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REPORT OF INTERGOVERNMENTAL CONSULTATION CONCERNING A DRAFT PROTOCOL FOR THE PROTECTION OF THE MEDITERRANEAN SEA AGAINST POLLUTION FROM LAND-BASED SOURCES ATHENS, 7-11 FEBRUARY 1977

Introduction

1. At the Intergovernmental Meeting on the Protection of the Mediterranean, which was convened by UNEP in co-operation with the Food and Agriculture Organization of the United Nations (FAO) and the Inter-Governmental Maritime Consultative Organization (IMCO) at Barcelona from 28 January to 4 February 1975, representatives of the Mediterranean coastal States 1/ approved an Action Plan 2/ consisting of four components: legal, scientific, integrated planning, and institutional and financial arrangements. Under the legal component of the Action Plan, the Mediterranean States "considered it to be particularly necessary and urgent to provide a legal basis for international co-operation to protect the marine environment in the Mediterranean", 3/ and they "endorsed the principles regarding the setting up of a framework convention and related protocols and technical annexes". 4/ The meeting also requested the Executive Director of UNEP to convene a conference of plenipotentiaries for the purpose of adopting a framework convention and related protocols.

2. To this end the Executive Director of UNEP convened, in co-operation with FAO and IMCO, the Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region for the Protection of the Mediterranean Sea at Barcelona from 2 to 16 February 1976. Sixteen Governments 5/ attended the Conference and approved the following legal instruments:

1/ Sixteen Mediterranean coastal States were represented: Algeria, Egypt, France, Greece, Israel, Italy, Lebanon, Libyan Arab Republic, Malta, Monaco, Morocco, Spain, Syrian Arab Republic, Tunisia, Turkey, Yugoslavia.

2/ Report of the Intergovernmental Meeting on the Protection of the Mediterranean (UNEP/WG.2/5), annex.

3/ UNEP/WG.2/5, annex, page 4, paragraph III.A.1.

4/ UNEP/WG.2/5, annex, page 4, paragraph III.A.2.

5/ Cyprus, Egypt, France, Greece, Israel, Italy, Lebanon, Libyan Arab Republic, Malta, Monaco, Morocco, Spain, Syrian Arab Republic, Tunisia, Turkey, Yugoslavia.

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;

Protocol concerning Co-operation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency.

At present 15 Mediterranean States 6/ and the European Economic Community have signed the Convention and at least one protocol. One State, Spain, has deposited its instrument of ratification for the Convention and two protocols.

3. Article 8 of the Convention binds the Contracting Parties to "take all appropriate measures to prevent, abate and combat pollution of the Mediterranean Sea Area caused by discharges from rivers, coastal establishments or outfalls, or emanating from any other land-based sources within their territories". 7/ In this connexion, the Conference of Plenipotentiaries also adopted a resolution calling on the Executive Director "to continue the preparatory work for a draft Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources". 8/

4. In response to this request UNEP, in co-operation with the World Health Organization, convened an Intergovernmental Consultation concerning a Draft Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources. At the kind invitation of the Government of Greece, the Consultation was held at Athens from 7 to 11 February 1977.

Agenda item 1. Opening of the meeting

5. The meeting was opened by Mr. Peter S. Thacher, Director, UNEP Geneva Office, on behalf of Dr. Mostafa K. Tolba, the Executive Director of UNEP. Mr. Thacher welcomed participants to the meeting and assured them of UNEP's strong interest in receiving their guidance on the matters before them for consideration. Mr. Thacher informed the participants in general terms about activities which UNEP, in co-operation with the specialized agencies and bodies of the United Nations system, had organized within the overall framework of the Mediterranean Action Plan; he stressed the interrelationship between the legal aspects - for which this meeting is an important additional step - and the scientific and other aspects of the comprehensive Action Plan which the Mediterranean Governments had approved two years earlier.

6/ Cyprus, Egypt, France, Greece, Israel, Italy, Lebanon, Libyan Arab Republic, Malta, Monaco, Morocco, Spain, Tunisia, Turkey, Yugoslavia.

7/ Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region for the Protection of the Mediterranean Sea, Barcelona, 2-16 February 1976, Office of Public Information, United Nations, Geneva, March 1976.

8/ Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region for the Protection of the Mediterranean Sea, Barcelona, 2-16 February 1976, Office of Public Information, United Nations, Geneva, March 1976, resolution 2.

