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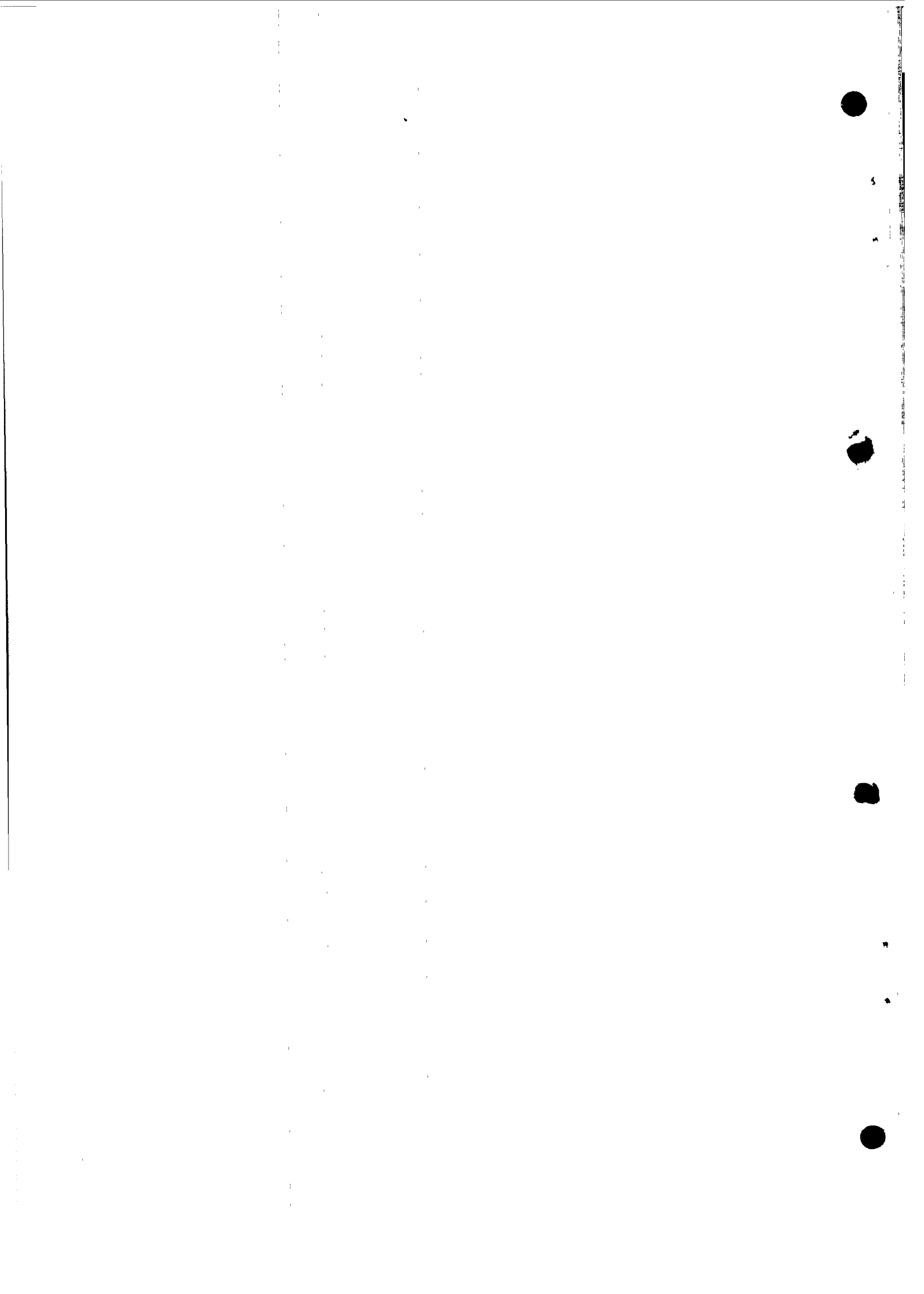
Intergovernmental Meeting on
Mediterranean Specially
Protected Areas

Athens, 13-17 October 1980

Guidelines Proposed for a Protocol concerning Mediterranean Marine and Coastal Protected Areas

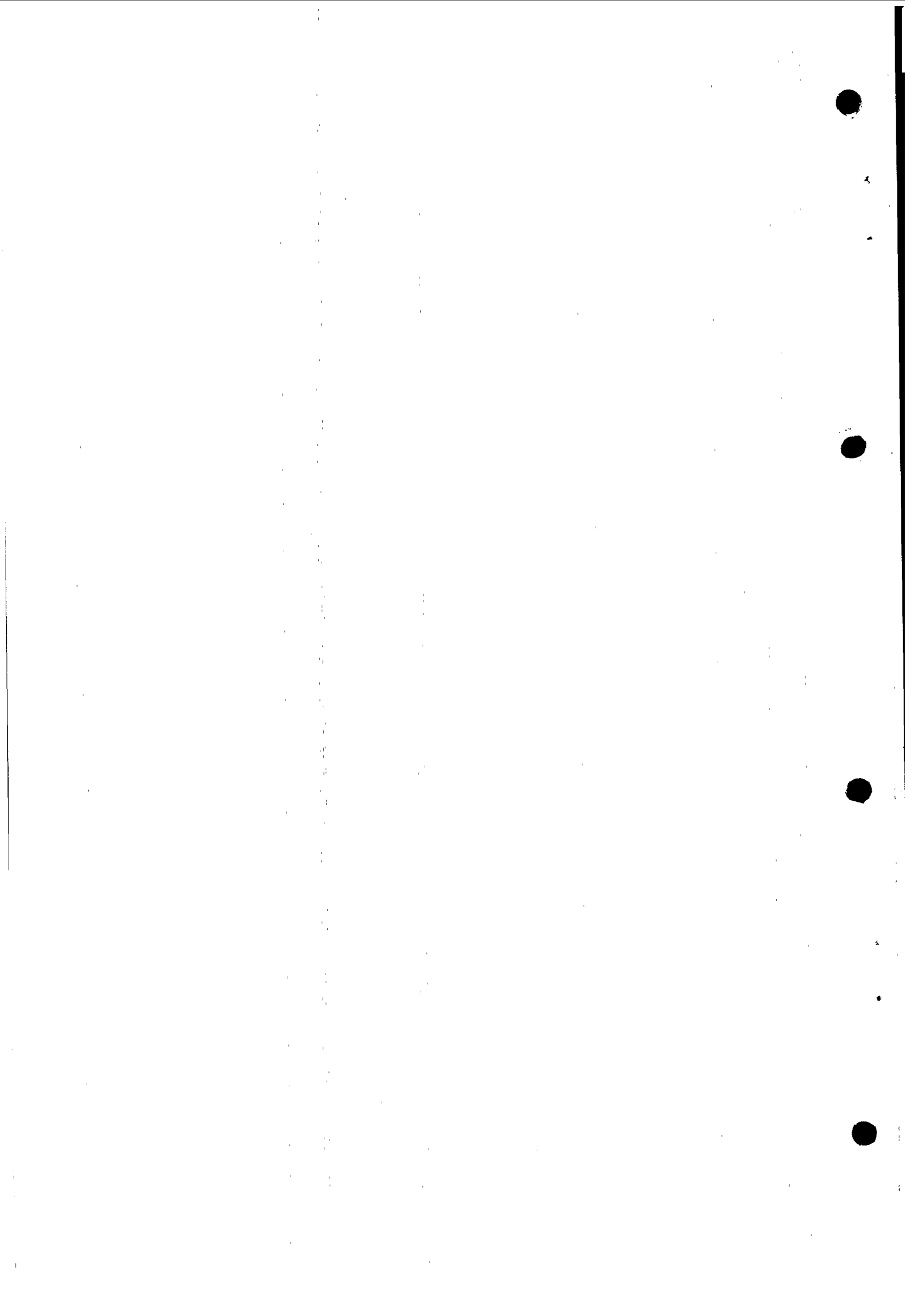
IN CO-OPERATION WITH :





GUIDELINES PROPOSED FOR
A PROTOCOL CONCERNING MEDITERRANEAN MARINE
AND COASTAL PROTECTED AREAS

Report by the Legal Office of the Food and Agriculture Organization
of the United Nations based on the work of
Mr. Ch. du Saussay and Mr. Prieur



FOREWORD

In accordance with resolution 2997 (XXVII) of the United Nations General Assembly, UNEP was established "as a focal point for environmental action and co-ordination within the United Nations system". The Governing Council of UNEP defined this environmental action as encompassing a comprehensive, transectoral approach to environmental problems which should deal not only with the consequences but also with the causes of environmental degradation.

The UNEP Governing Council has designated "Oceans" as a priority area in which it will focus effort to fulfil its catalytic role. In order to deal with the complexity of the environmental problems of the oceans in an integrated way, it has adopted a regional approach as exemplified by its Regional Seas Programme.

Although the environmental problems of the oceans are global in scope, a regional approach to solving them seemed more realistic. By adopting this approach, UNEP felt it could focus on specific problems of high priority to the States of a given region thereby more readily responding to the needs of the Governments and helping to mobilize more fully their own national resources. It was thought that undertaking activities of common interest to coastal States on a regional basis should, in due time, provide the basis for dealing effectively with the environmental problems of the oceans as a whole.

