque Government. The Meeting was convened pursuant to a specific recommendation of the Meeting of REMPEC Focal Points, held in Malta from 25 to 28 November 1998 (REMPEC/WG.16/14), and the consequent decision of the Eleventh Ordinary Meeting of the Contracting Parties to the Barcelona Convention, held in Malta from 27 to 30 October 1999 (UNEP(OCA)/MED 19.12/9).

2. The principal objectives of the Meeting were:

- (a) to prepare draft amendments to the Emergency Protocol to be submitted to a conference of plenipotentiaries;
- (b) to prepare draft amendments to the Annex to Resolution 7 related to the objectives and functions of REMPEC, taking into consideration the new mandate and responsibilities of the Centre, to be presented to the MAP Focal Points meeting and the meeting of the Contracting Parties.

Attendance

3. The Meeting was attended by legal and technical experts from the following Contracting Parties: Algeria, Bosnia and Herzegovina, Croatia, Cyprus, Egypt, European Community, France, Greece, Israel, Italy, Lebanon, Libyan Arab Jamahiriya, Malta, Monaco, Morocco, Slovenia, Spain, Syrian Arab Republic, Tunisia and Turkey.

4. Representatives of the following United Nations bodies, specialized agencies and non-governmental organizations also attended the Meeting as observers: International Maritime Organization, UNEP/IMO Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC), Helsinki Commission, RAMOGE, INDEMER and RAED.

5. A complete list of participants is attached as Annex I to the present report.

Agenda item 1: Opening of the Meeting

6. The Meeting was opened by H.E. Mr Bernard Fautrier, Plenipotentiary Minister for International Cooperation for the Environment and Development of Monaco, who welcomed the participants and emphasized the importance attached by the Principality of Monaco to the sea in both environmental and economic terms. He recalled that the Meeting, which was embarking upon the second stage of the updating of the Emergency Protocol, was called upon to make an important contribution to the last phase of the post-Rio modernization of the legal instruments pertaining to the Mediterranean Sea. The task of the Meeting would be to incorporate further principles, including prevention and precaution, into a text which had become obsolete and only applied once a situation became critical. Even though the instrument to be developed would be of a very technical nature, it was nevertheless one of the means for the integration of human activities into the environment, based on the sustainable development approach in which MAP had always been at the forefront.

7. He recalled that the Principality of Monaco had always, and particularly since the Rio Summit, advocated the need for close collaboration among the various inter-governmental actors concerned with sustainable development in the Mediterranean. The development of the mechanisms to facilitate such cooperation had been the prime objective of the Meeting of

Regional Seas Coordinators organized under the aegis of UNEP in Monaco in November 2000. He added that, from the beginning, MAP had developed close relations with such organizations as the Food and Agriculture Organization of the United Nations (FAO), World Health Organization (WHO), International Atomic Energy Agency (IAEA), Intergovernmental Oceanographic Commission (IOC) and International Maritime Organization (IMO). He hoped that the participants in the Meeting would be able to develop legal instruments that were worthy of the forward-looking image which the eco-region had always projected to the world.

8. H.E. Mr. Francis Zammit Dimech, Minister for the Environment of Malta and President of the Bureau of the Contracting Parties to the Barcelona Convention, recalled that the path leading to the Meeting had been long. The main undertaking was to build a regional strategy for the prevention of pollution of the marine environment from ships on a sound legal basis. This regional strategy had been the subject of a resolution adopted by the Contracting Parties, which emphasized the need to amend the Emergency Protocol in order to introduce the provisions required for the implementation of this strategy. Since then, steady progress had been made and the draft amendments before the Meeting were the fruit of a huge harmonized effort. The revision of the Protocol had become imperative in view of the intensity and impact of maritime traffic in the Mediterranean and the need for the rigorous implementation of international regulations, and particularly those of the IMO, on the prevention of maritime accidents and for enhanced cooperation among all parties. The figures were eloquent. The Mediterranean had become one of the seas with the highest density of maritime traffic. Nearly one third of the total volume of the world's sea-borne trade originated from or was directed to Mediterranean ports or passed through the Mediterranean basin. More than one quarter of the world's sea-borne oil traffic transited the Mediterranean. These figures were expected to increase due to the development process, which could not and should not be halted.

9. However, he reminded the participants that development was a means, but not a goal in itself. It was a means to a better and sounder life. This implied that, rather than seeking to reduce the volume of maritime traffic in the Mediterranean, the objective should be to lessen its negative impact on daily life and on the future. All development schemes had to be conditioned by environmental considerations within the context of sustainable development. The best protection of the environment could therefore only be obtained through appropriately controlled development. The task before the Meeting in this respect was to upgrade the Protocol to include both the response component and prevention with a view to achieving the so-called "safety continuum".

10. Referring to the issue of whether the text concerned would result in a significantly amended Protocol or the birth of a new one, he recalled that the Bureau of the Contracting Parties, at its Meeting held in Malta in May 2000, had invited the Secretariat to remind the Contracting Parties that the adoption of a new Protocol would have the advantage of facilitating its entry into force, for which only six ratifications would be required. The new version of the Protocol should provide the necessary legal framework for the Contracting Parties to work together to reduce the impact of shipping operations and to further strengthen their cooperative action, bearing in mind the relevant regulations adopted at the global level, particularly by the IMO.

11. Mr Jean-Claude Sainlos, Senior Deputy Director, IMO, Marine Environment Division, recalled that the task of the Meeting was to propose a finalized new text of the Emergency Protocol with a view to its signature at the plenipotentiary conference proposed to be held in Malta in December 2001. The proposed amendments to be considered by the Meeting placed emphasis on the prevention of pollution from ships, as a framework for MAP's activities in this respect, and in conformity with the OPRC Convention. At the same time, the Meeting was called upon to discuss proposed amendments to the Annex to Resolution 7 concerning the objectives and functions of REMPEC, for consideration by the Contracting

Parties, with the particular objective of introducing a preventive component into regional cooperation to protect the marine environment from pollution from ships.