6. Mr. C.A. Stavropoulos, Under-Secretary of State for Foreign Affairs, welcomed the participants to Greece and stressed the interest of his Government in environmental activities. He explained that the task before the meeting was to cope with the actual problems of today, and simultaneously to find solutions for their evolution in the future; he expressed his assurance that each delegation would work constructively for the success of the meeting.

Agenda item 2. Organization of the meeting

7. The meeting unanimously elected the following officers:

Chairman: Mr. C.A. Stavropoulos (Greece)
Under-Secretary of State for Foreign Affairs

Vice-Chairman: Mr. H.J. Crepin-Leblond (France)
Conseiller, Ministère des Affaires Etrangères

Vice-Chairman: Mr. Mohamed Hadj Ali Salem (Tunisia)
Mâitre de Conférences
Chef du Département de Pollution

8. The meeting adopted the rules of procedure of the UNEP Governing Council mutatis mutandis as provided for in rule 62 of these rules (UNEP/GC/3/Rev.1).

Agenda item 3. Adoption of the agenda

9. The meeting adopted the agenda as set forth in annex I to this report.

Agenda item 4. Draft Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources

10. The meeting then proceeded to consider the principles suggested for inclusion in the draft protocol (UNEP/IG.6/3) and recommended the revised principles contained in annex III. Square brackets have been put around principles or clauses that were not adopted by all delegations. Comments made with regard to specific principles are noted below.

Preamble

11. Although the meeting did not consider the preamble proposed in UNEP/IG.6/3, it was suggested that a paragraph should be included in the preamble referring to other relevant international agreements and to the precise scope of the Protocol itself.

Principle 2

12. The brackets in paragraph 2(a) around the words "territorial seas and" were introduced to reflect the view of some delegations that this terminology was not required in the light of article 1, paragraph 2, of the Barcelona Convention.

13. The brackets around paragraphs 2(b)(iv) and 2(b)(v) indicate the view of several delegations that further technical work was needed in this area before a decision could be made as to how to formulate paragraph 2(b)(iv) and whether to include paragraph 2(b)(v). While some delegations believed that it would be premature to

consider marine pollution by airborne substances, the meeting felt that it would be useful for additional scientific information to be provided so that further consultations could proceed on the basis of the best information available. It was agreed that the inclusion of airborne substances should not delay the conclusion of the protocol. One delegation observed that, if references to atmospheric transfer of pollutants from land-based sources were deleted from the principles, the scope of the Protocol would be substantially diminished.

Principle 3

14. Some delegations suggested that principles 3 and 7 should be moved so as to appear in the text after principles 4, 5 and 6. Reservations were also expressed regarding the application of different standards to existing sources of pollution and new installations.

Principle 5

15. The meeting was unable to reach agreement on the inclusion of paragraph 5(b), and it was decided to leave the paragraph in brackets.

Principle 7

16. In view of the lack of a precise definition of "new installations" in the documents before the meeting, it decided to leave the principle in brackets. The Secretariat was requested to provide for the next consultation a list of definitions relevant to the Principles.

Principle 8

17. While the meeting agreed on a general reference in the present principles to specially protected areas, the meeting felt that specific provisions could be developed in a separate legal instrument, taking into account the relevant work of other international organizations, and that this question could be usefully considered by the intergovernmental meeting of Mediterranean coastal States to be convened by UNEP at Monaco in November 1977. The meeting agreed that principle 8 should apply only to the Protocol Area. One delegation suggested that the French term "zones" needed further clarification.

Principle 11

18. Several delegations stressed the need for accelerated efforts by national and international funding agencies to assist developing countries in meeting the possible additional costs of implementing the provisions of the Protocol. The representative of UNEP stated that, although UNEP itself was not a funding agency, its mandate included assisting States in their endeavours to obtain financial support from the various sources available. Other delegations, while favourably disposed to the principle, considered it necessary to study the proposal in more depth. It was decided, therefore, to leave the entire principle in square brackets.

Principle 13

19. Paragraph 13(a) was placed in brackets to indicate the need for further study. One delegation announced its intention to present to the intergovernmental meeting of Mediterranean coastal States at Monaco, 1977, a special study of liability and compensation aspects in the context of resolution 4 of the 1976 Barcelona Conference.

Principle 15

20. Paragraphs 15(b)(v) and (vi) were placed in brackets because of the reservations regarding the inclusion of principle 5, paragraph (b), and principle 7. Paragraph 15(b)(viii) was placed in brackets because some delegations felt that the paragraph needed further consideration.