Two elements are fundamental to the Regional Seas Programme:

- (a) Co-operation with the Governments of the regions. Since any specific regional programme is aimed at benefiting the States of that region, Governments are encouraged to participate from the very beginning in the formulation and acceptance of the programme. After acceptance, the implementation of the adopted programme is carried out by national institutions which have been nominated by their Governments.
- (b) Co-ordination of the technical work through the United Nations system. Although the regional programmes are implemented predominantly by Government-nominated institutions, a large number of the United Nations specialized organizations and other international and regional organizations are called upon to provide assistance to these national institutions. UNEP acts as an overall co-ordinator, although in some cases this role is limited to the initial phase of the activities. Thus the support and experience of the whole system of the United Nations and related organizations contributes to the programme.

The substantive aspect of any regional programme is outlined in an "action plan" which is formally adopted by the Governments before the programme enters an operational phase. All action plans are structured in a similar way, although the specific programme for any region is dependent upon the needs and priorities of that region. A typical action plan includes the following components:

- (a) Assessment component. This concerns assessing and evaluating the causes, magnitude and consequences of environmental problems. The most important activities deal with marine pollution assessment and studies of the coastal and marine activities and socio-economic factors that may influence, or may be influenced by, environmental degradation;
- (b) Management component. An assessment of the environmental situation is undertaken to provide a basis for assisting national policy-makers to manage their natural resources in a more effective and sustainable manner. Therefore, each regional programme includes a wide range of activities in the field of environmental management. Such activities may include co-operative regional projects on rational exploitation of marine living resources, utilization of renewable sources of energy, management of fresh-water resources, protection of soil from erosion and desertification, development of tourism without its usual concomitant ecological harm, mitigation of the environmental damage usually associated with human settlements and others;
- (c) Legal component. In several regions a regional convention, elaborated by specific technical protocols, provides the legal framework for co-operative action. The legal commitment of Governments clearly expresses their political will to deal individually and jointly with their common environmental problems;
- (d) Institutional component. As the programme is implemented primarily through designated national institutions, assistance and training are provided, where necessary, to allow national institutions to participate fully in the programme. Existing global or regional co-ordinating mechanisms are used when appropriate. However, specific regional mechanisms may be created if Governments feel they are necessary;

- (e) Financial component. UNEP, together with other United Nations organizations, provides "seed money" or catalytic financing in the early stages of regional programmes. However, as a programme develops, it is expected that the Governments of the region will gradually assume financial responsibility. Government financing may be provided directly to the national institutions participating in the programme or through a special regional trust fund to which Governments contribute.

At present there are ten regions where regional action plans are operative or are under development.

The Mediterranean was the first region in which UNEP attempted to assist the coastal States to adopt and apply measures for the protection and development of the marine and coastal environment.

In collaboration with a number of United Nations bodies and specialized agencies, UNEP convened the Intergovernmental Meeting on the Protection of the Mediterranean in Barcelona from 28 January to 4 February 1975. During that meeting, which was attended by 16 of the 18 coastal States, an action plan 1/ was approved containing all the components described in general terms above.

One year later at the Conference of the Plenipotentiaries of the Coastal States of the Mediterranean Region for the Protection of the Mediterranean Sea 1/, convened by UNEP in Barcelona from 2 to 16 February 1976, the Mediterranean Governments and the EEC approved the texts of three legal instruments:

- Convention for the Protection of the Mediterranean Sea against Pollution;
- Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft; and
- Protocol Concerning Co-operation in Combating Pollution of the Mediterranean Sea by Oil and other Harmful Substances in Cases of Emergency.

The Convention and the two protocols came into force on 12 February 1978 and have been ratified as of the end of June 1980 by fifteen Mediterranean States and the EEC.

1/ Mediterranean Action Plan and the Final Act of the Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region for the Protection of the Mediterranean Sea. UNEP 1978.

Efforts have continued to develop additional protocols for specific sources of pollution, and, to date, negotiations have been focused on a protocol for the protection of the Mediterranean Sea against pollution from land-based sources which was adopted in Athens on 17 May 1980. Priority has now been assigned to the development of a protocol concerning Mediterranean specially protected areas.

Activities related to the establishment and management of Mediterranean specially protected areas fall under both the environmental management component and the legal component of the Mediterranean Action Plan.

In January 1977, a consultation of experts was convened in Tunis to discuss problems related to the management of areas requiring special protection. The consultation recommended that:

- (i) Mediterranean protected areas, in particular the aquatic parks, reserves and wetlands, should be organized into an Association of Protected Mediterranean Areas. One member of the Association should act as co-ordinator of the Association's activities;
- (ii) regular, periodic meetings should be organized for representatives of Mediterranean protected areas to exchange views on their experience and problems;
- (iii) research on ecological problems of protected areas should be intensified and should be related to the ongoing UNEP Co-ordinated Mediterranean Pollution Monitoring and Research Programme;
- (iv) an intergovernmental meeting should be convened to consider and adopt guidelines and technical principles for the establishment and management of Mediterranean protected areas. The report of the Tunis Expert Consultation should be used in the preparatory work of the recommended intergovernmental meeting;
- (v) a Directory of Mediterranean protected areas should be prepared and kept under constant review. 2/

At the First Meeting of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea against Pollution and its related protocols (Geneva, 5-10 February 1979), two recommendations were adopted calling for activities in support of the protection and rational management of marine parks, wetlands, and other protected areas. Among other things, UNEP was requested to:

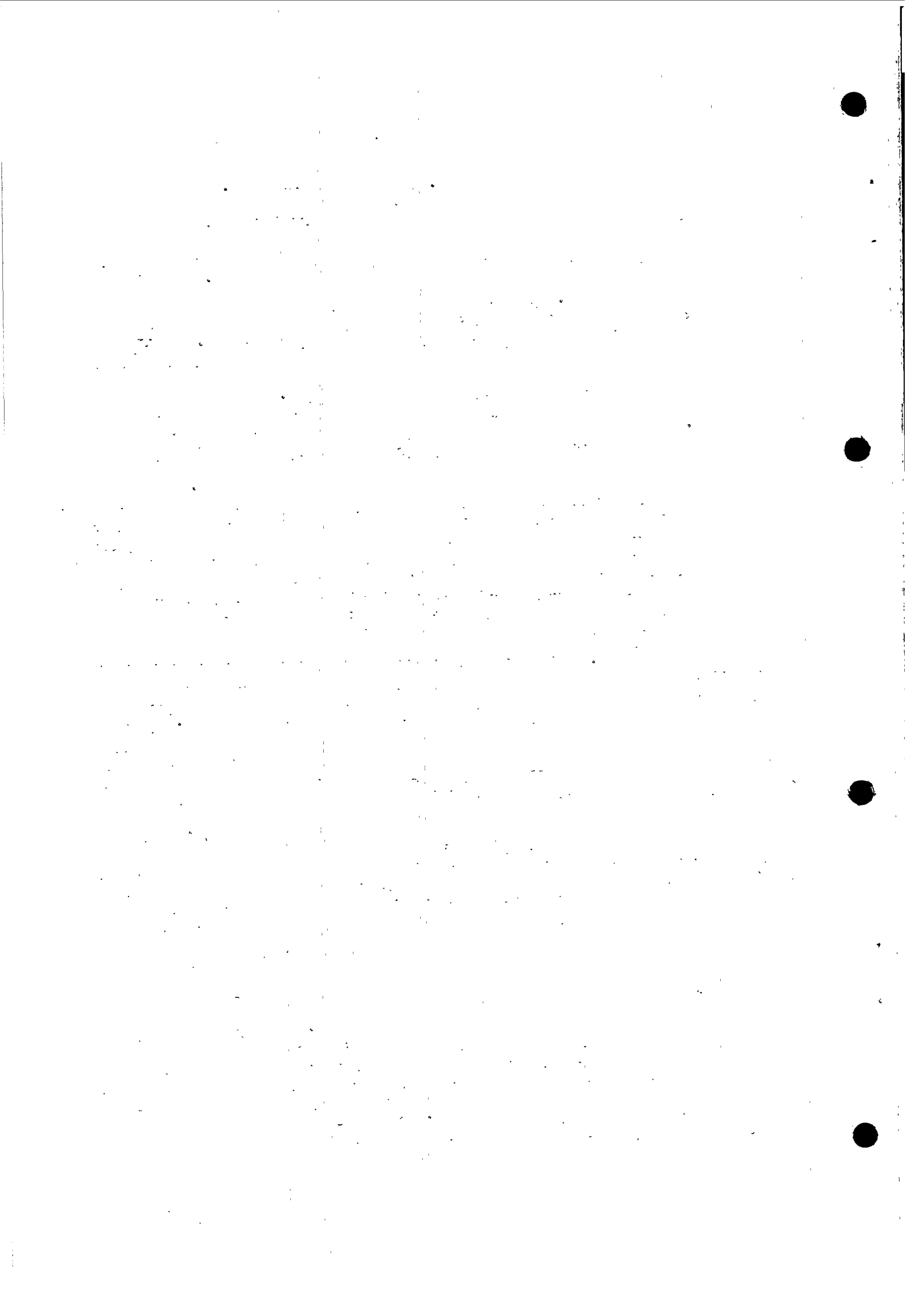
2/ UNEP/WG.6/5, page 7, sub-paragraphs 8.1 - 8.5

"... in co-operation with UNESCO, FAO and IUCN, convene an intergovernmental meeting to consider, with a view to adoption, guidelines and technical principles for the selection, establishment and management of Mediterranean specially protected areas and other related matters. The meeting should also consider the development of a protocol concerning Mediterranean protected areas." 3/

The Intergovernmental Meeting on Mediterranean Specially Protected Areas (Athens, 13-17 October 1980) is being held in response to that request. The present document has been prepared in an effort to assist Governments of the Mediterranean Region in their discussions on the selection, establishment and management of Mediterranean marine and coastal protected areas as well as in their parallel negotiations and the eventual implementation of a related protocol.