12. He added that regional collaboration was of great importance for the implementation of IMO instruments. However, IMO also placed emphasis on ensuring that the initiatives taken at the regional level regarding the prevention of pollution of the marine environment from ships did not conflict with the rules and regulations adopted at the global level within the framework of IMO. The Mediterranean was an area with a high and increasing intensity of maritime traffic, and a correspondingly high risk of accidental and operational pollution. In order to protect the marine environment against such pollution, there was a particular need for strategic regional cooperation. It was therefore important to consider the means and role to be attributed to REMPEC for the implementation of the new version of the Protocol.

13. Mr Lucien Chabason, UNEP/MAP Coordinator, thanked the authorities of Monaco both for hosting the present Meeting and for their intensive involvement in MAP activities, including the hosting of the next Meeting of the Contracting Parties in November 2001. He also gave thanks to Mr Zammit Dimech, the President of the Bureau of the Contracting Parties, for his constant support to MAP.

14. He recalled that the present Meeting formed part of the process of completing the updating of the Barcelona system of legal instruments, first commenced in 1994, to bring it into line with the principles of sustainable development adopted by the United Nations Conference on Environment and Development (UNCED) in Rio. The Meeting also formed part of the measures adopted at the Mediterranean level in the lead-up to Rio+10. In this respect, it was important for the Mediterranean region to be able to demonstrate its achievements, both at the legal level and in respect of the implementation of the Strategic Action Programme. In this connection, he welcomed the establishment of a specially protected area for marine mammals by France, Italy and Monaco, which demonstrated the results that could be achieved through international cooperation. The Meeting was also being held against the background of a series of high-profile accidents at sea which had caused serious levels of pollution. While the most widely known, such as the Erika off the Atlantic coast of France, had not been in the Mediterranean region, he referred to a number of incidents which had occurred recently in the Mediterranean. Even though the rate of accidents involving seagoing vessels was now much lower than in previous eras, the size of ships and the nature of their loads meant that any accident was liable to give rise to serious pollution problems. Substantial efforts were consequently needed by all the parties concerned to reduce those risks as much as possible. He therefore thanked the IMO and REMPEC for the assistance provided in formulating the proposed amendments to the Protocol, which took into account existing instruments. He hoped that it would be possible to submit a finalized instrument for adoption by the conference of plenipotentiaries to be held in Malta at the end of the year.

15. HSH Prince Albert, Hereditary Prince of Monaco, encouraged the participants in their work of updating the Emergency Protocol and placed emphasis on the need for the coastal States of the Mediterranean Sea to develop modern and effective instruments to combat chronic and accidental pollution from maritime sources. Insofar as compatible with international law, which would undoubtedly undergo significant development in this field, it was also essential to impose similar measures and penalties upon vessels not flying the flag of a Mediterranean coastal State as those applied to States Parties.

16. He recalled that, at the initiative of his grandfather, Prince Albert, Monaco had long demonstrated its concern for the preservation of the sea and the marine and coastal environment. More recently, his father, the Sovereign Prince, had played an important role in the initiative of implementing the RAMOGE Agreement in a context of rising regional awareness of problems related to marine pollution from both maritime and land-based

sources. He referred in particular to the establishment of the RAMOGEPOL plan nearly ten years ago. The time had now come for the active expression of the duty to conserve marine resources. In this respect, his country was at the forefront of the development of innovative legal solutions, such as the ACCOBAMS agreement, which would come into force very soon, and the agreement between France, Italy and Monaco establishing a sanctuary for marine mammals, which should also become operational in the near future following its ratification by Italy.

17. Broad public awareness of chronic deballasting, as well as recent maritime ecological disasters, which could easily have occurred in the Mediterranean, had amply demonstrated the essential need to develop rapidly the instruments required to combat pollution and prevent accidents, as well as to cope with them when they occurred. He reaffirmed Monaco's support for the development of a new Protocol and its rapid entry into force. This was in the interests of all coastal States for which the preservation of a living Mediterranean needed to be a priority objective, not only in view of the intrinsic value of its biological diversity, but also its economic value, particularly in such sectors as tourism and fishing. At a time when too many people still ignored the need to take into account the concept of sustainability in economic activities, he called upon the region, the cradle of so many civilizations, to set an example once again.

Agenda item 2: Rules of procedure

18. It was agreed that the rules of procedure for meetings and conferences of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea against Pollution and its related Protocols would apply *mutatis mutandis* to the Meeting (UNEP/IG.43/6/Annex XI).

Agenda item 3: Election of officers

19. The Meeting elected its Officers as follows:

Chairperson:	Mr Daniel Silvestre (France);
Vice-Chairperson:	Mr Mohamed Aly Borhan (Egypt);
Rapporteur:	Mr Gabriel P. Gabrielides (Cyprus).

Agenda item 4: Adoption of the agenda and organization of work

20. Following a brief discussion of whether it would be better to discuss first the benefits of adopting a new Protocol or amending the present Protocol, or to proceed directly to the discussion of the proposed amendments to the Protocol, the Meeting decided first to have a general informal discussion concerning the benefits of both options, followed by a discussion of the proposed amendments. After the approval of the amendments, a final recommendation on the adoption of a new Protocol or an amended version of the present text would be made. With the above modification, the Meeting adopted the agenda contained in document REMPEC/WG.19/4/1/Rev.1 (Annex II to the present report). The list of documents is presented in Annex III.

