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Intergovernmental Review Meeting of
Mediterranean Coastal States on
the Action Plan

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STUDY OF THE FEASIBILITY OF ADMINISTRATION OF
THE MEDITERRANEAN TRUST FUND BY ORGANIZATIONS
OR BODIES OTHER THAN THE UNITED NATIONS
ENVIRONMENT PROGRAMME (UNEP)

Note by the Executive Director: This study has been prepared by
Mr. J.P. Costa, UNEP Consultant, acting in his personal capacity. The opinions
and the recommendations expressed in this study are those of the author and do
not necessarily reflect the views of UNEP.

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Contents

	<u>Page</u>
Terms of reference and general scope of the study (paragraphs 1 and 2)	1
General plan of this report	1
Analysis of the existing situation (paragraphs 5-14)	1 - 3
Range of possible solutions for the administration of the Fund by organizations or bodies other than UNEP (paragraphs 15-49) ...	3 - 12
Recapitulation of the various possible solutions (cf. annex I) (paragraph 50)	12
Final recommendations (paragraphs 51-57)	12 - 14
Annex I. Table recapitulating the various possible solutions	
Annex II. Main headings generally found in the financial regulations of international organizations (purely indicative)	

Terms of reference and general scope of the study

1. The first Meeting of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea against Pollution and the related protocols was held at Geneva from 5 to 10 February 1979. The Meeting agreed that a Mediterranean Regional Trust Fund for the Protection of the Mediterranean Sea against Pollution should be established; they further agreed that the Contracting Parties should temporarily entrust the Executive Director of UNEP with the administration of the Fund, and that he should thoroughly investigate, by means of suitable studies, the feasibility of administration of the Trust Fund by organizations or bodies other than UNEP. Lastly, it agreed that the mechanism would be reviewed at the next meeting of the Contracting Parties, at which time a decision could possibly be reached in the light of experience gained during the 1979-1980 biennium.

2. Accordingly, under an agreement of 18 November 1980, the author of this study was requested by the Co-ordinator of the Mediterranean Action Plan to prepare a study on the feasibility of administration of the Fund by organizations or bodies other than UNEP.

General plan of this report

3. In keeping with the purpose of the study the author, after widely exploring the situation and holding in-depth discussions with the Co-ordinator of the Mediterranean Action Plan, saw fit to adopt the following general plan for his report:

- (i) Analysis of the existing situation;
- (ii) Range of possible solutions for administration of the Fund by organizations or bodies other than UNEP;
- (iii) Recapitulation of these solutions;
- (iv) Final recommendations.

4. The author of the study wishes to make two things clear from the outset: first, the study was carried out entirely on his own responsibility as consultant, guided only by the significance of the Mediterranean Action Plan; and second, because of the short space of time accorded him for its preparation (two months; working half-time) he realized that it was impossible to produce an exhaustive document. He is therefore well aware of its shortcomings and merely hopes that it may constitute a useful basis for discussion at the second Meeting of the Contracting Parties to the Convention and its related protocols.

Analysis of the existing situation

5. The Convention for the Protection of the Mediterranean Sea against Pollution, signed at Barcelona on 16 February 1976, and the related protocols, constitute a solemn pledge by the Contracting Parties to combat pollution of the Mediterranean Sea Area and to co-operate among themselves to that end.

6. It is not without importance in the context of this study to point out that the Barcelona Convention and its protocols may be seen as having given birth to an international intergovernmental organization. Such an organization generally involves the following characteristics:

An agreement between States or groups of States;

Common objectives;

Permanent organs, comprising at least one deliberative organ composed of representatives of member States or groups of States, and an executive secretariat independent of the States or groups of States but responsible to them;

Pooling of resources, particularly financial, for achieving the organization's objectives.

7. An analysis - necessarily superficial - of the Barcelona Convention and its related protocols shows that most of the above characteristics of intergovernmental organizations are to be found in these instruments: there are objectives common to the member States and to the European Economic Community, described, in particular, in articles 4-11 of the Convention; a deliberating organ is provided for in article 14 under the title Meetings of the Contracting Parties; article 13 refers to the secretariat and lists its functions; and article 18 stipulates the adoption of financial rules to determine, in particular, the financial participation of the Contracting Parties.

8. However, the same analysis reveals some peculiar features of the institution thus established by the Convention and its protocols: the institution has no name; the instruments do not provide expressly for the establishment of an organization; the Barcelona Convention refers to the "Organization", but defines it in a very special way (article 2 (b)); also, under the terms of article 13 ("Institutional arrangements"), the Contracting Parties designate the United Nations Environment Programme as responsible for carrying out the secretariat functions listed in that article.

9. This latter peculiarity is the most noteworthy one. There are both historical reasons, and reasons pertaining to the political will of the Contracting Parties to explain it. Historically, UNEP, in the person of its Executive Director, convened the 1975 Intergovernmental Meeting on the Protection of the Mediterranean, at which an Action Plan for the protection and management of the Mediterranean Basin was adopted, and then the Conference of Plenipotentiaries of the Coastal States of the Mediterranean Sea Area adopted the Barcelona Convention and its first two protocols. Thus it was UNEP which acted as both the driving force and the catalyst in alerting coastal States to the need to combat pollution of the Mediterranean Sea area, individually or jointly. At the political level, the Contracting Parties to the Convention expressed a wish that their action should be part of the activities of the United Nations Environment Programme, a subsidiary organ of the United Nations responsible for environmental problems. They also proposed setting up a small secretariat within an already existing organization (UNEP), rather than starting from scratch.

