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Conference of Plenipotentiaries of the
Coastal States of the Mediterranean Region
for the Protection of the Mediterranean Sea
against Pollution from Land-Based Sources

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Athens, 12 - 17 May 1980

EXPLANATIONS OF RESERVATIONS MADE BY EXPERTS AS INDICATED IN FOOTNOTES
TO PRELIMINARY DRAFT PROTOCOL FOR THE PROTECTION OF THE MEDITERRANEAN
SEA AGAINST POLLUTION FROM LAND-BASED SOURCES

The preliminary draft protocol for the protection of the Mediterranean Sea against pollution from land-based sources was last reviewed and revised by the meeting of legal experts that was convened in Geneva from 25 to 29 June 1979. ^{1/}

When revising the text of the preliminary draft protocol, reservations to certain phrases, paragraphs or articles were expressed by some experts. Such reservations have been indicated in the footnotes to the text of the draft protocol (see document UNEP/IG.19/3).

Written explanations of most of the reservations were provided by the experts concerned, and these are set forth in this document for the information of participants at the Conference of Plenipotentiaries.

^{1/} Report of the Meeting of legal experts on the Preliminary Draft Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources, UNEP/WG.17/6, 9 July 1979.

Articles 2 and 4

Reservations of the expert designated by the Government of Lebanon

The expert designated by the Government of Lebanon expressed a reservation concerning articles 2 and 4 of the Protocol:

1. The routes of transfer of land-based pollution as listed in article 4 should be placed in the "Definitions" and not in the "Scope", especially because of the transfer of pollution by the atmospheric route.
2. The "Definitions" should include a definition of the territory so as to remove all ambiguity; and mention should be made there of fixed man-made off-shore structures, which would pass from para. 2 of the present article 4 to the definition of territory.
3. The "Scope of the Protocol" should indicate where pollution is observed.

Article 2

Reservation of the expert designated by the Government of Turkey

The expert designated by the Government of Turkey expressed his reservation to the definition of "freshwater limit" on the grounds that he has a reservation to the inclusion of internal coastal waters in the coverage of the Protocol.

Article 3

Reservations of the expert designated by the Government of Turkey

Two reserves:

The first concerns the inclusion of the concept of "internal coastal waters" within the coverage of the Protocol as defined in this article.

The second is based on the proposal of the expert designated by the Government of Turkey, who requested that the Protocol should not apply to installations used exclusively for governmental and non-commercial purposes by the Parties. In this connexion, the expert designated by the Government of Turkey cited the example of article 11 of the "Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft."

Article 4

Reservation of the expert designated by the Government of Italy to paragraph 1

The expert designated by the Government of Italy expressed a reservation concerning the inclusion in Article 4, para. 1 of the proposal "and through the atmosphere" for the following reasons:

1. The question of pollution transferred by the atmosphere is still under study both by scientists and by organizations such as UNEP and OECD, and for that reason we do not have sufficient data for embarking on a study of that type of pollution.
2. In particular, scientific knowledge does not make it possible to discern the sources of pollution carried by the atmosphere. Consequently, the problem in question can only be a statement of principle.

The expert designated by the Government of Italy is therefore of the opinion that the question concerning pollution transferred by the atmosphere should form the subject of another protocol.

Reservation of the expert designated by the Government of Spain

The expert designated by the Government of Spain expressed his reservation to the inclusion in paragraph 1 of article 4 of polluting discharges reaching the Protocol Area "through the atmosphere". He considers that pollution from or through the atmosphere is an independent source of pollution different from pollution from land-based sources, as it is stated in the Informal Composite Negotiating Text of the Third U.N. Conference on the Law of the Sea (articles 195-3-a, 208, 213, 214 and 223). Therefore this type of pollution should be dealt with in an "ad hoc" Protocol.

Linking the legal regime applicable to both sources may cause an unjustifiable delay in the adoption and entry into force of the international instruments required to combat marine pollution from land-based sources.

Reservation of the expert designated by the Government of Turkey to paragraph 1

The reservation expressed by the expert was based on the idea that the Protocol should not apply to polluting discharges reaching the Protocol Area from land-based sources on the territories of the Parties through underground watercourses and through the atmosphere.

Article 5

Reservation of the expert designated by the Government of Morocco to paragraph 4

The expert designated by the Government of Morocco reserved his position concerning the articles dealing with the reduction of pollution coming from existing or new sources.