The preparation of the main working documents before the intergovernmental meeting on Mediterranean specially protected areas was a joint undertaking of the Food and Agriculture Organization of the United Nations (FAO), the United Nations Educational, Scientific, and Cultural Organization (UNESCO), and the International Union for Conservation of Nature and Natural Resources (IUCN), in close co-operation with UNEP.

The first results of this co-operative effort were reviewed by a meeting of representatives from the participating organizations and invited experts from the Mediterranean Region (Geneva, 11-12 December 1979). The present document, which is submitted to the intergovernmental meeting for its consideration, reflects the revisions suggested by the inter-agency/expert meeting.



Introduction

1. When the Convention for the Protection of the Mediterranean Sea against Pollution was adopted in Barcelona on 16 February 1976, two additional protocols were also opened for signature by the Contracting Parties. The first was the Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft, and the other was the Protocol Concerning Co-operation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency. The two protocols came into force on the same date as the Convention itself, 12 February 1978. However, those two protocols were not the only legal by-products of the co-operation of the Mediterranean coastal States. Article 4, paragraph 2, of the Barcelona Convention provides that the Contracting Parties shall co-operate in the adoption of additional protocols for the implementation of the Convention, while article 15 establishes the formal procedure for the adoption of additional protocols. The matter of protocols along with other matters, naturally deserved special attention in the 1976 Convention. Thus, the preparatory work for the preparation of a protocol concerning pollution resulting from the exploration and exploitation of the continental shelf and the sea-bed and its subsoil reflects article 7 of the Convention, while parallel efforts are being made in respect of pollution from land-based sources, as mentioned in article 8. The Barcelona Convention is drafted in general terms with no specific limitations of form or substance in that respect. With regard to form, a protocol is not the only possible solution, even though it is given special attention in the 1976 text. With regard to substance, a topic does not have to be covered by a specific article in the Convention for it to be the subject of an additional protocol. Thus, the Barcelona Convention does not include a specific article relating to the designation of marine and coastal protected areas in the Mediterranean Sea.

As was stated in the first legal study on national aspects, the matter of marine and coastal protected areas was given official recognition within the framework of the Barcelona Convention at the first meeting of the Contracting Parties held at Geneva in February, 1979. Recommendation 33 of that meeting, made in pursuance of article 14, paragraph 2 (iv) of the Barcelona Convention, provides that:

"Recognizing the activities already under way within the Action Plan on specially protected areas, UNEP should, in co-operation with IUCN, FAO and UNESCO, prepare background material on existing legislation and regional legal alternatives for the protection of such marine and coastal areas. UNEP should convene an intergovernmental meeting in 1979 to review this material and other related matters, and to advise on the feasibility of developing a protocol on specially protected marine and coastal areas."

The purpose of the present study is to complement the study on national aspects, to indicate the present state of international positive law on marine protected areas, to touch upon the reasons for preparing an additional protocol to the Barcelona Convention and to propose a preliminary draft text with pertinent commentaries.

The first international declarations recommending special protection for certain marine areas date back to the First World Conference on National Parks held at Seattle from 30 June to 7 July 1962. Recommendation No. 15 adopted by the conference invites the Governments and international agencies concerned to examine as a matter of urgency the possibility of creating marine parks or reserves to defend underwater areas of special significance from all forms of

human interference. That recommendation was repeated on several occasions both by conferences on national parks and by the General Assembly of IUCN. ^{1/} In 1972 the Declaration adopted by the United Nations Conference on the Human Environment emphasized the fact that the natural resources of the earth, including flora and fauna and especially representative samples of natural ecosystems, should be safeguarded for the benefit of present and future generations. (principle 2). Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat (principle 4). Such considerations are a prominent feature of the measures recommended in the action plan which was also adopted at Stockholm (recommendations 29 and 45). Recommendation 32, which recommends that Governments should give attention to the need to enact treaties to protect species inhabiting international waters, is particularly significant.

The Informal Composite Negotiating Text forming the basis for the work of the Third United Nations Conference on the Law of the Sea provides that measures to prevent, reduce and control pollution of the marine environment should include:

"the measures ... necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other marine life". ^{2/}

There are also mandatory rules on this matter. In 1968, the African Convention on the Conservation of Nature and Natural Resources said that national parks could include aquatic environments (article III, paragraph (4) (b) (iv)). Moreover, and especially, article X of the Convention provides as follows:

"(1) The Contracting States shall maintain and extend where appropriate within their territory and where applicable in their territorial waters, the Conservation areas existing at the time of entry into force of the present Convention and, preferably within the framework of land-use planning programmes, assess the necessity of establishing additional conservation areas in order to:

(i) protect those ecosystems which are most representative of and particularly those which are in any respect peculiar to their territories,

(ii) ensure conservation of all species ..."

As of 1 March 1979, two Mediterranean coastal States (Egypt and Morocco) were parties to that Convention.

The International Convention for the Prevention of Pollution from Ships (London, 1973) which is intended to apply to all maritime States (Tunisia is the only Mediterranean coastal State party to this Convention) provides for the possibility of designating special areas defined as follows:

^{1/} Regional Symposium on the Conservation of Nature, Noumea, 5-13 August 1971, resolution No. 8; Second World Conference on National Parks, Grand Teton, 22-27 September 1972, recommendation No. 4; South Pacific Conference, recommendation No. 6; Eleventh General Assembly of IUCN, Banff, 16 September 1972, resolution No. 11.

^{2/} Article 195, new paragraph 5 (MP/24).

"... a sea area where for recognized technical reasons in relation to its oceanographical and ecological condition and to the particular character of its traffic the adoption of special, mandatory methods for the prevention of sea pollution by oil is required." 1/

To the above precedents may be added a number of international instruments calling for the establishment of protected areas to preserve wildlife, ecosystems of particular importance or fragility and the archaeological heritage. These instruments generally do not distinguish between protected land areas and protected areas in a marine environment:

London Convention of 8 November 1933 relative to the Preservation of Fauna and Flora in their Natural State, to which Egypt and Italy are parties;

European Convention on the Protection of the Archaeological Heritage, London, 6 May 1969, to which France, Italy, Malta and Spain are parties;

Convention of Ramsar of 2 February 1971 on Wetlands of International Importance Especially as Waterfowl Habitat, to which Greece, Italy and Yugoslavia are parties;

UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage, Paris, 23 November 1972, to which 11 Mediterranean coastal States are parties (Algeria, Egypt, France, Italy, Libya, Malta, Monaco, Morocco, Syria, Tunisia and Yugoslavia);

Convention on Conservation of Nature in the South Pacific, Apia, 12 June 1976.

Other conventions, such as that concerning Fishing and Conservation of the Living Resources in the Baltic Sea and the Belts, signed at Gdansk on 13 September 1973, provide for the possibility of establishing areas closed to exploitation (article X, paragraph (d)). The Antarctic Treaty signed at Washington on 1 December 1959 provides that Governments should take measures regarding the preservation and conservation of living resources in Antarctica (article IX, paragraph (1) (f)). Measures applying in part to marine areas were approved at the third Consultative Meeting of the Contracting Parties and subsequently amended in 1968, 1972 and 1975. A number of areas, 15 in all, were declared protected areas for scientific reasons 2/ at the fourth Consultative Meeting, and States notified their approval of the measures agreed. 3/

1/ Annex I, Regulations for the prevention of pollution by oil, regulation 1.

2/ See Hambro "Some notes on the future of the Antarctic Treaty Collaboration" American Journal of International Law, 1974, p. 217, rec. IV-2 and VII-2.

3/ For example, France on 29 September 1972; Belgium by the Law of 12 January 1978 for the Protection of Fauna and Flora in the Antarctic (Moniteur Belge, 19 September 1978, p. 10.517).

Finally it should be added that two regional organizations have adopted resolutions concerning coastal areas. Resolution 73 (29) adopted by the Ministerial Committee of the Council of Europe on 26 October 1973 recommends the Governments of Member States to establish coastal nature reserves for the conservation of natural, historical, picturesque and archaeological sites and the protection of the flora, fauna and inhabitants particularly of marshlands and intertidal wetlands.