10. All these remarks concerning the legal analysis that can be made of the Barcelona Convention go to show that its authors have allowed for the possibility of the institution created by them developing in various directions, either by increasing its financial resources and establishing an independent secretariat, or by limiting the resources held in common and enhancing the role entrusted to UNEP. Of course, the problem of the evolution of the institution, as such, goes far beyond the scope of this study.

11. At the financial level, the Barcelona Convention has not provided for any detailed measure. Consequently, the existing system was set up on a pragmatic basis.

12. An Intergovernmental Review Meeting of Mediterranean Coastal States on the Mediterranean Action Plan was held at Monaco from 9 to 14 January 1978. It adopted a recommendation endorsing the principle of a separate trust fund to ensure the harmonious development and effective co-ordination of jointly agreed activities. Pursuant to that recommendation, the Executive Director of UNEP convened a Meeting of experts on Mediterranean Trust Fund and other institutional and financial matters, which took place at Geneva from 18 to 22 September 1978. Lastly, having regard to the UNEP Executive Director's proposals, and the view expressed by the Meeting of experts, the first meeting of the Contracting Parties, held at Geneva from 5 to 10 February 1979, agreed on the principle of a trust fund whose administration would be temporarily placed in the hands of the Executive Director of UNEP, and adopted rules concerning the management of that fund.

13. Accordingly, the Mediterranean Trust Fund was officially established on 24 July 1979, for a period of two years. The Fund was to contribute \$US 3.2 million to the budget for the 1979-1980 biennium, while UNEP was to contribute \$US 1,640,000 and the European Economic Community \$US 80,000. Lastly, other United Nations bodies were to contribute \$US 1.6 million to a supplementary programme.

14. The Trust Fund officially set up on 24 July 1979 is subject to the rules governing the constitution and management of United Nations trust funds, as set forth in the United Nations Secretary-General's circular ST/SGB/146/Rev.1 of 19 October 1978.

Range of possible solutions for the administration of the Trust Fund by other organizations or bodies

15. For each solution envisaged, its advantages and drawbacks, and then the ways and means of adopting it, will be considered.

Maintenance of the status quo

16. Though seemingly excluded from the scope of the present study, the first solution consists in maintaining the status quo, i.e. prolonging the Mediterranean Trust Fund beyond the period of two years for which it was originally created. The Fund would continue to be administered by the Executive Director of UNEP, who in practice would be empowered to delegate responsibility for its management to the Co-ordinator of the Mediterranean Action Plan.

17. Clearly, the main advantage of this solution is that it would maintain a system which has been in operation for two years without obliging the Contracting Parties to devise other formulas. Moreover, it has the advantage of all the safeguards attaching to the financial mechanisms provided under the United Nations regulations, in particular, at the level of control and auditing. Those are no mean advantages. Since UNEP would manage the Fund, that would dispense the Contracting Parties (States and the European Economic Community) from the need to find other mechanisms to perform that function. True, in accordance with the decision adopted by the UNEP Governing Council at its sixth session, the Executive Director announced to the participants the first meeting of the Contracting Parties that UNEP would gradually reduce its participation in the secretariat expenses till it vanished completely. But this reduction, this financial disengagement, motivated by a desire to see its role of catalyst taken over by the Contracting Parties themselves, does not necessarily imply that UNEP will give up the management of the Fund.

18. The status quo solution also has its drawbacks. The first is the rigidity and complexity of financial circuits deriving from the United Nations trust fund system, with its dual delegation of responsibility; hence, for example, the complex procedures for credit transfers between States and New York (where the UNEP Trust Fund has its bank account), Nairobi and Geneva (the present headquarters of the Co-ordinating Unit). Furthermore, the Fund does not authorize expenditure appropriations exceeding its actual cash receipts, which in the event of a delay by States in paying the contributions they have pledged precipitates a serious financial crisis, as was shown by the experience of 1979-1980.

19. A second drawback which must be carefully weighed stems from the fact that, for all activities financed by the Trust Fund, and in accordance with the rules in the Secretary-General's circular mentioned above, a percentage of programme support costs is deducted, that is to say, the standard percentage factor approved for the United Nations Development Programme (UNDP). At present, this is 13 per cent, but it could vary depending on decisions entirely beyond the control of the Contracting Parties to the Barcelona Convention. Furthermore, although it is true that, however the Fund is managed, there will always be considerable overheads, a rate of 13 per cent nevertheless makes a "hole" of about \$US 421,000 in the 1979-1980 biennial budget. There is no assurance that other solutions would be any less costly for the Action Plan - a factor which is all the more important because of the necessarily limited resources at the latter's disposal, presenting it with difficult choices, for example, between Section I of the Fund (Activities directly derived from the Convention and its related protocols) and Section II (Other activities agreed to as part of the Mediterranean Action Plan).

20. A third drawback, which would apply only in the future, must be mentioned. Assuming the Action Fund was to develop on a large scale, it would presumably become increasingly difficult to maintain UNEP management of the Trust Fund, that is to say, for UNEP management to continue to exist side by side with the expansion of an institution having all the earmarks of an autonomous intergovernmental organization. That does not mean that UNEP sponsorship or guardianship should be abandoned, but merely that other financial management mechanisms will perhaps be necessary.