21. Some delegations felt that information to be circulated by the Organization and considered by the meetings of the Parties could include information concerning non-compliance with the provisions of the Protocol.

Principle 16

22. This principle appears in brackets because it will only be required in the event of deviation from article 17, paragraph 2, of the Barcelona Convention.

Principle 17

23. Paragraph 17(v) is placed between brackets because it will only be required in the event of deviation from article 27, paragraph 3, of the Barcelona Convention.

Technical annexes

24. Detailed consideration of the technical annexes (UNEP/IG.6/4) was deferred to future meetings of governmental experts. One delegation submitted a proposal for alternative texts of annexes I and II (UNEP/IG.6/CRP.7). It was agreed that WHO should revise the technical annexes in the light of views expressed during the meeting and any comments which may be communicated to WHO.

Time-table for future negotiations

25. The meeting recommended that the Executive Director of UNEP should accept the kind offer of the Government of Italy to act as host to the next intergovernmental consultation concerning a draft Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources. The representative of UNEP suggested that this consultation should be convened from 17 to 21 October 1977. The Meeting took note of the plan of UNEP and WHO to convene a meeting of Government experts in Geneva starting 19 September 1977 to review the results of the ECE/UNIDO/FAO/UNESCO/WHO/IAEA/UNEP joint project on pollutants from land-based sources on which the Executive Director will report to Governments at the Monaco meeting. The Meeting felt that it would be useful if UNEP and WHO could assure that the technical experts, at their September meeting, will consider in depth the appropriate technical annexes and technical problems relevant to the protocol on land-based sources with a view to preparing agreed recommendations for consideration by the next intergovernmental consultation concerning a draft Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources.

26. The results of the second intergovernmental consultation should be presented to the intergovernmental meeting of Mediterranean coastal States, Monaco, November 1977.

27. The meeting expressed its deep appreciation and sincere gratitude for the courtesy and generous hospitality extended by the Government of Greece and the City of Athens to the members of the delegations, observers and the secretariat attending the Conference, and it unanimously agreed that the efforts which had been made by the Government of Greece and the authorities of Athens in providing facilities, premises and other resources, had contributed significantly to the smooth conduct of its proceedings.

ANNEX I

AGENDA

1. Opening of the meeting
2. Organization of the meeting
3. Adoption of agenda
4. Draft Protocol for the Protection of the Mediterranean Sea Against Pollution from Land-Based Sources
 - 4.1 Scope of protocol
 - 4.2 Consideration of Principles suggested for inclusion in the draft protocol and of proposed technical annexes
 - 4.3 Time-table for future negotiations
5. Other business
6. Adoption of Report
7. Closure of the Consultation

ANNEX II

PRINCIPLES RECOMMENDED FOR INCLUSION IN THE DRAFT PROTOCOL
FOR THE PROTECTION OF THE MEDITERRANEAN SEA AGAINST
POLLUTION FROM LAND-BASED SOURCES

Principle 1. General obligation

The Contracting Parties to this Protocol (hereinafter referred to as "the Parties") should take all appropriate measures to prevent, abate and combat pollution of the Mediterranean Sea Area caused by discharges from rivers, coastal establishments or outfalls, or emanating from any other land-based sources within their territories.

Principle 2. Scope and geographical coverage

(a) The area to which this Protocol applies (hereinafter referred to as the "Protocol Area") should be the Mediterranean Sea Area as defined in article 1 of the Convention and should include the [territorial seas and] waters on the landward side of the base-lines from which the breadth of the territorial sea is measured, extending, in the case of watercourses, up to the freshwater limit. "Freshwater limit" means the place in the watercourse where, at low tide and in a period of low freshwater flow, there is an appreciable increase in salinity due to the presence of sea-water.

(b) The Protocol should apply to all polluting discharges reaching the Protocol Area from the territories of the Parties:

- (i) directly from the coast through coastal dumping or from coastal establishments or outfalls;
- (ii) through run-off from land;
- (iii) through rivers, canals and other watercourses;
- [(iv) from man-made off-shore structures which are under the jurisdiction of a Party and which serve purposes other than the exploration and exploitation of mineral resources in the sea;]
- [(v) through the atmosphere (wherever this is specified in the Protocol or in any annex thereto).]