Agenda item 5: Benefits of adopting a new Protocol versus amendments to the present Protocol

21. Mr Raftopoulos, MAP Legal Adviser, introduced the Note by the Secretariat on the benefits of adopting a new Protocol versus Amendments to the present Protocol (REMPEC/WG.19/6). He said that international law did not establish any rule regarding whether a revised legal text should be in the form of a new or an amended legal instrument. The question of amending or replacing a Convention or a Protocol related to the management of the regime which they established. The principal criteria were therefore whether the text introduced a new regime or was an extension of an existing regime and how the management of the regime could best be served. He indicated that it was thus necessary to look at the evidence of international practice. Replacement might occur when a new Convention replaced an earlier one for reasons of better governance of the established environmental regime, or when a Protocol amended a Convention and included a mechanism for denouncing the old regime with the effect that a single new instrument came into force integrating both the Protocol and the Convention. Within the Barcelona Convention system, the 1982 SPA Protocol had been replaced by the 1995 SPA and Biodiversity Protocol for reasons of better governance of the new comprehensive regime required by the concept of sustainable development.

22. The draft Protocol before the meeting adopted an integrated approach to vessel source pollution. It adopted an integrated pattern of managing both operational and accidental pollution. In doing so, great care had been taken not to regionalize the substance of the global legal regime regulating vessel source pollution, but only its implementation and enforcement. It also incorporated recent developments in relevant international environmental law, and reflected the experience gained in implementing the Barcelona Convention regime. It clearly introduced a new regime and he cited some of the new elements it contained: (i) the concept of 'pollution incident'; (ii) the establishment of a system of coordination with the global regime on operational pollution from ships; (iii) the maintenance and promotion not only of contingency plans and other technical means, but also legal and institutional means and capacity-building; (iv) an improved reporting procedure that provided more transparency and achieved greater effectiveness; (v) the inclusion of emergency measures on board ships, offshore installations and in ports; (vi) the necessary legal and administrative measures to facilitate assistance, and the inclusion of the reimbursement of the cost of assistance; (vii) provisions on port reception facilities and pleasure craft; (viii) initiatives to improve the environmental safety of maritime traffic; (ix) cooperation in defining national, subregional and regional strategies for ships in distress; and (x) the extension of the functions of the regional centre.

23. He concluded by stating that, if it was decided to adopt a new rather than a revised Protocol, the preamble would have to reflect this development and transitional provisions would have to be included.

24. The Coordinator of MAP referred to MAP's experience with regard to new or amended legal texts, noting that the amended texts of the Barcelona Convention and Protocols had not yet entered into force, whereas the new Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean had already come into effect. He emphasized that the main reason for the Secretariat's proposal that the Protocol should be a new rather than amended legal text was the scope of the changes proposed.

25. The expert from Egypt considered that the reason for a new Protocol was not evident, stating that the over-riding concern should be how best to implement the text's provisions. Other experts, however, considered that the scope of the changes was such that a new Protocol would be the best solution.

26. After the approval of the amendments, the Meeting returned to the subject (see paragraph 20 above) and decided that, in view of the extensive and substantive amendments that had been approved, it would recommend the adoption of a new Protocol. It therefore requested the Secretariat to prepare draft final clauses for the Meeting's consideration.

Agenda item 6: Amendments to the Protocol Concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency

27. Mr Roberto Patrino, Director of REMPEC, introducing the amendments proposed by the Secretariat (REMPEC/WG.19/5 and Corrigenda 1 and 2), recalled that the Tenth Meeting of the Contracting Parties, held in Tunis in November 1997, had adopted a Resolution on the regional strategy on prevention of pollution of the marine environment by ships, which called for the amendment of the Protocol and of the Annex to Resolution 7 regarding the objectives and functions of REMPEC. In preparing the draft amendments, the following documents had been taken into consideration: the present text of the Emergency Protocol; the present text of the Annex to Resolution 7 relating to the objectives and functions of REMPEC, as amended by the Sixth Ordinary Meeting of the Contracting Parties (Athens, October 1989); the decision regarding the extension of REMPEC's mandate and functions, taken by the Eighth Ordinary Meeting of the Contracting Parties (Antalya, October 1993); the provisions of the relevant component (prevention of pollution of the marine environment from ships) of the Action Plan for the Protection of the Marine Environment and the Sustainable Development of the Coastal Areas of the Mediterranean (MAP Phase II); the deliberations of the 1996 Meeting of REMPEC Focal Points; the draft amendments to the Annex to Resolution 7, as reproduced in document UNEP(OCA)/MED.129/5, Appendix II, prepared for the Meeting of MAP Focal Points (Athens, July 1997); and the regional strategy on the prevention of pollution of the marine environment by ships, adopted by the Tenth Meeting of the Contracting Parties (Tunis, November 1997).

28. The REMPEC Focal Points meeting (Malta, November 1998), taking as a basis the conclusions of the Meeting of National and Legal Technical Experts, had agreed on a number of amendments to the text of the Emergency Protocol and the Annex to Resolution 7. At the same time, with a view to harmonizing the work with the revision of the Barcelona Convention and its other Protocols, it had agreed to take the opportunity for a more extended revision of the Emergency Protocol. The preparatory work for that revision, carried out in close cooperation between UNEP/MEDU, IMO and REMPEC, had been circulated to MAP and REMPEC Focal Points for comments, following which it had been decided to convene the present Meeting. A team of external consultants, nominated in full agreement by IMO, REMPEC and UNEP/MEDU, had met at REMPEC in March 1999 to proceed with the revision process, based on the draft document approved by the REMPEC Focal Points in November 1998. The Meeting had prepared proposals which had been distributed in document REMPEC/WG.17/4. In 2000, following the Erika accident, the MAP Coordinator had initiated a new round of discussions with the consultants in order to reflect in the revised Emergency Protocol the principles emerging from the lessons learnt from that accident. As a result, the Secretariat had prepared a number of supplementary amendments, which were also reflected in document REMPEC/WG.19/5.