21. The status quo solution pre-supposes ways and means which would be readily applicable. All that is needed is a decision by the Contracting Parties to that effect, plus a corresponding decision by the UNEP Governing Council, and lastly, the agreement of the Controller of the United Nations, on behalf of the Secretary-General. Finally, the Executive Director of UNEP should continue in future to request Mediterranean coastal States and the European Economic Community to pay their contributions to the Trust Fund.

Further institutionalization of the office of Co-ordinator

22. The second solution is what might be termed the further institutionalization of the office of Co-ordinator. This would mean that the resources of the Mediterranean Action Plan (contributions from States and the European Economic Community) would be paid, not into a special United Nations trust fund managed by the Executive Director of UNEP, but into a Common Fund belonging to the organization itself and managed by the head of its secretariat - the Co-ordinator of the Mediterranean Action Plan. Naturally, this Fund would receive resources over and above the contributions of Contracting Parties, particularly subsidies in respect of the programme costs, UNEP having undertaken to assist in defraying these rather than the secretariat costs. Such a solution would, in fact, represent an extrapolation of the potential of the Barcelona Convention, since it would reflect and crystallize the status of the institution established by the Convention as an international governmental organization. It is, indeed, the general practice in such organizations for the members to share in the financing by paying their contributions directly to the organization itself, and for the executive head thereof to be responsible for the management of the common fund and for investment and expenditure. In the case of the Action Plan, neither the Convention nor the protocols designate an executive head; however, later joint decisions by the Executive Director of UNEP and the Contracting Parties established a Co-ordinating Unit and put at its head a Mediterranean Action Plan Co-ordinator. It would, therefore, be logical if this Co-ordinator, having been made the head of the secretariat on the authority of the Executive Director of UNEP, were to be given responsibility for the preparation of the budget, collection of the resources and management of the Fund, and for investment and expenditure.

23. The main advantage of this solution is flexibility and autonomy in the financing of the institution's activities. It would be more adaptable than the current system because it would allow for the management of the Fund according to an independent set of rules, simpler and less rigid than those imposed on special United Nations trust funds and probably better suited to a relatively modest budget and an organization which is more regional than universal in character, even though the Barcelona Convention is open for signature by non-Mediterranean States. It would also confer greater autonomy on the institution born of the Barcelona Convention, since it would be less subject to external rules (such as a decision to set a standard percentage of programme support costs in relation to activities).

24. A further advantage, which is perhaps more political than technical and cannot, therefore, be appropriately assessed in a study of this nature, would be that responsibility for the financial and secretariat aspects of the Fund would be merged. The Co-ordinator of the Action Plan, whose functions, delegated by the Executive Director of UNEP, already include control of the Co-ordinating Unit and participation in the management of the United Nations Trust Fund, would thus be directly subject to rules drawn up by the Contracting Parties themselves, and not, say, by the Secretary-General of the United Nations. His mandate would, therefore, be better defined and more easily controlled by the Contracting Parties.

25. The first of the drawbacks of this solution is that it would require the establishment of precise financial regulations governing the preparation of the budget, the collection of the resources and the management of the Common Fund, investments, disbursements and the auditing of the Fund's accounts. The rules would also have to state under what legal régime and by what methods the organization could conclude contracts. This drawback is, admittedly, mitigated by the fact that there already exist numerous examples of such financial regulations, both for world-wide organizations and for regional institutions. For instance, with respect to pollution control, financial rules already exist for such bodies as the Commission of the Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft, the Central Commission for the Navigation of the Rhine and the Danube Commission. Similarly, an organization such as the Intergovernmental Bureau for Informatics, which is world-wide in scope but outside the United Nations system, has its own financial regulations. Moreover, there is nothing to prevent the Contracting Parties to the Barcelona Convention from adopting - and simplifying and adapting to the dimensions of a regional and more specific organization - regulations based on those of large organizations or specialized agencies. But this notwithstanding, the basic drawback of a need for new rules remains.

26. A further drawback of this solution is that it would be necessary to strengthen the Co-ordinating Unit, which it was intended should be small and uncomplicated. There would have to be a high-level professional officer to deal with administrative and financial matters, a junior professional to assist him, and a small number of General Service staff. However, the experience of other bodies of similar financial scope to the Mediterranean Action Plan shows that the additional staff costs this expansion would entail in relation to maintaining the status quo would be far below the present level of programme support costs. Naturally, the author of this study has not had time to carry his examination of this highly specific point very far, but it would be helpful to make such an investigation with a view to a cost-benefit analysis of all the possible options.

27. The institutionalization of the office of the Co-ordinator could give rise to a particular problem: might it not change the nature of the Co-ordinating Unit's relations with UNEP? It would seem that the Contracting Parties are very anxious to keep the Unit under the aegis of UNEP, and that UNEP itself, which has a more general programme of activity in relation to regional seas, wishes to continue to provide the secretariat services. Some means would therefore have to be found of reconciling the establishment of a Common Fund managed by the Co-ordinator with the present relationship with UNEP. One possibility would be for the Co-ordinator to be chosen by agreement between the Executive Director and the Contracting Parties from among the members of the UNEP secretariat and seconded to the institution by UNEP under contract. Another possibility (which could be combined with that just mentioned) would be to invite UNEP to participate in meetings of the Contracting Parties with the right to vote, thereby giving it an effective voice, particularly in budget preparation and control. There are precedents for this kind of thing in international life: for example, UNESCO participates, with the right to vote, in sessions of the General Assembly and of the governing body of the Intergovernmental Bureau for Informatics (the successor to the International Computing Centre), even though the latter is an autonomous intergovernmental organization.