Principle 3. Reduction of pollution from existing sources

The Parties should undertake to elaborate and adopt programmes for the progressive reduction of pollution from existing land-based sources which will lead to an improvement in the quality of the environment and which will take place according to a time-table agreed upon by the Parties.

Principle 4. Substances listed in annex I

(a) The Parties should undertake to adopt strict measures in order to eliminate pollution of the Protocol Area from land-based sources by the substances listed in annex I. To this end they should elaborate, jointly or individually as appropriate, programmes and measures capable of leading to such elimination, if necessary in stages.

(b) The Parties should, within a period of ... years from the date of entry into force of this Protocol, prepare and adopt a time-table for the application of standards for emissions and/or standards of use as appropriate. The standards and time-table would be fixed by common agreement and periodically reviewed for each of the substances of annex I.

Principle 5. Substances listed in annex II

(a) The Parties should combat and strictly limit pollution from land-based sources in the Protocol Area by substances listed in annex II and should elaborate, jointly or individually as appropriate, programmes and implement measures towards this end.

[(b) All discharges should be made subject to the issue of an authorization by the competent national authorities, which will take into account the criteria laid down in annex III.]

Principle 6. Special guidelines, criteria or standards

(a) The Parties should progressively elaborate and adopt, in co-operation with the competent international organizations, common guidelines, criteria or standards dealing, inter alia, with:

- (i) the length, depth and position of pipelines for coastal outfalls;
- (ii) special requirements for separate treatment of hazardous types of sewage, such as sewage from hospitals and industrial wastes which may be harmful to man or living resources or which may create difficulties for the biological treatment of municipal waste waters;
- (iii) quality of waters used for specific purposes and necessary for the protection of human health (fish and shellfish, bathing water), of living resources (fisheries, fishing activities, aquaculture) and of ecosystems;
- (iv) a control and progressive replacement of products, installations and industrial and other processes contributing significantly to water pollution either directly or through rivers or the atmosphere;
- (v) special requirements concerning the quantities of discharges of substances referred to in principles 4 and 5, the concentration of such substances in effluents and the methods of discharging them.

(b) Without prejudice to the provisions of principle 4, such guidelines, criteria or standards should take into account subregional features, local geographical and physical characteristics, the economic capacity of States and their need for economic development, the level of existing pollution and the local environmental capacity of the marine environment.

They may be adopted either in the form of recommended practices or in the form of provisions to be incorporated in annexes to the Protocol.

Principle 7. Discharges from new installations

[The Parties should, through the implementation, jointly or individually as appropriate, of programmes and measures, ensure within ... year(s) from the entry into force of the Protocol that discharges of domestic or industrial wastes into the Protocol Area from newly established installations as defined in annex IV undergo previous treatment complying with the minimum requirements set forth in the technical guidelines contained in annex V.]

Principle 8. Specially protected areas

The Parties should take all appropriate measures, through the establishment of marine parks, zoning provisions and similar means, to protect to the largest extent possible, from any land-based pollution, certain areas selected because of particular ecological conditions, uses or conservation requirements.

Principle 9. Monitoring

Within the framework of the monitoring programmes provided for in article 10 of the Convention, and if necessary in co-operation with the competent international bodies, the Parties should implement at the earliest possible date monitoring activities to ensure:

- as far as possible, systematic assessments and periodic information on the levels of pollution along their coasts, in particular with regard to the substances listed in annexes I and II;
- an evaluation of measures for the reduction of marine pollution taken under the present Protocol.

Principle 10. Scientific and technological co-operation

In conformity with article 11 of the Convention, the Parties should undertake to co-operate as far as possible in fields relating to science and technology related to pollution from land-based sources, including research on inputs, pathways and effects of pollutants and on the development of new methods for treatment, disposal and reduction. To this end the Parties should, in particular, endeavour to:

- (i) exchange scientific and technical information;
- (ii) co-ordinate their research programmes.

Principle 11. Training and assistance

[The Parties should, as far as possible, directly or if necessary with the assistance of regional organizations or qualified international organizations:

- (a) Promote programmes of assistance for developing countries in the fields of science, education, technology etc., with a view to preventing pollution from land-based sources and its harmful effects on the environment.
- (b) Such technical assistance could, on a favourable financial basis, cover for example the training of scientific and technical personnel, and the acquisition, utilization and production by the countries themselves of appropriate equipment.]