29. Mr Sainlos, Senior Deputy Director, MED, IMO, introducing document REMPEC/WG.19/5/1, said that its basic purpose was to clarify the text, particularly in relation to the provisions for the prevention of pollution of the marine environment from ships, and the objective of the Protocol, which was to develop regional cooperation for the implementation of existing relevant IMO Conventions and resolutions. For that purpose, it was proposed to add a new preambular paragraph on the role of IMO and a new definition of "international

regulations". The other proposed amendments to Articles 1, 3 and 10 were mainly intended to remove ambiguities from and simplify the text.

30. The Meeting agreed to discuss the proposed amendments paragraph by paragraph. A new title for the Protocol was proposed and it was agreed that throughout the text the words "harmful substances" should be replaced by "hazardous and noxious substances". In addition, the concept of prevention was strengthened throughout the Protocol. As the work progressed, a number of informal working documents were prepared by the Secretariat and further refined by the experts.

31. When discussing the preamble to the Protocol, the Meeting decided that one of the preambular paragraphs should refer to the subject areas of the international legal instruments that had been taken into consideration when preparing the revised draft Protocol. The Meeting requested that a complete and updated list of these legal instruments be prepared by the Secretariat and annexed to a Resolution proposed for adoption by the Conference of Plenipotentiaries. It considered that this would facilitate updating the list.

32. Introducing the draft final provisions (see paragraph 19 above), Mr Raftopoulos, MAP Legal Adviser, said that they were based on the Specially Protected Areas Protocol which had entered into force on 12 December 1999. The first two clauses related to the normative implementation of the Protocol, in particular the right of Parties to adopt stricter domestic measures and the invitation to non-Parties and international organizations to cooperate in implementing the Protocol. Three standard clauses followed relating to signature; ratification, acceptance or approval; and accession. The remaining clause dealt with the entry into force of the Protocol which would take place on the thirtieth day following deposit of the sixth instrument of ratification, acceptance, approval or accession. As from that date the new Protocol would replace the former one in the relations between the Parties to both instruments. Consequently, two regimes would coexist, the new regime applying to Parties to the new Protocol, and the old regime which would continue to apply to Parties to the former Protocol, a situation provided for in international law under Article 30 of the Vienna Convention on the Law of Treaties.

33. In the course of the ensuing debate a number of minor amendments to the final provisions were agreed. One expert from Turkey suggested that the text of Article 3, paragraph 6, of the Specially Protected Areas Protocol should be included in the final provisions. After some discussion, the Meeting agreed that it should be added to the General Provisions.

34. Referring to the Arabic language version of the new Protocol, the expert from Egypt offered to review the text on behalf of the Arabic-speaking Parties. This offer was accepted with thanks.

35. The Coordinator said that he would report the outcome of the Meeting to the Bureau. Every effort would be made to transmit the amended text of the draft Protocol to Contracting Parties in the four working languages within a month, which would allow sufficient time for them to send their comments by the end of July. This should make it possible to convene a conference of plenipotentiaries, proposed to be held in Malta in December 2001. Should any unexpected difficulties arise – an eventuality which he did not anticipate – a further short meeting of experts could be held immediately before the conference of plenipotentiaries.

36. The amended text of the draft Protocol concerning Cooperation in Preventing Pollution from Ships and in Combating Pollution of the Mediterranean Sea by Oil and Hazardous and Noxious Substances in Cases of Emergency (the "Emergency Protocol") was approved by the Meeting and is attached as Annex IV.

37. The representative of IMO proposed that the MAP Secretariat and IMO consult in the preparation of the new definition of “regional centre”.

38. The expert from the European Community expressed a reservation *ad referendum* regarding Article 1 (d).

39. He also proposed the inclusion of the following new paragraph 1bis in Article 2 of the draft Protocol:

“In cooperating, the Parties shall take into account the participation of economic actors, relevant local authorities and nature protection associations”.

This proposal was not discussed by the Meeting.

Agenda item 7: **Discussion of the proposed amendments to the Annex to Resolution 7 concerning the objectives and functions of REMPEC**

40. Mr Patrino, Director of REMPEC, explained that the amendments to the Annex to Resolution 7 had been prepared by REMPEC and submitted to the MAP Focal Points. A revised text had then been prepared and submitted to the REMPEC Focal Points, which had recommended that it be considered by the Second Meeting of National Legal and Technical Experts, together with the proposed amendments to the Protocol, and subsequently transmitted to the MAP Focal Points for their consideration and to the Contracting Parties for adoption.

41. The Meeting had a general exchange of views on the content of the Annex and its title and several experts expressed their preference for either alternative I or alternative II for paragraph 2 in section B. A compromise proposal was suggested, without being discussed.

42. The Meeting agreed that the title of the Annex should read “Annex related to the Objectives and Functions of the Regional Centre for the Implementation of the Emergency Protocol”.

43. The Secretariat was requested to amend the title of the Annex accordingly, to bring the Annex into line with the amended text of the Protocol, to include references to the regional centre’s role in technical assistance, to subregional agreements, and to the role played by the IMO, and to transmit the amended text to the MAP Focal Points.

Agenda item 8: **Other business**

44. The expert from Greece informed the Meeting that the Greek Parliament had recently adopted a law which, *inter alia*, made it mandatory for all tankers carrying less than 2000 tonnes of persistent oil in its cargo and calling at Greek ports and any floating oil production and storage units operating in Greek territorial waters to have financial security against potential oil damage.