28. The ways and means of implementing this second solution do not necessarily entail revision of the Convention. What would be essential would be, first, the closure (with the consent of the Contracting Parties, the Executive Director of UNEP and the United Nations Controller) of the Mediterranean Regional Trust Fund; second, the

adoption by the Contracting Parties of new financial regulations containing rules covering the points mentioned in paragraph 25 above; third, an agreement (of a relatively formal kind) between UNEP and the Contracting Parties concerning the role, appointment and, if appropriate, secondment of the Action Plan Co-ordinator. But the main point is the financial regulations.

29. In addition to these necessary ways and means, consideration might perhaps be given to revising the Barcelona Convention. As indicated in article 16 of the instrument, that would entail the convening by UNEP, at the request of two thirds of the Contracting Parties, of a diplomatic conference for the adoption of amendments proposed by one or more Contracting Parties. The amendments could be aimed at modifying article 13 of the Convention, concerning institutional arrangements, in order to make it more precise (and to include some mention of the role of the Co-ordinator). They could also cover those articles of the Convention and protocols that refer, without specifically naming it, to the "Organization", which really means the United Nations Environment Programme. Once again, this revision of the Convention is not indispensable, particularly in the short and medium term.

Management by another international organization

30. The third solution is to entrust the management of the Mediterranean Regional Trust Fund to an international organization other than UNEP itself. That would be in keeping with the actual title of this study and with the decision taken by the Contracting Parties at their first meeting to study such a possibility. In point of fact, it is hard to think of any international organization, other than a subsidiary organ of the United Nations or a specialized agency, which could be given the task. This is because the choice would have to be compatible with the provisions of the Secretary-General's circular on trust funds. It would be possible, in theory, to call on an organization from outside the United Nations system, but the Fund would then no longer be a United Nations trust fund, but a holding fund or special fund established by the organization in question for the receipt of voluntary contributions made available to it for special purposes. In view of its complexity and lack of obvious advantages, such an arrangement has been considered only as an academic possibility and not as one for detailed study.

31. It would, however, be feasible to substitute for UNEP as the managing body of the Mediterranean Regional Trust Fund another organ of the United Nations system - preferably, of course, one concerned with pollution control in the Mediterranean area. Possible choices are the United Nations Industrial Development Organization (UNIDO) the Food and Agriculture Organization (FAO), or UNESCO, IMOC, WHO or UNDP. All these institutions are accustomed to managing funds of the type in question and have sufficient administrative capacity to be able to take on the job without undue difficulty.

32. The advantages of this solution would be twofold. First, there would be no need to amend the present financial regulations of the Fund (except, of course, as regards the title of the body responsible for managing it). Second, it would very probably ensure the heavy involvement of a second organization, in addition to UNEP, in supporting activities under the Mediterranean Action Plan. In ideal circumstances, that would lead to an increase in the Fund's cash resources, as opposed to the present situation, in which other organs of the United Nations system are only empowered to provide resources in kind for a supplementary programme of activity part of which must be financed by the Action Plan.

33. On the other hand, the drawbacks of this solution are manifold. In the first place, it is far from certain that any organ would want to act as the Fund's

management. Even supposing that such a body could be found, there would remain the major difficulty of justifying the choice of one agency rather than another. Each deals with a particular aspect of environmental conservation in the Mediterranean area (industry, fishing, science and technology, health, navigation ...), but none deals with those aspects as a whole. In fact, only the United Nations itself, or perhaps UNDP, is naturally suited by its nature to manage a fund of the type in question (although as far as UNDP is concerned, the fact that many of its member States which are Contracting Parties to the Convention are not developing countries raises a query in this respect). At all events, it is unlikely that any organization would show much enthusiasm for a new task of the type proposed; furthermore, we have only to read the above-mentioned circular from the Secretary-General to realize that with the very substantial administrative duties he already has, he is not anxious to encourage the practice of creating trust funds.

34. There is a second drawback, which has to do with the relations with UNEP. UNEP was behind the signing of the Barcelona Convention and its protocols and is expressly made responsible in the Convention for carrying out the secretariat functions that derive therefrom; there is no other organization which is mentioned by name in those instruments. While it is true that article 4, paragraph 3, of the Convention, for example refers to international bodies considered to be competent by the Contracting Parties and pledges the Parties to promote, within such bodies, measures concerning the protection of the marine environment from all types and sources of pollution, it is no less true that only UNEP is mentioned in so many words. Furthermore, UNEP is alone within the United Nations system in having general jurisdiction in environmental matters. It would, therefore, be hard to justify the substitution for UNEP of another organization. The idea that it might be possible to reconcile such a substitution as management of the Fund with the maintenance of UNEP's role in respect of the secretariat services is hardly realistic: it would make matters more complicated still, and have more disadvantages than advantages, particularly as regards inter-agency co-ordination.

35. The ways and means of applying this solution are themselves complex. There would first have to be a sort of call for bids among the organizations interested in managing the Trust Fund. That would entail consultations which would, in all likelihood, be long and difficult, and would mean consulting the Secretary-General of the United Nations, and particularly the Under-Secretary-General for Inter-Agency Affairs and Co-ordination and the Administrative Committee on Co-ordination. Following the selection of an appropriate organization, it would be necessary to close down the present Trust Fund and to open another; that would require the consent of the Contracting Parties, the Executive Director of UNEP; the executive head of the organization selected, and, on behalf of the Secretary-General, the United Nations Controller. There would, in principle, have to be new financial rules, since the new organization would almost certainly wish to adapt those currently in force. Finally, it would be essential to conclude a special agreement between the new organization and UNEP, and that would require the consent of the Contracting Parties.