Principle 12. Watercourses shared by several States

(a) If the discharge from a watercourse which flows through the territories of two or more Parties or forms a boundary between them is liable to cause pollution of the marine environment of the Protocol Area, the Parties concerned should endeavour to take appropriate measures in common in order to prevent, abate and combat as far as possible such pollution.

(b) The provisions of the Protocol may not be invoked against a Party to the extent that the latter is prevented, as a result of pollution having its origin in the territory of a non-contracting State, from ensuring their full application.

Principle 13. Discharge affecting other Parties

[(a) Each Party should ensure at all times that discharges of wastes from its territory do not prejudice the interests of one or more of the other Parties and should, whenever necessary for this purpose or whenever requested by any other Party concerned, enter into mutual consultation with a view to reaching an agreed solution.]

(b) At the request of any Party concerned, the question should be considered at the next meeting of the Parties, which may make recommendations with a view to reaching a satisfactory solution.

Principle 14

(a) The Parties would undertake to inform one another, either directly or through the Organization designated in article 13 of the Convention (hereinafter referred to as the "Organization"), of measures taken under principles 4, (5), 7, 9 and (11) and of any difficulties encountered in their implementation.

(b) Information communicated through the Organization should be circulated to the other Parties, who would examine it at their meetings as indicated in principle 15 below.

(c) Parties which have agreed to exchange information directly between themselves shall nevertheless communicate such information to the Organization.

Principle 15. Meetings of the Parties

(a) Ordinary meetings of the Parties should be held in conjunction with ordinary meetings of the Contracting Parties held pursuant to article 14 of the Convention. The Parties may also hold extraordinary meetings as provided in the rules of procedure adopted under article 18 of the Convention.

(b) It should be the function of the meetings of the Parties:

- (i) to keep under review the implementation of the Protocol and to consider the efficacy of the measures adopted and the need for any other measures;
- (ii) to review and amend, as required, the annexes to the Protocol;

- (iii) to elaborate and adopt agreed programmes for the progressive reduction of pollution from existing land-based sources in accordance with principle 3 and to consider reports of the Parties on the implementation of these programmes;
- (iv) to consider the reports of the Parties on the measures taken for the prevention of pollution by substances in annex I in accordance with principle 4 and any difficulties encountered in the implementation of such measures;
- [(v) to review the statistical records of licences granted by the Parties for the discharge of substances of annex II in accordance with principle 5 and to determine, as may be found necessary, the intervals and manner for the submission of such records;]
- [(vi) to consider the reports of the Parties on the measures taken to ensure the treatment of all discharges from newly established installations or outfalls in accordance with principle 7 and any difficulties encountered in the implementation of such measures;]
- (vii) to adopt in accordance with principle 6 special standards, either in the form of recommended practices or in the form of annexes to the Protocol;
- [(viii) to consider information from the Parties on areas protected in accordance with principle 8 and to determine, as may be found necessary, the intervals and manner for the submission of such information, as well as any criteria for the various categories of areas and the protective measures applicable to them;]
- (ix) to consider reports of the Parties on the monitoring measures undertaken in accordance with principle 9 and to determine, if found necessary, the intervals and manner for the submission of such reports;
- (x) to make, in accordance with principle 13, recommendations regarding pollution from the territory of one Party affecting one or more other Parties;
- (xi) to receive through the Organization the information at its disposal under the Protocol, and to make recommendations as appropriate;
- (xii) to discharge such other functions as may be appropriate for the implementation of this Protocol.

Principle 16. Annexes and amendments to annexes

[The amendment of the annexes to this Protocol or the adoption of additional annexes pursuant to article 17 of the Convention should require, notwithstanding subparagraph 2(ii) of that article, a ... majority of the Parties.]

Principle 17. Final clauses

(1) The provisions of the Convention relating to any Protocol should apply with respect to the present Protocol.

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

(3) This Protocol should be open for signature in from to by any State invited to participate in the Conference of Plenipotentiaries at which it will be adopted. It should also be open for signature by the European Economic Community and by any similar regional economic grouping of which at least one member is a coastal State of the Mediterranean Sea Area and which exercises competence in fields covered by this Protocol.

(4) As from, this Protocol should be open for accession by States, by the European Economic Community and by any grouping referred to in paragraph 3 of this principle.

[(5) This Protocol should enter into force on the thirtieth day following the deposit of at least instruments of ratification, acceptance or approval of, or accession to, the Protocol by the Parties referred to in paragraph 3 of this principle.]