The recommendation of the Council of OECD on the principles of management of coastal areas adopted on 12 October 1976 also calls for the establishment of protected areas. 1/

Going beyond merely urging the creation of marine protected areas, some international bodies have recommended that States should co-operate at the regional level at least in the planning of protection of designated areas, and in the circulation and processing of scientific data and even that, in more general terms, States should offer mutual assistance for their programmes and activities. 2/

Despite the restrictive interpretation which might be given to its title, the Convention for the Protection of the Mediterranean Sea against Pollution signed at Barcelona on 16 February 1976 contains what is tantamount to an additional protocol concerning the protection of marine areas requiring special attention. Article 4, paragraph 1, of the Convention provides that the Contracting Parties shall individually or jointly take all appropriate measures to prevent, abate and combat pollution of the Mediterranean Sea Area and to protect and enhance the marine environment in that Area. This view of the protection of the Mediterranean, not only against pollution but in general, is also seen in the preamble which refers to the responsibility to preserve the common heritage of the marine environment of the Mediterranean Sea Area for the benefit of present and future generations against the threat posed by pollution to the marine environment, its ecological equilibrium and its resources; the preamble also refers to the need for close co-operation among the States and international organizations concerned in a co-ordinated and comprehensive regional approach for the protection and enhancement of the marine environment in the Mediterranean Sea Area (second, third and sixth paragraphs).

Quite apart from the legal justification for preparing a protocol, it would seem that, in practice, such an instrument is absolutely essential. There is a clear connexion between the guidelines put forward in the first legal study and the present proposals. The protocol could well be a means of persuading States

1/ 14. Coastal development projects should not compromise coastal ecosystems as such, for example estuaries, wetlands, barrier reefs, archipelagos and protected areas for flora and fauna.

2/ Rec. 2/2-3 of the Regional Meeting held at Teheran from 6-10 March 1975 on the Promotion and the Establishment of Marine Parks and Reserves in the Northern Indian Ocean including the Red Sea and Persian Gulf (IUCN 1976 pp. 13 et seq.); Proposals for a programme for the protection of flora and fauna and their habitats, Economic Commission for Europe, seventh session, Geneva, February 1979.

to enact co-ordinated national legal provisions. There would be no point in asking them to take adequate measures if there were no document proposing a selection of desirable legal provisions for the establishment of marine protected areas on their territory.

The common desire of the Mediterranean States, as set forth in the preamble to the Barcelona Convention, to preserve a common heritage and to organize a comprehensive regional approach shows the need for integrated management of the Mediterranean. Regional co-operation among States must reflect the realities of marine life - interaction, fragility and fluidity. It is thus essential, in the struggle against pollution of the sea, to envisage parallel measures providing special protection for marine fauna and flora. Protection of the marine environment implies a global approach to problems because of the close links between the environment pollution and aquatic life. The collective approach of States to marine protected areas is in fact only the natural extension of their previous actions. It would be a serious mistake for the Barcelona Convention and its protocols not to be supplemented by a text on marine protected areas.

However, the protocol can also be justified in terms of scientific co-operation. The legislative model is useful only at the national level, and its limitations are soon evident. The ecological management of a marine environment affected by events occurring on the shores of neighbouring States or at sea calls for speedy information from other States concerning threats to the protected portions of the sea coast. Any attempt to establish marine protected areas in the Mediterranean States not backed up by suitable international measures would be doomed to failure. It is essential to arrange for exchanges of scientific information, to provide for the joint use of costly and hard-to-find research facilities and to monitor constantly the quality of the protected environment. None of those things is possible except on an international level. National management of protected areas implies a degree of international co-operation which, in the Mediterranean, in view of the complete permeability of marine frontiers, will be not merely a formal and sterile exchange of documents but an essential tool for the preservation and reconstitution of species.

It follows from the above and the Report of Expert Consultation on Mediterranean Marine Parks and Wetlands ^{1/} that the drafting of an additional protocol on protected areas in the Mediterranean region is desirable and has a sound legal basis.

The essential provisions of such a protocol could be based on the following proposals:

PREAMBLE

The Contracting Parties to the present Protocol,

1. Taking into account the danger threatening the environment of the Mediterranean as a whole as a result of its geographical characteristics;

^{1/} Tunis, 12-14 January 1977, UNEP/WG.6/5 of 25 March 1977.

2. Concerned to protect and, where appropriate, improve the state of marine areas, natural resources and, in general, the sites and cultural heritage of the Mediterranean;

3. Desirous of establishing close co-operation among themselves in order to achieve that end;

Have agreed as follows:

1. GENERAL UNDERTAKING

(a) The Contracting Parties to this Protocol (hereinafter referred to as "the Parties") shall take all necessary and appropriate measures to protect those marine areas which are important for the safeguard of the natural resources, sites and cultural heritage of the Mediterranean.

(b) Such areas shall be established in order to safeguard in particular:

The ecological and biological processes essential to the functioning of Mediterranean ecosystems;

Representative samples of all types of Mediterranean ecosystems;

Satisfactory population levels for the largest possible number of species of fauna and flora belonging to those ecosystems;

Areas of particular importance because of their scientific, aesthetic, historical, archaeological, cultural or educational interest;

and taking into account their importance in particular as:

(1) The natural habitat of species, including migratory species, of fauna and flora, particularly rare or endangered or endemic species;

(2) Typical and "critical" Mediterranean ecosystems;

(3) Zones necessary for the maintenance of exploitable stocks of economically important marine species;

(4) Pools of genetic material and safe "sanctuaries" for endangered, indigenous species;

(5) Sites of historical, geographical, archaeological, hydrological, aesthetic or ecological interest;

(6) Reference sources for scientific research;

(7) Areas for public environmental education;

(c) The protected marine areas (hereinafter referred to as "the protected areas") comprise both areas established in the high seas or in the waters

under the jurisdiction of a State and areas situated in the territorial waters or on the coasts of Mediterranean coastal States, as well as wetlands and coastal areas and estuaries subject to the influence of the marine environment.

Commentary

A very large number of treaties dealing with environmental protection contain a general undertaking setting forth the essential obligations of the contracting parties.

The undertaking to explore the establishment of protected areas is in keeping with article 3 of the 1933 London Convention relative to the Preservation of Fauna and Flora in their Natural State, 1/ and article 2 of the 1940 Washington Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere. 2/ In this connexion, mention may also be made of article II of the 1976 Convention on Conservation of Nature in the South Pacific, which contains a similar or although somewhat less precise undertaking, 3/ and article X of the 1968 African Convention. 4/

The factors to be taken into account in determining the areas to be protected are defined by the Report of the Expert Consultation on Mediterranean Marine Parks and Wetlands, and in particular in the draft technical principles and guidelines for the establishment and management of Mediterranean protected areas annexed to that report. 5/

1/ "The Contracting Governments will explore forthwith the possibility of establishing in their territories national parks and strict natural reserves ..."

2/ "The Contracting Governments will explore at once the possibility of establishing in their territories national parks, national reserves ... as defined in the preceding article".

3/ "Each Contracting Party shall, to the extent that it is itself involved encourage the creation of protected areas ..."

4/ "The Contracting States shall maintain and extend where appropriate within their territory and where applicable within their territorial waters, the Conservation areas existing at the time of entry into force of the present Convention and ... assess the necessity of establishing additional conservation areas ..."

5/ Document UNEP/WG.6/5, Annex VI, para. 9: "Mediterranean reserves have a great importance and significance as:

Breeding grounds necessary for the maintenance of exploitable stocks of economically important marine species;

Natural habitats for birds migrating to, from or through the Mediterranean region;

Typical and "critical" Mediterranean ecosystems;

Reference sources for scientific research;

Pools of genetic material and safe "sanctuaries" for endangered indigenous Mediterranean species;

Areas for public environmental education;

Sites of historical, geographical, archaeological, hydrological and ecological interest."

2. GEOGRAPHICAL COVERAGE

The area to which this Protocol applies shall be the Mediterranean Sea Area as defined in article 1 of the Convention for the Protection of the Mediterranean Sea against Pollution (hereinafter referred to as "the Convention"); it shall also include areas on the landward side of the baselines from which the breadth of the territorial sea is measured which are of significance for the protection of the marine environment of the Mediterranean region.

Commentary

The first part of this provision is identical to article 2 of the Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft. In the light of the report of Expert Consultation, ^{1/} the scope of the present proposals has, however, been broadened in the same way as for the draft Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources. ^{2/} In other words, it is proposed to implement article 1, paragraph 2, of the Convention, envisaging the inclusion of internal waters.

3. ESTABLISHMENT OF MARINE PROTECTED AREAS

The Parties shall establish marine protected areas and shall make every effort to carry out the work necessary to protect those areas and where appropriate, restore them as rapidly as possible, taking into account the urgency of such work. To that end, the Parties shall prepare, separately or where applicable by common consent, guidelines or criteria necessary for the selection, creation and management of such protected areas.

Commentary

This proposal deals with the work necessary to ensure the protection of the selected zones. Similar provisions, although much more strict, appear in the 1933 London Convention establishing a firm deadline for the commencement of work; ^{3/} other comparable undertakings are less precise. ^{4/} The latter solution has been deemed preferable for the present draft.