36. If it was desired to go still further and entrust to the new organization the secretariat functions currently discharged by UNEP, the Convention would have to be revised by a diplomatic conference. It must be said, however, that in the case in point, the problem of revision is simplified by the way in which the Convention has been drafted: all that needs to be done is to amend article 13 by replacing the words "United Nations Environment Programme" by the name of the new organization. Nevertheless, there would be no way round the convening of a diplomatic conference.

Management by a member State

36. The fourth solution studied is that of entrusting the management of the Common Fund to a member State. ^{1/} The Fund in question could presumably not be the Mediterranean Regional Trust Fund in its present form. The solution, then would consist in the following: the other Contracting Parties would undertake to pay the monies representing their contributions to the Action Plan to one of the member States especially designated for that purpose. The State in question would be responsible for collecting, depositing and investing those resources, transferring them to the secretariat (via the Co-ordinator) as expenses were incurred, and, finally, keeping the Fund's books. UNEP and possibly other organizations would make payments into the Common Fund managed by the State in question, likewise for financing the Action Plan.

37. The main advantages of such a scheme lie in its apparent simplicity and in the technical competence of State organs specializing in the handling and management of financial resources. As regards the first point, it might be considered logical for States pooling their resources for a common goal to make one of their number responsible for centralizing the sums in question and re-injecting them into the programme-cost financing circuit. As regards the second question, national financial administrations are generally very efficient and experienced; they also have ready access to facilities for the deposit and investment of money, either with the national Treasury, or through the banking system. In addition, it is reasonable to suppose that any country that agreed or offered to manage a Common Fund of the kind in question would agree, or even offer, to provide this particular form of support for the Action Plan free of charge or at minimal cost. This is a point to be borne in mind in any cost-benefit analysis.

38. However, this solution has numerous drawbacks. First, there would probably be no obvious choice for the country to manage the Common Fund, and the selection might, therefore, be lengthy and complicated. Furthermore it would be technically desirable, if only in order to simplify the financial circuits and the essential contacts between the Co-ordinator and the administrator of the country managing the Fund, for that country to be the one selected as the site for the Co-ordinating Unit. That, however, introduces an additional constraint.

39. A second drawback is that, as a general rule, the budgetary procedure of States does not lend itself to the system envisaged. In principle, all countries have rules governing budget unification and the non-allocation of receipts to expenditure that run contrary to the goal in question. It is true that those rules are subject to exceptions, in such forms as special accounts, trust funds or settlement accounts, but mechanisms of that type are not easily established and entail a good deal of red tape.

40. A third drawback is that, politically speaking, it would not be very easy for the managing State to call in the contributions of any of its partners if they fell

^{1/} As a variant of this solution, management of the Common Fund could be vested in the European Economic Community. The author admits to not having investigated this alternative; he considered that the obstacles to be overcome made it unrealistic.

behind in their payments. The principle of the sovereign equality of States and the rules of courtesy that govern diplomatic relations put a State in a far more delicate situation than, say, an international organization when it comes to collecting arrears of contributions.

41. Last, but not least, there is the fact that, while it may be easy for a State to collect, deposit and invest funds, and even to keep accounts, it is far harder for it to apportion the monies between particular items of expenditure and to check that the expenditure is correctly made. In other words, a State is better fitted to be an accountant than to function as a co-ordinator (a role that would be required in the case of a Common Fund among the Contracting Parties), and it seems likely, on the face of it, that the relations between the accountants of the State in question and the Co-ordinator would be very complex. Nor would financial control be very easy. In fact, a system whereby the management of a Common Fund by a State would co-exist with the fulfilment of the secretariat functions by an organ of an international institution seems particularly problematical and would probably be quite costly in the long-run; nor do there seem to be any real precedents for such an arrangement. One precedent has been held to exist in the case of pollution control in Lake Geneva, but because of the smallness of the area covered and the number of partners (two), the example cannot be considered as applicable elsewhere.

42. The ways and means required in order to apply this solution are quite complex. First, it would be necessary to close the Mediterranean Regional Trust Fund (that would necessitate the consent not only of the Contracting Parties, but also of the Executive Director of UNEP and the United Nations Controller). Then the Contracting Parties would have to agree on the appointment of a particular member State as manager of the Common Fund. The main difficulty would then be to adopt explicit, highly detailed financial regulations relating, in particular, to the allocation of resources, the disbursement of funds and the respective roles of the managing State, as represented by one of its officials, and the Co-ordinator of the Action Plan, not to mention the legal régime under which, and the means whereby the organization could conclude contracts. Finally, there would have to be a relatively formal agreement between the Contracting Parties and UNEP spelling out the secretariat functions which the latter would be expected to fulfil. On the other hand, this option would not seem to require any amendment of the Barcelona Convention unless, in the long term, the country selected to manage the Fund itself provided secretariat services.

Complete autonomy for the organization

43. There is a fifth and final solution that can be envisaged - the most radical of all. Its *raison d'être* is as follows: while it is true that, without stating it in so many words, the Convention has given birth to an autonomous intergovernmental organization, this organization is capable of managing its resources in a completely autonomous way. In other words it is the solution of complete autonomy for the organization. This would pay homage to the historic role played by the United Nations Environment Programme in favour of a Mediterranean Action Plan. But the catalytic action would be regarded as having succeeded, and the consequence drawn from it would be that UNEP would no longer have to act as secretariat as the Contracting Parties had wished; still less would it have a role to play in the management of the financial resources of the organization. At most, UNEP would be invited to maintain its contribution to the programme expenses, but on the same footing as the other organizations within the United Nations family.