45. The expert from the European Community informed the Meeting of the adoption of Decision No. 2850/2000/EC of the European Parliament and of the Council, of 20 December 2000, setting up a Community framework for cooperation in the field of accidental or deliberate pollution, and of Directive 2000/59/EC of the European Parliament and of the Council, of 27 November 2000, on port reception facilities for ship-generated waste and cargo residues.

Agenda item 9: Adoption of the report of the Meeting

46. The report of the Meeting was adopted, as amended.

Agenda item 10: Closure of the Meeting

47. After the usual exchange of courtesies, the chairperson closed the Meeting at 10.30 am on Friday 6 April 2001.

ANNEX I

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LISTE DES PARTICIPANTS**

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ANNEX II

AGENDA

1. Opening of the Meeting
2. Rules of Procedure
3. Election of Officers
4. Adoption of the agenda and organization of work
5. Benefits of adopting a new Protocol versus amendments to the present Protocol
6. Amendments to the Protocol Concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency
7. Discussion of the proposed amendments to the Annex to Resolution 7 concerning the objectives and functions of REMPEC
8. Other business
9. Adoption of the report of the Meeting
10. Closure of the Meeting

ANNEX III**LIST OF DOCUMENTS****Working documents**

REMPEC/WG.19/1	<i>No document issued under this agenda item.</i>
REMPEC/WG.19/2	<i>No document issued under this agenda item.</i>
REMPEC/WG.19/3	<i>No document issued under this agenda item.</i>
REMPEC/WG.19/4/1/Rev.1	Provisional agenda.
REMPEC/WG.19/4/2	Annotated provisional agenda.
REMPEC/WG.19/4/3	Draft timetable.
REMPEC/WG.19/5	Proposed amendments to both the Protocol concerning co-operation in combating pollution of the Mediterranean Sea by oil and other harmful substances in case of emergency and to the Annex to Resolution 7 concerning the objectives and functions of REMPEC. (Note by REMPEC).
REMPEC/WG.19/5/Cor.1	Corrigendum to REMPEC/WG.19/5 - "Proposed amendments to both the Protocol concerning co-operation in combating pollution of the Mediterranean Sea by oil and other harmful substances in case of emergency and to the Annex to Resolution 7 concerning the objectives and functions of REMPEC". (Note by REMPEC). Applicable to the English text only.
REMPEC/WG.19/5/Cor.2	Corrigendum to REMPEC/WG.19/5 - "Proposed amendments to both the Protocol concerning co-operation in combating pollution of the Mediterranean Sea by oil and other harmful substances in case of emergency and to the Annex to Resolution 7 concerning the objectives and functions of REMPEC". (Note by REMPEC). Applicable to the English text only.
REMPEC/WG.19/5/1	Proposed Amendments to both the Protocol concerning co-operation in combating pollution of the Mediterranean Sea by oil and other harmful substances in case of emergency and to the Annex to Resolution 7 concerning the objectives and functions of REMPEC (Drafting proposals submitted by the International Maritime Organization).

REMPEC/WG.19/5/2	Algerian observations on the Protocol concerning Co-operation in Combating Pollution of the Mediterranean Sea by Oil and other Harmful Substances in Cases of Emergency and to the Annex to Resolution concerning the Objectives and Functions of REMPEC. (Submitted by Algeria).
REMPEC/WG.19/6	Benefits of adopting a new Protocol versus amendments to the present Protocol. (Note by REMPEC).
REMPEC/WG.19/7	<i>No document issued under this agenda item.</i>
REMPEC/WG.19/8	Report of the meeting.

Information documents

REMPEC/WG.19/INF.1/Rev.1	Provisional list of documents.
REMPEC/WG.19/INF.1/Rev.2	List of documents.

Reference documents

1. Report of the first Meeting of National Legal and Technical Experts on the Amendments to the Emergency Protocol, Malta, 23-24 November 1998 (REMPEC/WG.15/6). Working papers related to the same meeting.
2. Proposed amendments to both the Protocol concerning co-operation in combating pollution of the Mediterranean Sea by oil and other harmful substances in case of emergency and to the Annex to Resolution 7 concerning the objectives and functions of REMPEC (REMPEC/WG.17/4, Catania, September 1999).
3. IMO/UNEP: Regional Information System; Part A, Basic Documents, Recommendations, Principles and Guidelines concerning Accidental Marine Pollution Preparedness, Response and Mutual Assistance, REMPEC, July 2000.
4. UNEP/MAP: Mediterranean Action Plan and Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols, Athens 1997.
5. IMO: International Convention for the Safety of Life at Sea (SOLAS) (consolidated edition, 2001).
6. IMO: MARPOL 73/78 (consolidated edition, 1997).
7. IMO: 1997 and 1999 MARPOL Amendments (1999 edition).
8. IMO: International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC), 1990 (1991 edition).
9. IMO: Final Act of the Conference on International Co-operation on Preparedness and Response to Pollution Incidents by Hazardous and Noxious Substances (HNS-OPRC/CONF/11).

10. IMO: International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (Intervention), 1969 (1977 edition).
11. IOPC Fund: Texts of the 1971 Fund Convention, 1969 Civil Liability Convention, 1976 Protocols to the Fund and Civil Liability Conventions, Internal Regulations and Rules of Procedure (2nd edition, 1987).
12. IMO: Civil Liability for Oil Pollution Damage (CLC) (1996 edition).
13. IMO: International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention) (1997 edition).
14. UN - New York: United Nations Convention on the Law of the Sea (UNCLOS) (1997 edition).