^{1/} The experts recommended that "the principles and guidelines be sufficiently broad in scope so as to be applicable not only to marine parks and wetlands but also to all protected areas of Mediterranean significance (coastal, aquatic, island)", *ibid.*, para. 7.2

^{2/} Article 2 of that draft provides that the area to which the Protocol applies "shall also include waters on the landward side of the baselines from which the breadth of the territorial sea is measured and extending, in the case of watercourses, up to the freshwater limit; it shall also include saltwater marshes communicating with the sea" (UNEP/WG.17/6).

^{3/} Article 3, paragraph 1: "In all cases where the establishment of such parks or reserves is possible, the necessary work shall be commenced within two years from the date of the entry into force of the present Convention".

^{4/} Thus, according to article 2 of the Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere (1940), wherever the establishment of protected areas is feasible, "the creation thereof shall be begun as soon as possible after the effective date of the present Convention".

The restoration of polluted areas appears to be a need recognized by the report of experts on marine parks; 1/ this report also stresses that it is necessary to safeguard "the biological renewal processes of living resources and of the structures supporting these processes" as a priority task. 2/

4. PROTECTION MEASURES

States shall take the measures required by the purposes attributed to the areas which they establish, notably:

(a) The prohibition of the dumping or discharge of wastes or other matters which may impair the protected area, particularly those referred to in annexes I and II of the Protocol for the prevention of pollution of the Mediterranean Sea by dumping from ships and aircraft;

Commentary

A similar measure is recommended in the Report of Expert Consultation on Mediterranean Marine Parks and Wetlands. 3/ It should be recalled that the Protocol on dumping prohibits only the dumping of wastes or other materials referred to in annex I. 4/

(b) The regulation of the passage of ships and the prohibition of any stopping or anchoring except where these are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress;

Commentary

The report of expert consultation recommends the establishment of areas where "man's deleterious activities, and in some cases even his presence, are minimized or eliminated". 5/ Such measures, particularly with relation to navigation in the territorial sea and in the exclusive economic zone, still, however, give rise to serious legal problems. The right of innocent passage is traditionally recognized for any foreign ship in the territorial sea and should

1/ The report (UNEP/WG.6/5) considers that one of the possible functions of marine protected areas is "to improve regions already degraded in order to re-establish normal functioning of the ecosystem and to study the possible stages of such re-establishment and other ecosystem processes".

2/ Document UNEP/WG.6/5, para. 5.7.

3/ UNEP/WG.6/5, para. 5.6.

4/ Article 5 of the Protocol states: "The dumping into the Mediterranean Sea Area of wastes or other matter listed in Annex II to this Protocol requires, in each case, a prior special permit from the competent national authorities."

5/ UNEP/WG.6/5, annex VI, General Guideline No. 4.

be recognized a fortiori in the exclusive economic zone. It is, however, increasingly widely accepted that the coastal State may regulate innocent passage in its territorial sea. 1/

1/ In the Geneva Convention of 29 April 1958, article 14, para. 5, this power to regulate is accepted only for the passage of foreign fishing vessels which shall observe "such laws and regulations as the coastal State may make and publish in order to prevent these vessels from fishing in the territorial sea". However, the Informal Composite Negotiating Text of the Third United Nations Conference on the Law of the Sea provides, in its article 21 that:

"1. The coastal State may make laws and regulations, in conformity with the provisions of the present Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of all or any of the following:

(a) The safety of navigation and the regulation of marine traffic;

...

(d) The conservation of the living resources of the sea;

(e) The prevention of infringement of fishery regulations of the coastal State;

(f) The preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof;

(g) Marine scientific research and hydrographic surveys;

...

4. Foreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations and all generally accepted international regulations relating to the prevention of collision at sea."

In relation to the prohibition of stopping or anchoring, it should be recalled that the right of innocent passage normally includes the right to stop or anchor in only two cases: incidents of ordinary navigation and force majeure or distress. 1/ The present proposal aims to eliminate the first case while maintaining the second.

It should none the less be understood that the power of regulation provided for in the proposal concerns only the ships of parties to the protocol and that compliance with the regulations by other States will have to be obtained by a procedure similar to that envisaged in resolution No. 3 of the Barcelona Conference. 2/

1/ According to article 14, paragraph 3 of the Geneva Convention of 29 April 1958, "Passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or by distress".

Article 18, paragraph 2 of the Informal Composite Negotiating Text adds a number of details which have been included in the present proposal: "Passage shall be continuous and expeditious. However, passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress".

2/ Under the terms of this resolution:

"The Conference,

Having adopted the text of the Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft, which provides in article 11 that each Party shall apply the measures required to implement this Protocol to ships and aircraft registered in its territory and to ships and aircraft loading in its territory.

Recognizing the importance of universal implementation and observation of article 11 by all ships and aircraft;

1. Invites the Parties to the said Protocol to prevail upon other States to take appropriate steps so that ships flying their flags and aircraft registered in their countries will observe articles 4, 5 and 6 of the Protocol;

2. Invites the Inter-Governmental Maritime Consultative Organization (sic) to persuade the other States to act in conformity with the said Protocol."

- (c) The regulation or prohibition of the fishing, hunting, harvesting and destruction of animals, plant life or any part thereof.

Commentary

Measures for the preservation of all or only certain living or assimilable species are generally the central force of international regulation for protected areas. The following are relevant in that respect: article 7, paragraphs 1 and 2 of the 1933 London Convention, 1/ article 8 of the 1940 Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere, 2/ article III, paragraph (4) (a) (ii) and (b) (ii) of the African Convention 3/ and article III, paragraph 3, of the 1976 Convention on the Conservation of Nature in the South Pacific. 4/

1/ "... the Contracting Governments shall ...

1. Set aside in each of their territories suitable areas (to be known as reserves) within which the hunting, killing or capturing of any part of the natural fauna ... shall be prohibited save (a) by the permission given for scientific or administrative purposes in exceptional cases by the authorities of the territory ... (b) for the protection of life and property ...

2. Extend in these areas, so far as may be practicable, a similar degree of protection to the natural flora."

2/ "The protection of the species mentioned in the Annex to the present Convention, is declared to be of special urgency and importance. Species included therein shall be protected as completely as possible, and their hunting, killing, capturing, or taking, shall be allowed only with the permission of the appropriate government authorities in the country. Such permission shall be granted only under special circumstances, in order to further scientific purposes, or when essential for the administration of the area in which the animal or plant is found."

3/ "(a) "strict nature reserve" means an area

...

(i) throughout which any form of hunting or fishing, any undertaking ... are strictly forbidden,

(b) "national park" means an area

...

(ii) exclusively set aside for the propagation, protection, conservation and management of vegetation and wild animals ...

(iii) in which the killing, hunting and capture of animals and the destruction or collection of plants are prohibited except for scientific and management purposes and on the condition that such measures are taken under the direction or control of the competent authority."

4/ "3. The hunting, killing, capture or collection of specimens (including eggs and shells) of the fauna and destruction or collection of specimens of the flora in national parks shall be prohibited, except when carried out by or under the direction or control of the appropriate authorities or for duly authorized scientific investigations."

(d) The regulation or prohibition of any act likely to harm or disturb the fauna or flora, including introduction of zoological or botanical species, whether indigenous or imported.

Commentary

This proposal, which seems in keeping with the spirit of the report of expert consultation, corresponds to a provision contained in article III, paragraph 4(a) (iii) of the 1968 African Convention. 1/ It should be added that an absolute prohibition would hinder operations to restore the natural environment. The authorities of a protected area should have the right to introduce or reintroduce members of species which have disappeared or are disappearing, on condition that certain precautions are taken.

(e) The regulation or prohibition of any activity involving the exploration or exploitation of the sea-bed or its sub-soil or the modification of the sea-bed profile;

Commentary

Activities involving the exploration or exploitation of the sea-bed or its sub-soil generally require the authorization of the territorially competent State. 2/ The special nature of protected areas should be taken into account when national authorities take decisions on applications for authorization.

(f) The regulation or prohibition of any activity involving the modification of the profile of the soil or the exploitation of the sub-soil of the land part of a marine protected area;

(g) The prohibition of the removal of any object which may be considered as an archaeological object and of the undertaking of any unauthorized archaeological excavation;

1/ "'strict nature reserve' means an area

.....

throughout which ... any act likely to harm or disturb the fauna or flora, including introduction of zoological or botanical species, whether indigenous or imported, wild or domesticated, are strictly forbidden."

2/ In this connexion, see document UNEP/WG.24/2 of 15 December 1978, Study of off-shore mining and drilling carried out within the limits of national jurisdiction, by A.C. Kiss, pp. 16-22.

Commentary

This proposal is based on article 3 of the European Convention on the protection of the archaeological heritage..1/

(h) The regulation of the trading, importing and exporting of animals, plant life or any part thereof and archaeological objects subject to measures of protection;

Commentary

This proposal is the logical complement to paragraphs (e), (f) and (g) above. The following are relevant in this connexion: article 9 of the 1933 London Convention 2/ article 9 of the Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere, 3/ article IX of the 1968

1/ "To give full scientific significance to archaeological excavations in the sites, areas and zones designated in accordance with Article 2 of this Convention, each Contracting Party undertakes, as far as possible, to:

(a) prohibit and restrain illicit excavations; (b) take the necessary measures to ensure that excavations are, by special authorization, entrusted only to qualified persons; (c) ensure the control and conservation of the results obtained". Moreover, the term "archaeological object" has been defined in article 1 of the Convention as "all remains and objects, or any other traces of human existence, which bear witness to epochs and civilizations for which excavations or discoveries are the main source or one of the main sources of scientific information".