44. The essential advantage of this solution is that it has a certain coherence, as well as reinforcing the will of the Contracting Parties to form among them a concrete organization calculated to attain the goals they have assigned to the Mediterranean Action Plan. As has already been said, this is one possible interpretation of the Barcelona Convention and its protocols. It is not the only possible interpretation, and it is not self-evident. But the moment we accept it, it seems quite logical that the organization should be endowed not only with its own budget, but also with a Fund of its own and an entirely independent secretariat. This implies, moreover, that contributions by States would be regarded as mandatory and not voluntary.

45. This solution has the drawbacks of its advantages, or the virtues of its shortcomings. It implies first of all an irreversible, or at any rate not easily reversible and possibly premature evolution for an organization which emanated from a convention signed in 1976 and in fact really began to function still more recently.

46. A second drawback has to do with relations with UNEP. Radical separation from this organization may seem very violent and unduly abrupt after all the efforts by UNEP to achieve the signature of the Convention and to finance the secretariat and programme costs of the nascent institution. Furthermore, this young institution is perhaps not yet sufficiently sturdy for its members to prefer to dispense with any direct intervention by UNEP and to go it alone.

47. At a more technical level, even though there are no hard and fast rules, since international life offers an enormous variety of examples, there may be a certain lack of proportion between the complete autonomy solution and the actual size of the institution, whether from the financial point of view or from that of numbers of personnel. Without the logistical support of the United Nations, and reduced to its own forces, this institution would undoubtedly need to reinforce its secretariat and its administration very considerably. It is not certain that a "cost-benefit" analysis - the advantages of which cannot be overestimated - would at present give positive results on this hypothesis.

48. Finally, the present situation of those concerned with the Mediterranean Action Plan, particularly the officials working in the Co-ordinating Unit, calls for some thought and some reflection. These are UNEP staff members or consultants under contract to UNEP. Since it is hardly likely that if there was to be a radical separation, UNEP would agree to second these officers to the organization or put them at its disposal, they might well have to leave it in order to return to UNEP, at any rate the permanent staff members among them. At the same time, new recruits would be needed. This would mean losing competent and devoted officers, and new staff not yet familiar with questions relating to the Action Plan would have to be trained. Hence the drawbacks are not inconsiderable.

49. The ways and means of arriving at this final solution, which as we have said is the most radical of all, would themselves be radical. It would mean a thorough revision of the Barcelona Convention to clarify any ambiguities in it and to suppress any direct reference to UNEP. This would mean convening a diplomatic conference, which, in view of the nature of the amendments envisaged would itself have to be

preceded by negotiations both among the Contracting Parties and between them and UNEP. Then, once the revision had been completed, a new set of financial regulations and also new rules of procedure would have to be drawn up. After that it would be wise to proceed as soon as possible with the task of recruiting essential staff and to make arrangements, by agreement between the Contracting Parties and the Executive Director of UNEP, for the future of existing staff members who would have to be placed at the disposal of its original organization. Finally, if the Co-ordinating Unit was still located at Geneva, on United Nations premises, it would be necessary immediately to install the permanent headquarters of the secretariat in the territory of a member State.

Recapitulation of the various possible solutions

50. In view of the number (five) and complexity of the various solutions envisaged within the framework of this study, it was felt that it might be useful to recapitulate them in a synoptic table. However, for reasons of clarity and presentation, the author has preferred to place this table in annex I to the present document, so as to make it clearer and easier to read.

Final recommendations

51. The author of this study has taken care not to express any personal preferences in regard to the various possible solutions; indeed, he was neither qualified nor authorized to do so. On the other hand, he felt it necessary to provide the reader with such recommendations as he thought might be pertinent whatever the solution finally adopted by the Contracting Parties to the Barcelona Convention.

52. The first recommendation has to do with the procedure for studying the question raised. As already stated, the shortness of the time available for undertaking this study has had one obvious drawback: it has not been possible, in so short a period, to consult all the individuals or bodies whose views would have been precious if not indispensable. This is true in particular of the following organizations:

The services of the United Nations Legal Counsel;

The services of the United Nations Controller;

The United Nations Under Secretary-General for Inter-Agency Affairs and Co-ordination and the Administrative Committee on Co-ordination (if appropriate).

It is therefore indispensable to make contact with these individuals or bodies if the Contracting Parties should consider it necessary to make a more in-depth study or merely to study the detailed application of this or that solution which they have in mind.

53. The second recommendation has to do with the time-table. If we leave aside the first solution (maintenance of the status quo), all the others imply not merely weighing their relative advantages and disadvantages (for example by means of a "cost-benefit" analysis), but also setting in motion complicated ways and means. However, the second meeting of the Contracting Parties is scheduled to take place in March 1981, whereas the Mediterranean Regional Trust Fund, set up for a period of two years, is due to expire in July 1981. It hardly seems feasible to

set in motion the ways and means essential for an alternative solution in the brief interval between March and July. Even assuming that, in spite of the shortcomings of the present study, the participants at the second meeting of the Contracting Parties feel themselves sufficiently well informed to adopt a solution in principle (other than the solution of the status quo), they would have to hold up the entry into force of the new formula. Otherwise there is a great danger of a hiatus or a vacuum between the closing down of the Regional Trust Fund and the setting up of a new Fund (Common Fund of the institution or new special United Nations Trust Fund). This is all the more likely inasmuch as, unless the institution were reactivated, the closing down procedure would take place automatically.