ANNEX IV

DRAFT PROTOCOL CONCERNING COOPERATION IN PREVENTING POLLUTION FROM SHIPS AND IN COMBATING POLLUTION OF THE MEDITERRANEAN SEA BY OIL AND HAZARDOUS AND NOXIOUS SUBSTANCES IN CASES OF EMERGENCY¹

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,

Desirous of implementing articles 6 and 9 of the said Convention, as amended,

Recognizing that grave pollution of the sea by oil and hazardous and noxious substances or a threat thereof in the Mediterranean Sea Area involves a danger for the coastal States and the marine environment,

Considering that the cooperation of all the coastal States of the Mediterranean Sea is called for to prevent pollution from ships and to respond to pollution incidents, irrespective of their origin,

Acknowledging the role of the International Maritime Organization and the importance of cooperating within the framework of this Organization, in particular in promoting the adoption and the development of international rules and standards to prevent, reduce and control pollution of the marine environment from ships,

Recognizing the importance of cooperation in the Mediterranean Sea Area in promoting the effective implementation of international regulations to prevent, reduce and control pollution of the marine environment from ships,

Recognizing also the importance of prompt and effective action at the national, subregional and regional levels in taking emergency measures to deal with pollution of the marine environment or a threat thereof,

Applying the precautionary principle, the polluter pays principle and the method of environmental impact assessment, and utilizing the best available techniques and the best environmental practices, as provided for in article 4 of the Convention,

Bearing in mind the relevant provisions of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982,

Taking into account the international conventions dealing in particular with maritime safety, the prevention of pollution from ships, preparedness for and response to pollution incidents, and liability and compensation for pollution damage,

Wishing to further develop mutual assistance and cooperation in preventing and combating pollution,

¹ The way of presenting the Articles of the Protocol and their Headings are corrected in order to be in line with the standard type adopted by the other Protocols and the Convention.

Have agreed as follows:

Article 1

DEFINITIONS

For the purpose 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;²
- (b)** “Pollution incident” means an occurrence or series of occurrences having the same origin, which results or may result in a discharge of oil and/or hazardous and noxious substances and which poses or may pose a threat to the marine environment, or to the coastline or related interests of one or more States, and which requires emergency action or other immediate response;
- (c)** “Hazardous and noxious substances” means 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;
- (d)** “Related interests” means the interests of a coastal State directly affected or threatened and concerning, among others
- (i) maritime activities in coastal areas, in ports or estuaries, including fishing activities;
 - (ii) the historical and tourist appeal of the area in question, including water sports and recreation;
 - (iii) the health of the coastal population;
 - (iii bis) the cultural, aesthetic, scientific and educational value of the area;
 - (iv) the conservation of biological diversity and the sustainable use of marine and coastal biological resources;
- (e)** “International regulations” means regulations aimed at preventing, reducing and controlling pollution of the marine environment from ships as adopted, at the global level and in conformity with international law, under the aegis of United Nations specialized agencies, and in particular of the International Maritime Organization;³
- (f)** “Regional centre” means the “Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea” (REMPEC), established by Resolution 7 adopted by the Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region on the Protection of the Mediterranean Sea at Barcelona on 9 February 1976, which is administered by the

² The standard definition of the “Convention” is added under 1(a). This is exactly done in all other Protocols (LBS PROTOCOL, SPA & BD PROTOCOL, OFFSHORE PROTOCOL, HAZARDOUS WASTES PROTOCOL) and is also necessary for the new Protocol. The enumeration of the rest of the sub-paragraphs is corrected accordingly.

³ Reservation by the European Community

International Maritime Organization and the United Nations Environment Programme, and of which the objectives and functions are defined by the Contracting Parties to the Convention⁴.

Article 1bis

PROTOCOL AREA

The area to which the Protocol applies shall be the Mediterranean Sea Area as defined in article 1 of the Convention⁵.

Article 2

GENERAL PROVISIONS

1. The Parties shall cooperate:
 - (a) to implement international regulations to prevent, reduce and control pollution of the marine environment from ships; and
 - (b) to take all necessary measures in cases of pollution incidents.
2. Each Party shall apply this Protocol without prejudice to the sovereignty or the jurisdiction of other Parties or other States. Any measures taken by a Party to apply this Protocol shall be in accordance with international law.

Article 3

CONTINGENCY PLANS AND OTHER MEANS OF PREVENTING AND COMBATING
POLLUTION INCIDENTS

1. The Parties shall endeavour to maintain and promote, either individually or through bilateral or multilateral cooperation, contingency plans and other means of preventing and combating pollution incidents. These means shall include, in particular, equipment, ships, aircraft and personnel⁶ prepared for operations in cases of emergency, the enactment, as appropriate, of relevant legislation, the development or strengthening of the capability to respond to a pollution incident and the designation of a national authority or authorities responsible for the implementation of this Protocol.

⁴ In the new 1 (f) the word “whose” (one line before the end) is replaced by the correct “of which the” and the word “Barcelona” (end line), after the introduction of art. 1a) is unnecessary and is also deleted.

⁵ This article is adjusted to the correction of Article 1 and, as a result, after the word “Convention” the rest of the text is deleted.

⁶ The word “manpower” is replaced by the word “personnel” used in the OPRC CONVENTION. The word manpower is no longer used because of its sexist connotation.

2. The Parties shall also take measures in conformity with international law to prevent the pollution of the Mediterranean Sea Area from ships in order to ensure the effective implementation in that Area of the relevant international conventions in their capacity as Flag State, Port State and Coastal State, and their applicable legislation. They shall develop their national capacity as regards the implementation of those international conventions and may cooperate for their effective implementation through bilateral or multilateral agreements.

3. The Parties shall inform the regional centre every two years of the measures taken for the implementation of this Article. The regional centre shall present a report to the Parties on the basis of the information received.