2/ "Each Contracting Government shall take the necessary measures to control and regulate in each of its territories the internal, and the import and export, traffic in, and the manufacture of articles from trophies as defined in paragraph 8 of the present article, with a view to preventing the import or export of, or any dealing in, trophies other than, such as have been originally killed, captured or collected in accordance with the laws and regulations of the territory concerned."

3/ "Each Contracting Government shall take the necessary measures to control and regulate the importation, exportation and transit of protected fauna or flora or any part thereof by the following means:

1. The issuing of certificates authorizing the exportation or transit of protected species of flora or fauna, or parts thereof.

2. The prohibition of the importation of any species of fauna or flora or any part thereof protected by the country of origin unless accompanied by a certificate of lawful exportation as provided for in paragraph 1 of this Article."

African Convention ^{1/} and articles 6 - 8 of the European Convention on the protection of the archaeological heritage. ^{2/} The measures envisaged concern the protection of animals, plant life and archaeological objects of the State on the territory of which a marine protected area is established. Import controls are, however, justified to prevent any possible fraud.

Of course, these measures are necessary within the framework of measures for the protection of species rather than measures for the protection of specific areas, and they complement the general protection of the species. If such measures are imposed within the framework of geographically restricted protective measures, as is the case for species in protected areas, they inevitably become difficult to apply. In such a case, for example, certificates would have to be issued for all species whose geographical distribution extended beyond protected areas stating that the exported specimens had not been taken from a protected area. In view of these difficulties, it should therefore be considered that if trade or export represents a threat to a species, it is the species as such which should be the subject of controls or of a trade or export ban, irrespective of the place (whether a protected area or not) from which the specimens have been taken. This does not mean that such measures should not cover specimens taken from protected areas. One way of obtaining this result, without having to evolve a complicated system of administrative control, would be to prohibit the possession of objects (specimens or parts thereof, etc.) originating in protected areas. This would make it possible to take action, whenever proof is available, even in trade and export cases.

With regard to the protection of the fauna and flora of other States parties to the protocol, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed in Washington on 30 April 1973 and open to all States, already provides a particularly well-developed system. It therefore seems unnecessary to duplicate it with a system for the control of foreign trade in animals restricted to the Mediterranean.

- (i) Any [other] measure for safeguarding ecological and biological processes essential to the functioning of these areas.

Commentary

This proposal has the advantage of emphasizing that measures may be necessary both outside and inside protected areas without, however, drawing attention to this fact in a separate article.

^{1/} This concerns mainly the regulation of the trading and transport of specimens and trophies belonging to protected species.

^{2/} By these provisions, Contracting Parties engage to undertake the necessary measures to prevent museums and other similar institutions under State control "acquiring archaeological objects suspected, for a specific reason, of having originated (sic) from clandestine excavations or of coming unlawfully from official excavations", to restrict the movement of suspected archaeological objects and to "give consideration to any questions of identification and authentication raised by any other Contracting Party, and to co-operate actively to the extent permitted by its national legislation".

5. RESERVATION OF THE RIGHTS OF LOCAL POPULATIONS

Any State may waive or ease protective measures for the benefit of local populations. Waivers shall not be such as to endanger the maintenance of ecosystems protected under the terms of the present Protocol or biological processes contributing to the maintenance of these ecosystems. They must not cause the extinction of, or any substantial reduction in, the number of individuals making up species or the animal and plant populations within the protected ecosystems, or any ecologically connected species or populations, particularly migratory species and rare, endangered or endemic species.

States which waive or ease protective measures shall inform the Organization accordingly.

Commentary

It is customary in national legislation to safeguard the rights of local populations. The principle is embodied in various international conventions (article VI of the Convention on Conservation of Nature in the South Pacific ^{1/} and article III, paragraph 1(d), of the Agreement on the Conservation of Polar Bears of 15 November 1973 ^{2/}).

6. TRANSITIONAL AREAS

The parties may give an area additional protection by establishing a transitional area in which activities are less severely restricted while remaining compatible with the purposes of the area.

Commentary

The report on the Expert Consultation recommends that a fully protected core area containing a "critical habitat" should be surrounded by a buffer zone in which limited activities are permitted for the benefit of resource protection, tourism and education, ^{3/} adding that proper management of the core areas will depend to a certain extent on management of the buffer zones. ^{4/}

^{1/} "Notwithstanding the provisions of articles III, IV and V, a Contracting Party may make appropriate provision for customary use of areas and species in accordance with traditional cultural practices".

^{2/} "Subject to the provisions of articles II and IV, any Contracting Party may allow the taking of polar bears when such taking is carried out ..."

(d) by local people using traditional methods in the exercise of their traditional rights and in accordance with the laws of that party ..."

^{3/} UNEP/WG.6/5, para. 5.5.

^{4/} Op.cit., annex VI, General Guideline No. 3.

The London Convention of 1933 ^{1/} and the African Convention ^{2/} provide for peripheral areas. These are transition areas between protected and unprotected marine environments. Moreover, in contrast to the situation in land parks, the transitional area does not necessarily have to include the whole periphery of the marine protected area. The expression "transitional area" is therefore preferred.

7. PUBLICITY AND NOTIFICATION

(a) States shall advertise the boundaries of protected areas and the regulations applying thereto. To this end, they shall take all necessary measures such as the erection of markers and the issue of publications.

(b) The information referred to in paragraph (a) of this article must be transmitted to the organization designated in article 13 of the Convention (hereinafter referred to as "the Organization") which shall compile a directory of marine protected areas in the Mediterranean Sea region. This directory shall be kept up to date; the Parties shall supply the Organization with all the information necessary for that purpose.

Commentary

The potential users of areas subject to special protection measures obviously must be informed. Thus, article 21 of the Informal Composite Negotiating Text which deals with the laws and regulations of the coastal State relating to innocent passage provides that the coastal State shall give due publicity to all such laws and regulations (paragraph 3). Article 212, paragraph 5, contains comparable provisions concerning protective measures for areas situated within the exclusive economic zone.

The establishment of a directory of marine protected areas in the Mediterranean was recommended by the Expert Consultation. ^{3/} Similar

^{1/} Article 4: "The Contracting Governments will give consideration in respect of each of their territories to the following administrative arrangements:

...
2. The establishment round the borders of national parks and strict natural reserves of intermediate zones within which the hunting, killing and capturing of animals may take place under the control of the authorities of the park or reserve; but in which no person who becomes an owner, tenant, or occupier after a date to be determined by the authority of the territory concerned shall have any claim in respect of depredations caused by animals."

^{2/} Article X, para. 2 states: "The Contracting States shall establish, where necessary, around the borders of conservation areas, zones within which the competent authorities shall control activities detrimental to the protected natural resources."

^{3/} UNEP/WG.6/5, paras. 6.3 and 8.5.

measures were included in the 1971 Ramsar Convention on Wetlands 1/ and in the UNESCO Convention concerning the protection of the world cultural and natural heritage. 2/

In other cases, provision is made only for the measures to be reported. 3/

8. SCIENTIFIC RESEARCH

The Parties shall encourage and develop within the protected areas scientific and technical research on the ecosystems and the archaeological heritage and their conservation.

Commentary

One of the objects of marine protected areas is to make provision, on terms to be determined by each State, for scientific research into the marine environment (see article 1(b) above). The scientific value of protected areas has already been emphasized in the preamble to the Ramsar Convention and by article XII of the African Convention on the Conservation of Nature and Natural Resources. 4/

1/ Article 2, paragraph 1, provides that: "Each Contracting Party shall designate suitable wetlands within its territory for inclusion in a List of Wetlands of International Importance ... which is maintained by the bureau established under Article 8. The boundaries of each wetland shall be precisely described and also delimited on a map ...".

2/ Article 11, paragraphs 1 and 2 provide that:

"1. Every State Party to this Convention shall, in so far as possible, submit to the World Heritage Committee an inventory of property forming part of the cultural and natural heritage, situated in its territory and suitable for inclusion in the list provided for in paragraph 2 of this Article. This inventory, which shall not be considered exhaustive, shall include documentation about the location of the property in question and its significance.

2. On the basis of the inventories submitted by States in accordance with paragraph 1, the Committee shall establish, keep up to date and publish, under the title of "World Heritage List", a list of properties forming part of the cultural heritage and natural heritage, as defined in Articles 1 and 2 of this Convention, which it considers as having outstanding universal value in terms of such criteria as it shall have established. An updated list shall be distributed at least every two years."

3/ Article 5, paragraph 1, of the 1933 London Convention provides that "the Contracting Governments shall notify the Government of the United Kingdom of Great Britain and Northern Ireland of the establishment of any national parks or strict natural reserves (defining the area of the parks or reserves), and of the legislation, including the methods of administration and control, adopted in connexion therewith".