54. It would be reasonable, therefore, whatever change is decided, to maintain the status quo for a limited period, in other words to renew the Special Fund for a limited time. With regard to the length of the period of renewal, since the purpose is to allow enough time to set in motion the necessary ways and means to make another solution effective, this period will depend on the solution chosen (since the complexity of the ways and means will differ according to the solution); on the haste of the Contracting Parties in making the change; and finally on the feasibility of their meeting to take the necessary organizational decisions. Hence the answer to this question of length of the period is in the abstract impossible. What can be said is that the extension should be at least until 31 December 1982, and possibly for two years, i.e. until July 1983. Such a period (one-and-a-half to two years) would be the minimum required to set up the basic arrangements.

55. The third type of recommendation relates to the procedure to be followed in working out these ways and means. The author of this study ventures along this path with considerable caution. He is aware that it is for the Contracting Parties themselves to organize as they wish, and he is afraid that there is a danger of going beyond the terms of reference assigned to him. It may be noted, however, that except for the hypothesis of maintaining the status quo "permanently", all the other solutions imply a fairly thorough amendment of the financial regulations at present in force. The drafting of a new text is not an insurmountable task. There are many regulations of the sort which the institution could use as a model. But it is all the same a delicate task. It means adapting the regulations to the specific objectives and characteristics of the institution. It also means reconciling the flexibility necessary with the safeguards which are indispensable. The drafting of such an instrument must therefore be done with the utmost care. It might well be entrusted to an ad hoc working group, or prepared by the Executive Director of UNEP or by the Co-ordinator of the Action Plan and submitted for examination and revision to a meeting of experts or a meeting of the Contracting Parties held exclusively for this purpose. Thus a variety of approaches are possible, but here again we are at the heart of the problem.

56. As a purely indicative measure, annex II below contains a list of the main headings which would have to be covered by such rules of procedure. I say as an indicative measure, since such a list, based on the rules of procedure in force in many organizations, inside and outside the United Nations system, in no way claims to be either exhaustive or mandatory. But it can indicate the type of work that needs to be done to set up and implement an alternative solution, whichever one is chosen.

57. A fourth and last recommendation has to do with the actual mechanics of a fund, whether it is a Special Fund like the one at present in force, or a Common Fund belonging to the organization. In any event, there is one overriding difficulty of which all international institutions are well aware, namely that expenditure must be spread over the whole year (or even over a biennium), whereas income arrives irregularly and often on an arbitrary basis. Whether the contributions of States are mandatory or voluntary, they frequently involve delays in payment. The causes are many: difficulties in budgetary or internal parliamentary procedure, problems relating to exchange, desire on the part of States to control the expenditure of the organization by spacing their contributions, internal cash difficulties, etc. But the result, obviously, is that international organizations in turn have their cash problems, and at times serious financial crises. For this reason it would seem to be highly desirable to set up a revolving fund. As we know, the main object of such a fund, fed by advances from States and other members, is to enable it to make advances to the general fund, precisely pending the receipt of regular revenue such as contributions. For an outside observer, the absence of a revolving fund or similar machinery is extremely prejudicial to the Mediterranean Action Plan. Whatever the solution adopted by the Contracting Parties, they should bear in mind this essential feature of good management - the establishment of a revolving fund.

Conclusions.

58. As stated in paragraph 4 above, the purpose of this study is to serve as a basis for useful discussion by the participants at the second meeting of the Contracting Parties to the Barcelona Convention and the related protocols. It seemed reasonable to envisage only the five solutions described above and summarized in the synoptic table in annex I. There are other conceivable solutions, but they did not seem to be realistic. However, two final remarks may be made as we come to the end of this analysis:

In the first place, there is nothing to prevent the Contracting Parties from adopting variants, in other words from combining two solutions or choosing a path half way between two solutions.