Article 4

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 relevant international regulations.

Article 5

COOPERATION IN RECOVERY OPERATIONS

In case of release or loss overboard of hazardous and noxious substances in packaged form, including those in freight containers, portable tanks, road and rail vehicles and shipborne barges, the Parties shall cooperate as far as practicable in the salvage of these packages and the recovery of such substances so as to prevent or reduce the danger to the marine and coastal environment.

Article 6

DISSEMINATION AND EXCHANGE OF INFORMATION

1. Each Party undertakes to disseminate to the other Parties information concerning:
 - (a) the competent national organization or authorities responsible for combating pollution of the sea by oil and hazardous and noxious substances;
 - (b) the competent national authorities responsible for receiving reports of pollution of the sea by oil and hazardous and noxious substances and for dealing with matters concerning measures of assistance between Parties;
 - (b *bis*) the national authorities entitled to act on behalf of the State in regard to measures of mutual assistance and cooperation between Parties;
 - (b *bis bis*) the national organization or authorities responsible for the implementation of article 3.2, in particular⁷ those responsible for the implementation of the

⁷ After the word "in particular" the comma is deleted.

international conventions concerned, those responsible for the development of port reception facilities and those responsible for the monitoring of discharges which are illegal under MARPOL 73/78;

- (b *ter*) its regulations and other matters which have a direct bearing on preparedness for and response to pollution of the sea by oil and hazardous and noxious substances;
- (c) new ways in which pollution of the sea by oil and hazardous and noxious substances may be avoided, new measures for combating pollution, new developments in the technology of conducting monitoring and the development of research programmes.

2. The Parties which have agreed to exchange information **directly**⁸ shall communicate such information to the regional centre. The latter shall communicate this information to the other Parties and, on a basis of reciprocity, to coastal States of the Mediterranean Sea Area which are not Parties to this Protocol.

3. **Parties** concluding bilateral or multilateral agreements within the framework of this Protocol shall inform the regional centre of such agreements, which **shall** communicate **them** to the other **Parties**⁹.

Article 7

COMMUNICATION OF INFORMATION AND REPORTS CONCERNING POLLUTION INCIDENTS

The Parties undertake to coordinate the utilization of the means of communication at their disposal in order to ensure, with the necessary speed and reliability, the reception, transmission and dissemination of all reports and urgent information concerning pollution incidents. The regional centre shall have the necessary means of communication to enable it to participate in this coordinated effort and, in particular, to fulfil the functions assigned to it by paragraph 2 of article 10.

Article 8

REPORTING PROCEDURE

1. Each Party shall issue instructions to masters or other persons having charge of ships flying its flag and to the pilots of aircraft registered in its territory to report by the most rapid and adequate channels in the circumstances, following reporting procedures to the extent required by, and in accordance with, the applicable provisions of the relevant international agreements, to the nearest coastal State and to this Party:

- (a) all incidents which result or may result in a discharge of oil or hazardous and noxious substances;

⁸ The phrase "between themselves" are deleted.

⁹ The initial "The" is deleted and the last sentence is stated in better English.

- (b) the presence, characteristics and extent of spillages of oil or hazardous and noxious substances observed at sea which pose or are likely to pose a threat to the marine environment or to the coast or related interests of one or more of the Parties.

1 *bis*. Each Party shall also issue instructions to persons having charge of sea ports or handling facilities under its jurisdiction to report to it, in accordance with its national law, all incidents which result or may result in a discharge of oil or hazardous and noxious substances.

1 *ter*. In accordance with the Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil, each Party shall issue instructions to persons having charge of offshore units under its jurisdiction to report to it by the most rapid and adequate channels in the circumstances, following reporting procedures it has prescribed, all incidents which result or may result in a discharge of oil or hazardous and noxious substances.

1 *quater*. The information collected in accordance with paragraphs 1, 1 *bis* and 1 *ter* shall be communicated to the regional centre, as appropriate.

2. The information collected in accordance with paragraphs 1, 1 *bis* and 1 *ter* shall be immediately communicated to the other Parties likely to be affected by the pollution incident:

- (a) by the Party which has received the information, preferably directly or through the regional centre; or
- (b) by the regional centre.

In case of direct communication between Parties, these shall inform the regional centre of the measures taken, and the centre shall communicate them to the other Parties.

2 *bis*. The Parties shall use a mutually agreed standard form proposed by the regional centre for the reporting of pollution incidents as required under paragraph 2 of this article.

3. In consequence of the application of the provisions of paragraph 2, the Parties are not bound by the obligation laid down in article 9, paragraph 2, of the Convention.

Article 9

OPERATIONAL MEASURES

1. Any Party faced with a pollution incident shall:

- (a) make the necessary assessments of the nature, extent and possible consequences of the pollution incident or, as the case may be, the type and approximate quantity of oil or hazardous and noxious substances and the direction and speed of drift of the spillage;
- (b) take every practicable measure to prevent, reduce and, to the fullest possible extent, eliminate the effects of the pollution incident;
- (c) immediately inform all Parties likely to be affected by the pollution incident of

these assessments and of any action which it has taken or intends to take, and simultaneously provide the same information to the regional centre, which shall communicate it to all other Parties;

- (d) continue to observe the situation for as long as possible and report thereon in accordance with article 8.

2. Where action is taken to combat pollution originating from a ship, all possible measures shall be taken to safeguard:

- (a) human lives ;
- (b) the ship itself; in doing so, damage to the environment in general shall be prevented or minimized.

Any Party which takes such action shall inform the International Maritime Organization either directly or through the regional centre.