4/ "The Contracting States shall encourage and promote research in conservation, utilization and management of natural resources and shall pay particular attention to ecological and sociological factors".

9. PUBLIC INFORMATION AND EDUCATION

The Parties shall publicly circulate as widely as possible information on the significance and interest of the protected areas and the scientific knowledge which may be gained from them from the point of view of both nature conservation and archaeology. Such information must be given adequate coverage in education programmes concerning the environment and history.

Commentary

The educational, social and cultural aspects of environmental problems and the importance of public information in this field have been emphasized on many occasions since the issue of recommendations 95-99 of the Stockholm Action Plan. It may be added that these problems are also dealt with in positive law, as shown by article XIII of the African Convention 1/ and article VII, paragraph 5, of the Convention on Conservation of Nature in the South Pacific. 2/

10. INTERNATIONAL CO-OPERATION

(a) The Parties shall co-operate in co-ordinating the establishment of protected areas, with the aim of creating a network of reserves in the Mediterranean region. They shall co-ordinate their activities in the planning and management of the development of protected areas. There shall be regular exchanges of information concerning the characteristics of the protected areas, experience acquired and problems encountered.

1/ "(1) (a) The Contracting States shall ensure that their peoples appreciate their close dependence on natural resources and that they understand the need, and rules for the rational utilization of these resources.

(b) For this purpose they shall ensure that the principles indicated in paragraph (1):

- (i) are included in educational programmes at all levels,
- (ii) form the object of information campaigns capable of acquainting the public with, and winning it over to, the idea of conservation.

(2) In order to put into effect paragraph (1) above, the Contracting States shall make maximum use of the educational value of conservation areas."

2/ "With a view to attaining the objectives of this Convention the Contracting Parties shall examine the possibility of developing programmes of education and public awareness relating to conservation of nature."

Commentary

A number of international Conventions provide in general terms for co-operation between States which intend to establish, or have already established, protected areas. 1/ It would thus appear quite reasonable that the present proposals should contain a similar clause concerning, inter alia, the creation of reserves, particularly since the establishment of genuine networks of protected areas was strongly recommended by the Expert Consultation on marine parks. 2/ The recommendations also stress the importance of co-operation in the development planning and management of protected areas. 3/

1/ 1933 London Convention, Article 7:

"... the Contracting Governments shall ...

6. Establish as close a degree of co-operation as possible between the competent authorities of their respective territories ..."

- African Convention, article XVI, paragraph (1):

"... (a) whenever such co-operation is necessary to give effect to the provisions of this Convention and

(b) whenever any national measure is likely to affect the natural resources of any other State."

- Ramsar Convention on Wetlands, article 5:

"The Contracting Parties shall ... endeavour to co-ordinate and support present and future policies and regulations concerning the conservation of wetlands and their flora and fauna".

- Convention on the protection of nature in the South Pacific, article VII, paragraph (4):

"The Contracting Parties shall work towards harmonization of objectives relating to the conservation of nature".

2/ Report of Expert Consultation, paragraphs 4.2 and 5.15, and, in particular, principle (8) contained in annex VI, which concerns the establishment and management of protected areas in the Mediterranean region:

"Environmental management in the Mediterranean region requires, inter alia, carefully-planned zoning for various activities as a means to achieve harmonious eco-development. A vital part of this zoning is the establishment of an integrated network of protected areas, such as reserves, marine parks and wetlands. In this way, 'critical Mediterranean habitats' may be safeguarded and used as reference sites for research aimed at providing scientific information on the magnitude of changes caused by man's activities in the Mediterranean ecoregion."

3/ Ibid., paragraphs 5.2 and 5.4.

Exchanges of information play an important role in international co-operation for the protection of the environment. 1/ Given the particular nature of the environment concerned, exchanges of information concerning marine protected areas should be considered essential.

(b) The Parties shall jointly examine the possibility of establishing, through international agreements, protected open sea zones, with due regard to the criteria set out in article 1, paragraph (b).

Commentary

Paragraph (b) of this article envisages the possibility of creating protected open sea zones, in accordance with the recommendations of the Expert Consultation. 2/ The establishment of such zones would obviously depend on the conclusion of specific international agreements delimiting the zones to be protected, and setting out the particular protective measures to be taken. It would be desirable for all the Mediterranean States to join in such agreements, and for other States whose vessels frequent the Mediterranean also to accede to them.

Agreements of this type represent a response to the concerns expressed in the draft principles of conduct in the field of the environment, prepared for the guidance of States in respect of the conservation and harmonious utilization of natural resources shared by two or more States, principle 2 of which provides for multilateral agreements. 3/

11. FRONTIER PROTECTED AREAS

Where a State proposes to establish a protected area contiguous to the limits of the jurisdiction of another State, the competent authorities of the two States shall consult each other with a view to reaching agreement on the measures to be taken, and shall examine the possibility of the creation, by the other State concerned, of a corresponding protected area, or the adoption of any other appropriate measures. Where contiguous protected areas are established by two States, the modalities of consultation may be made the subject of special agreements.

1/ Provision is made for such exchanges in article 5, paragraph (2) and article 7, paragraph (4) of the 1933 London Convention; in article XVI, paragraph (2), of the 1968 African Convention; and in article VII, paragraph (2), of the 1976 Convention on Conservation of Nature in the South Pacific.

2/ "The experts noted that open sea zones may be important producers of organic matter which is transferred to coastal zones. The need to establish protected open seas zones in areas of high productivity, which are of the greatest importance for the trophic equilibrium of the ecoregion and for the preservation of fisheries potential, was stressed. Such open sea reserves could be established by an agreement among Governments concerned which would control the discharge or dumping of pollutants within the protected area."
(UNEP/WG.6/5, paragraph 5.6).

3/ UNEP/IG.12/2, 1978.

Commentary

The draft principles and guidelines adopted by the Expert Consultation on marine parks rightly point out that "natural boundaries of 'critical habitat' (zones) do not necessarily coincide with national ... boundaries." Consequently, "natural units should be determined according to the characteristics of the ecosystem and their ecological processes." Moreover, "marine natural units or those for migratory species are very large and dynamic". 1/ Transboundary protected areas should consequently be envisaged; failing that, close collaboration between the countries concerned is desirable if reserves extend over national borders. 2/

These considerations are in conformity with Recommendation 37 of the Plan of Action adopted by the Stockholm Conference, which recommends that Governments "take steps to co-ordinate, and co-operate in the management of, neighbouring or contiguous protected areas. Agreement should be reached on such aspects as mutual legislation, patrolling systems, exchange of information, research projects, collaboration on measures of burning, plant and animal control, fishery regulations, censuses, tourist circuits and frontier formalities."

Such co-operation is provided for in a number of treaty provisions, including article 6 of the 1933 London Convention 3/ and article 5 of the Ramsar Convention on Wetlands. 4/

Resolution (74) 8, adopted by the Committee of Ministers of the Council of Europe on 27 February 1974, concerning co-operation between local communities in frontier areas, invites Member States to envisage the establishment of institutions, inter alia, for the conservation of nature, through the creation of common zones. Similarly, a recommendation by the Consultative Assembly of the Council of Europe (No. 587-1970) invites the Council of Ministers to "examine any suitable measures to promote the creation of regional and transfrontier parks".

1/ UNEP/WG.6/5, annex VI, General Guideline (2).

2/ Ibid. Principle (11).

3/ "In all cases in which it is proposed to establish in any territory of a Contracting Government a national park or strict natural reserve contiguous to a park or reserve situated in another territory ... or to the boundary of such territory, there shall be prior consultation between the competent authorities of the territories concerned. Similarly, there shall be co-operation between those authorities subsequent to the establishment of a park or reserve, or where such a park or reserve is already established."

4/ "The Contracting Parties shall consult with each other about implementing obligations arising from the Convention especially in the case of a wetland extending over the territories of more than one Contracting Party or where a water system is shared by Contracting Parties."

They shall at the same time endeavour to co-ordinate and support present and future policies and regulations concerning the conservation of wetlands and their flora and fauna.

The creation of frontier marine zones of this type is already envisaged by Turkey and Greece (the Meric-Evros delta) and Algeria and Tunisia (Tabarka-La-Calle).

12. SCIENTIFIC CO-OPERATION

States shall exchange scientific and technical information concerning current or planned research and the results thereof. They shall, to the greatest extent possible, co-ordinate their research with that conducted by other Parties. They shall, moreover, endeavour to define jointly or to standardize the scientific methods to be applied in the selection, management and monitoring of protected areas.

Commentary

It is hardly necessary to stress the importance of research as far as the protection of the environment is concerned. In the light of article 11 of the Convention for the Protection of the Mediterranean Sea against pollution, 1/ the Expert Consultation on marine parks stressed that research should be intensified and should be related to the UNEP Co-ordinated Mediterranean Pollution Monitoring and Research Programme. 2/ The exchange of information concerning current or planned research projects and the results thereof, 3/ the co-ordination of research, and, in particular, the standardization of scientific methodology used in selection and monitoring of protected areas 4/ should be the keystones of co-operation between the authorities and scientists of different countries.