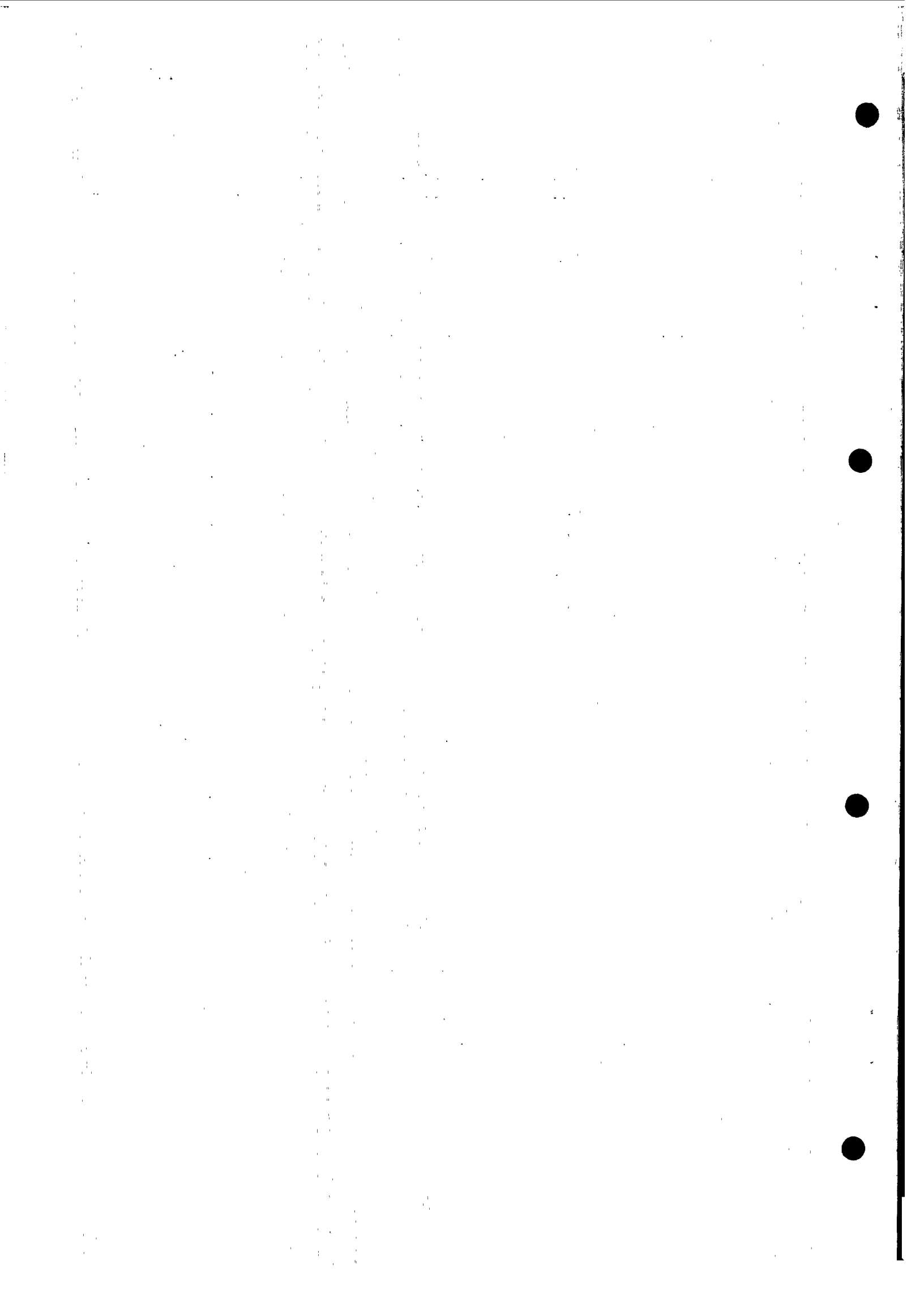
Finally, from a remote angle, it is possible to reclassify the five solutions studied here in a logical fashion. The first two and the fifth, in other words the status quo, institutionalization of the Co-ordinator's office, and complete autonomy, are actually all three, in spite of their profound differences, in the direct line of the Barcelona Convention. If we agree that every institution lives and evolves, these three solutions fundamentally correspond to three different stages in one and the same evolution. This does not of course mean that the stages must necessarily come one after another chronologically. The "decision-makers" may perfectly well crystallize the evolution at a particular stage if they so desire. But logically, these three different paths are situated along the same axis. On the one hand, the third and fourth solutions (management of the Fund by an international organization other than UNEP, or by a member State) are deviations from the original axis. Here again, this does not imply that the solutions in question should be discarded out of hand, on the pretext of some logical categorical imperative. On the contrary, they may be conceived as a veering away - possibly even desirable - from an initial path in the light of critical comment. But there could no doubt be some virtue in suggesting such a classification to those participating in the meeting at Cannes.

Jean-Paul COSTA
Paris, 20 January 1981

Annex I

Table recapitulating the various possible solutions

	<u>Solution 1:</u>	<u>Solution 2:</u>	<u>Solution 3:</u>	<u>Solution 4:</u>	<u>Solution 5:</u>
	Maintenance of the <u>status quo</u>	Institutionalization of the co-ordinator's office	Separate international organization	Management by a member State	Complete autonomy
Where the description may be found	Paragraph 16	Paragraph 22	Paragraph 30	Paragraph 36	Paragraph 43
Advantages of the various solutions	.A system that works .Safeguards	.Flexibility .Autonomy .Simplicity	.Little change .Greatest strength	.Simplicity .Technical competence	.Coherence .Political will
Short-comings of the various solutions	.Rigidity .Management costs .Incoherence in the final analysis	.Change .Staff increases .Relations with UNEP	.Problems of choice .Relations with UNEP .Complexity	.Problems of choice .Political and technical complication	.Abrupt change .Relations with UNEP .Staffing problems
Ways and means to be adopted for each solution	Decision to prolong the Fund	.New financial regulations .Agreement with UNEP .Revision of the Convention (ultimately)	.Consultation and selection .New financial regulations .Agreement with UNEP .Possible revision of the Convention (ultimately)	.Consultation and selection .New financial regulations .Agreement with UNEP .Possible revision of the Convention (ultimately)	.Revision of Convention (immediate) .New financial regulations and rules procedure .Agreement with UNEP .Staff questions
Diplomatic conference needed	No	No (except perhaps ultimately)	No (except perhaps ultimately)	No (except perhaps ultimately)	Yes



Annex II

Main headings generally found in the financial regulations of international organizations (purely indicative)

Scope

Financial year

Preparation and form of budget

Financing of expenditure (and where appropriate, scale of contribution of members)

Voting of credits and earmarking of expenditure

Formation of funds (general funds, revolving funds and miscellaneous funds)

Miscellaneous income

Depositing and investment of funds

Accountancy

Internal control

Outside auditing of accounts

Delegation of powers