Article 9 bis

EMERGENCY MEASURES ON BOARD SHIPS, ON OFFSHORE INSTALLATIONS AND IN PORTS

1. Each Party shall take the necessary steps to ensure that ships flying its flag have on board a pollution emergency plan as required by, and in accordance with, the relevant international regulations.

2. Each Party shall require masters of ships flying its flag, in case of a pollution incident, to follow the procedures described in the emergency plan and in particular to provide the proper authorities, at their request, with such detailed information about the ship and its cargo which is relevant to actions taken in pursuance of article 9, and to cooperate with these authorities.

3. Each Party shall require that authorities or operators in charge of sea ports and handling facilities under its jurisdiction as it deems appropriate have pollution emergency plans or similar arrangements that are coordinated with the national system established in accordance with article 3 and approved in accordance with procedures established by the competent national authority.

4. Each Party shall require operators in charge of offshore installations under its jurisdiction to have a contingency plan to combat any pollution incident, which is coordinated with the national system established in accordance with article 3 and in accordance with the procedures established by the competent national authority.

Article 10

ASSISTANCE

1. Any Party requiring assistance to deal with a pollution incident may call for assistance from other Parties, either directly or through the regional centre, starting with the

Parties which appear likely to be affected by the pollution. This assistance may comprise, in particular, expert advice and the supply to or placing at the disposal of the Party concerned of the required specialized personnel, products, equipment and nautical facilities. Parties so requested shall use their best endeavours to render this assistance.

2. Where the Parties engaged in an operation to combat pollution cannot agree on the organization of the operation, the regional centre may, with their approval, coordinate the activity of the facilities put into operation by these Parties.

3. In accordance with applicable international agreements, each Party shall take the necessary legal and 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 a 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 the personnel, cargoes, materials and equipment referred to in subparagraph (a).

Article 10 bis

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 above in subparagraphs (a) and (b) 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 international law and national or supra-national regulations.

Article 10 ter

PORT RECEPTION FACILITIES

1. The Parties shall take all the necessary steps to ensure the provision and utilization **at reasonable cost** in their ports and terminals of reception facilities, adequate to meet the needs of the ships using them, without causing undue delay to ships¹⁰.
2. The Parties shall also ensure the provision of adequate reception facilities for pleasure craft.
3. The Parties shall take all the necessary steps to ensure that reception facilities operate efficiently to limit any impact of their discharges to the marine environment.
4. The Parties shall take the necessary steps to provide ships using their ports with updated information relevant to the obligations arising from MARPOL 73/78 and from their legislation applicable in this field.

Article 10 quater

ENVIRONMENTAL SAFETY OF MARITIME TRAFFIC

In conformity with generally accepted international standards and within the framework of their recognized competencies, the Parties shall take the necessary steps to assess the environmental safety, individually, bilaterally or multilaterally, of the recognized routes used in maritime traffic and shall take the appropriate initiatives, within the framework of the International Maritime Organization, aimed at reducing the risks of accidents or the environmental consequences thereof.

Article 10 quinquies

ACCESS TO PORTS BY SHIPS IN DISTRESS

The Parties shall define national, subregional or regional strategies concerning access to their 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.

¹⁰ The phrase "at reasonable cost" is transferred after the word "utilization" because the word "adequate" refers to the word "reception facilities" and the existing formulation was confusing.

Article 11

SUBREGIONAL AGREEMENTS

The Parties may negotiate, develop and maintain appropriate bilateral or multilateral subregional agreements in order to facilitate the implementation of this Protocol, or part of it. Upon request of the interested Parties, the regional centre shall assist them, within the framework of its functions, in the process of developing and implementing these subregional agreements.

Article 11 bis

THE REGIONAL CENTRE

Article DELETED, see Article 1 "Definitions"

Article 12

MEETINGS

1. Ordinary meetings of the Parties to this Protocol shall be held 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 as provided in article 18 of the Convention.
2. It shall be the function of the meetings of the Parties to this Protocol, in particular:
 - (a) to examine and discuss reports from the regional centre on the implementation of this Protocol, and particularly of its articles 3, 6 and 10 *quinquies*;
 - (b) to formulate and adopt strategies, action plans and programmes for the implementation of this Protocol;
 - (c) to keep under review and consider the efficacy of these strategies, action plans and programmes, and the need to adopt any new strategies, action plans and programmes and to develop measures to that effect;
 - (d) to discharge such other functions as may be appropriate for the implementation of this Protocol.

Article 13

RELATIONSHIP WITH THE CONVENTION

1. The provisions of the Convention relating to any protocol shall apply with respect to the present 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 agree otherwise.

FINAL PROVISIONS

Article 14

EFFECT OF THE PROTOCOL ON DOMESTIC LEGISLATION

The provisions of this Protocol shall not affect the right of Parties to adopt relevant stricter domestic measures for the implementation of this Protocol.

Article 15

RELATIONS WITH THIRD PARTIES

The Parties shall, where appropriate, invite States that are not Parties to the Protocol and international organizations to cooperate in the implementation of the Protocol.

Article 16

SIGNATURE

This Protocol shall be open for signature at.....on..... and at.....from2001 to2002 by any Contracting Party to the Convention.

Article 17

RATIFICATION, ACCEPTANCE OR APPROVAL

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

Article 18

ACCESSION

As from....., this Protocol shall be open for accession by any Party to the Convention.

Article 19

ENTRY INTO FORCE

1. This Protocol shall enter into force on the thirtieth day following the deposit of the sixth instrument of ratification, acceptance, approval or accession.

2. From the date of its entry into force, this Protocol shall replace the Protocol Concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and other Harmful Substances in Cases of Emergency of 1976, in the relations between the Parties to both instruments.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Protocol.

DONE at, on....., in a single copy in the Arabic, English, French and Spanish languages, the four texts being equally authentic.