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- 1/ 1. "The Contracting Parties undertake as far as possible to co-operate directly, or when appropriate through competent regional or other international organizations, in the fields of science and technology, and to exchange data as well as other scientific information for the purpose of this Convention.
2. The Contracting Parties undertake as far as possible to develop and co-ordinate their national research programmes relating to all types of marine pollution in the Mediterranean Sea Area and to co-operate in the establishment and implementation of regional and other international research programmes for the purposes of this Convention."
- 2/ UNEP/WG.6/5, para. 8.3.
- 3/ Ibid., Annex VI, draft principles, principle 13.
- 4/ Op.cit., General Guideline (6).

In treaty law, these principles are enunciated in a number of provisions. ^{1/} It may also be recalled that article 9 of the preliminary draft protocol for the protection of the mediterranean sea against pollution from land-based sources provides that the Parties shall co-operate as far as possible in scientific and technological fields, and more particularly in the exchange of scientific and technical information and the co-ordination of their research programmes.

13. PROCEDURE FOR CO-OPERATION

(a) In applying the principles of co-operation set forth in articles 10 and 12 above, the Parties shall forward to the secretariat of the Organization, or to a body designated by the Organization:

(i) standardized information for monitoring the biological development of the Mediterranean environment;

(ii) reports, publications and information of a scientific, administrative and legal nature, and in particular:

- full information on the measures taken by the Parties for the protection of the protected areas in pursuance of the Protocol;
- full information on the species present in the areas;
- full information on any threats to those areas, especially from sources of pollution outside the Parties' control.

^{1/} For example, article 6 of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere states:

"Art. 6. The Contracting Governments agree to co-operate among themselves in promoting the objectives of the present Convention. To this end they will lend proper assistance, consistent with national laws, to scientists of the American Republics engaged in research and field study; they may, when circumstances warrant, enter into agreements with one another or with scientific institutions of the Americas in order to increase the effectiveness of this collaboration; and they shall make available to all the American Republics equally through publication or otherwise the scientific knowledge resulting from such co-operative effort."

Article XII of the African Convention states:

"The Contracting States shall encourage and promote research in conservation, utilization and management of natural resources and shall pay particular attention to ecological and sociological factors."

Article VII, paragraph 2, of the Convention on Conservation of Nature in the South Pacific provides as follows:

"The Contracting Parties shall wherever practicable conduct research relating to the conservation of nature. They shall as appropriate co-ordinate such research with research carried out by other Parties. They shall co-operate in the exchange of information on the results of such research and on the management of protected areas and of protected species."

(b) The officials responsible for the Contracting Parties' protected areas shall meet twice a year to discuss matters of joint interest and especially to make recommendations for the standardization and processing of scientific, administrative and legal data and information.

(c) In addition, the Parties' protected areas will be able to give the Regional Oil-Combating Centre for the Mediterranean, established by resolution 7 of the Conference, the information listed in the annex to that resolution, as well as the information to be supplied under the draft protocol for the protection of the Mediterranean Sea against pollution from land-based sources.

Commentary

The achievement of genuine co-operation calls for the adoption of practical measures to facilitate the exchange of information and research programmes. The establishment of special mechanisms for this purpose would make for unnecessary unwieldiness. It is also essential to avoid the information remaining unused or being imperfectly used. Accordingly, it seems advisable to provide that those responsible for the protected areas should co-operate with one another by holding regular meetings, and by working through the Regional Centre. It will thus be possible to preserve the unity of the institutional framework established by the Barcelona Conference and to stress the interrelationship between the problems of natural environment protection and the control of pollution from both land-based and maritime sources.

14. TRAINING AND ASSISTANCE

The parties shall, directly or as appropriate with the assistance of competent regional or other international organizations, endeavour to promote programmes of mutual assistance.

Such programmes shall comprise the selection and management of protected areas, the training of scientific and technical personnel, scientific research, and the utilization and production of appropriate equipment.

Commentary

The above draft is based on article 10 of the preliminary draft protocol for the protection of the Mediterranean Sea against pollution from land-based sources. ^{1/} In respect of assistance, it is worthwhile recalling the system

^{1/} The article reads as follows:

"1. The Parties shall, directly or as appropriate with the assistance of competent regional or other international organizations, endeavour to promote programmes of assistance to developing States, in particular in the fields of science, education and technology, with a view to preventing pollution from land-based sources and its harmful effects in the marine environment.

2. Such technical assistance may comprise the training of scientific and technical personnel, and the acquisition, utilization and production by those States of appropriate equipment."

provided for in article 13 of the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage. Co-operation "in the interchange and training of personnel for the conservation of nature" is also provided for in article VII, paragraph 3 of the Convention on Conservation of Nature in the South Pacific.

15. ALTERATION OF THE BOUNDARIES OF OR WITHDRAWAL OF PROTECTION FROM PROTECTED AREAS

The full or partial withdrawal of protection from a protected area by alteration of its boundaries or by amendment of the legal provisions for its protection may be undertaken only for reasons of overriding public interest and in application of a procedure at least equivalent to that followed for the original classification.

Commentary

The above draft more or less follows article III, paragraph 4 (a) (i) and (b) (i), of the African Convention. 1/ Action by the legislative authority or a higher authority than that which originally made the regulation is a necessary formal guarantee that protected areas will not be reduced in size or be withdrawn from protection, except for reasons of urgent national interest. 2/ It therefore seems desirable that States should apply at least equivalent procedures when altering or deleting protected areas. Some conventions also make provision for compensatory action through the creation of additional protected areas; such a procedure is provided for in the Ramsar Convention. 3/ It may be difficult to apply the procedure to marine

1/ "'Strict nature reserve' means an area:

- (i) under State control and the boundaries of which may not be altered nor any portion alienated except by the competent legislative authority".

Under subparagraph (b) (i), the same provision applies to "national parks".

2/ The latter condition is found in article 4 (2) of the 1971 Ramsar Convention on Wetlands:

"Where a Contracting Party in its urgent national interest, deletes or restricts the boundaries of a wetland included in the List, it should as far as possible compensate for any loss of wetland resources, and in particular it should create additional nature reserves for waterfowl and for the protection, either in the same area or elsewhere, of an adequate portion of the original habitat.

The 1976 Convention on Conservation of Nature in the South Pacific merely provides that "the boundaries of national parks shall not be altered so as to reduce their areas, nor shall any portions of such parks be capable of alienation, except after the fullest examination". (Article III, paragraph 1).

3/ See article 4, paragraph 2, quoted in foot-note 2 above.

protected areas, many of which exist for the protection of a unique biotope; in any event, the density of human settlements on Mediterranean coasts rules out any possibility of substitution.

16. MEETINGS OF THE PARTIES

(a) The ordinary meetings of the Parties shall be held in conjunction with the ordinary meetings of the Contracting Parties to the Convention held pursuant to article 14 of the Convention. The Parties may also hold extraordinary meetings in conformity with article 14 of the Convention.

(b) It shall be the function of the meetings of the Parties to this Protocol, in particular:

- (i) to keep under review the implementation of the Protocol, and to consider the efficacy of the measures adopted and the need for other measures; in particular, in the form of annexes pursuant to article 17, paragraph 3, of the Convention;
- (ii) to review and amend as required any annex to the Protocol;
- (iii) to make recommendations regarding the establishment of open sea protected zones in pursuance of article 10, paragraph (b) above;
- (iv) to monitor the establishment and development of the system of protected areas provided by article 10, paragraph (a), above, and to adopt guidelines to facilitate the establishment and development of that system and to increase co-operation among the Parties;
- (v) to consider the recommendations made by the twice-yearly meeting of the authorities responsible for the protected areas, as provided by article 13, paragraph (b) above;
- (vi) to consider reports submitted by the Parties to the Organization under article 20 of the Convention and any other information which the Parties may submit to the Organization, or to the meeting of the Parties.

Commentary

The above draft is based on article 14 of the Convention for the Protection of the Mediterranean Sea against Pollution, article 14 of the Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft, article 12 of the Protocol Concerning Co-operation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency, and article 14 of the draft protocol for the protection of the Mediterranean Sea against pollution from land-based sources. Naturally, the specific context of the present proposals (subparagraphs (iii) to (vi) above) was borne in mind.

17. FINAL CLAUSES

(a) The provisions of the Convention relating to any protocol shall apply with respect to the present Protocol.

(b) The rules of procedure and the financial rules adopted pursuant to article 18 of the Convention shall apply with respect to this Protocol, unless the Parties agree otherwise.

Commentary

The above proposals are identical with provisions contained in each of the two Protocols already in force, and with article 16, paragraphs 1 and 2, of the draft protocol for the protection of the Mediterranean Sea against pollution from land-based sources. Article 14, paragraph 2 (b) refers to the possibility of reviewing or amending any annex to the protocol. While the present draft does not expressly provide for annexes, it is nevertheless considered that it might be desirable for any future protocol concerning marine protected areas in the Mediterranean to include scientific and technical annexes. Such annexes should be based on in-depth studies of the criteria and principles for the establishment of marine protected areas, and would form an integral part of the protocol, pursuant to article 17, paragraph 1 of the Convention. They might list endangered zones, biotopes, biocenoses, formations and species requiring protection, in the context of the mapping of marine biocenoses in the Mediterranean now being undertaken by the Council of Europe.