Reservation of the expert designated by the Government of Turkey to paragraph 4

The expert designated by the Government of Turkey stated that the time-tables/time-limits for implementation should be a matter falling exclusively within national competence, since in his view each State party to the Protocol should establish its plan of action according to its economic priorities.

Reservation of the expert designated by the Government of Lebanon to paragraph 5

The reservation relates to the words "standards and time-tables" used at the start of the paragraph; they should be replaced by the term "programmes and measures", since the documents concerned have to be reviewed from time to time and since article 15, referred to at the end of the paragraph, applies to programmes and measures.

Article 6Reservation of the expert designated by the Government of Morocco to paragraph 3

The expert designated by the Government of Morocco reserved his position concerning the articles dealing with the reduction of pollution coming from existing or new sources.

Reservation of the expert designated by the Government of Turkey to paragraph 3

The expert designated by the Government of Turkey stated that the time-tables/time-limits for implementation should be a matter falling exclusively within national competence, since in his view each State party to the Protocol should establish its plan of action according to its economic priorities.

Article 7Reservation of the expert designated by the Government of Lebanon to paragraph 2

The reservation concerns the inclusion of "the economic capacity of the Parties and their need for development" among the factors to be taken into account in determining the guidelines, standards and criteria referred to in article 7. Since human nature and essential human needs with respect to hygiene and environment are the same in all countries, only objective factors should be taken into account in making this determination.

It is therefore proposed that the phrase in question should be deleted from paragraph 2, and that there should be added a paragraph 3 reading as follows:

"The guidelines, norms and criteria shall be so determined that they give rise only to such economic constraints as are strictly necessary in the light of the most recent scientific and technical information. They shall take account, in their time-limits of application, of the economic capacity of the Parties and of their development needs".

Article 10

Reservation of the expert designated by the Government of Morocco to paragraph 2

The expert delegated by the Government of Morocco is of the opinion that the expression "provided on a favourable financial basis", as used in the former article 13, should be retained.

Article 11

Reservation of the expert designated by the Government of Lebanon to paragraph 1

Contrary to what might be understood from the wording adopted, the fact of sharing the banks or the successive sections of a watercourse should not diminish the obligations of two or more Parties to the Protocol.

The text which the Government of Lebanon would like to see in place of that adopted would read, from the end of the fourth line of paragraph 1:

"... appropriate measures to enable them to discharge all of their obligations which are relevant to the full application of the Protocol".

Reservation by the expert designated by the Government of Morocco to paragraph 1

The expert considers that the expression "shall be invited to co-operate" is a mere pious wish incompatible with the fundamental objective of a protocol concerning pollution from land-based sources. A watercourse which flows solely through the territory of States parties to the Protocol and which might cause pollution of the protocol area should be regulated by those same parties in order to ensure the full application of the Protocol, which, by its nature, will concern discharges from watercourses having their sources entirely within the territory of States parties to a protocol on pollution from land-based sources; the control and the strict scientific regulation of such watercourses depends entirely on those parties. The expert from Morocco is of the opinion that the most appropriate expression for inclusion in article 11, paragraph 1, would therefore be: "The Parties concerned shall implement appropriate measures".

Article 12

Reservations by the expert designated by the Government of Lebanon to paragraph 1

It is essential to define the scope and conditions of application of this article clearly, narrowly and restrictively, in order to avoid any misinterpretation, especially where the interests of the Parties may be prejudiced as a result of violations of the Protocol. This requirement is not met by the very general wording adopted for paragraph 1.

The text of the article should therefore include:

At the beginning of paragraph 1, the following phrase:

"When, before the implementation of the measures provided for in the Protocol, but after its entry into force, or despite the implementation of those measures, land-based pollution".

After the second paragraph, a third paragraph reading as follows:

"The above provisions do not apply to situations resulting from the breach of obligations assumed under the Protocol, which remain governed by the provisions of articles 11, 21 and 22 of the Convention".

Article 13

Reservation by the expert designated by the Government of Turkey

The expert designated by the Government of Turkey proposed that the term "among others" should be replaced by "for example", since the items of information specified could not constitute a mandatory list in each case but were, rather, examples of many other items which might result from measures taken, results achieved and difficulties encountered in the implementation of the Protocol.

Article 15

Reservation of the expert designated by the Government of Morocco

The expert designated by the Government of Morocco considers it paradoxical that adoption of the annexes should require a majority vote, while adoption of the programmes and measures requires unanimity.

It would probably be simpler to make adoption of the programmes and measures subject to the majority procedure applicable to the annexes.