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Item 4.3 of the Provisional Agenda

## Note by the Executive Director

The draft Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft attached hereto, together with its technical annexes I, II and III, have been prepared under the auspices of the Spanish Delegation. They are submitted to participants to this meeting for preliminary consideration. It is envisaged that this Protocol and related technical annexes may be adopted simultaneously with the Framework Convention by a Conference of Plenipotentiaries. 1/

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1/ UNEP/WG.2/4



DRAFT PROTOCOL FOR THE PREVENTION ON POLLUTION OF THE  
MEDITERRANEAN SEA BY DUMPING FROM SHIPS AND AIRCRAFT

Submitted by the Spanish Delegation

Article 1. -

The Parties to the Protocol pledge themselves to take all possible steps to prevent the pollution of the Mediterranean Sea by the dumping of substances or materials that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea. (art. 1.L)

Article 2. -

1. - The area to which this Protocol applies is provided for in article .... of the Convention.

2. - The Parties agree to apply the measures which they adopt in such a way as to prevent the deliberate diversion of dumping into maritime areas outside the area to which this Protocol applies (art. 3.O; art. 3.R).

Article 3. -

For the purposes of this Protocol:

[1. - "Dumping" means any deliberate disposal of substances or materials into the sea by or from ships or aircraft other than:

(a) - any discharge incidental to or derived from the normal operation of ships and aircraft or their equipment;

(b) - the placing of substances or materials for a purpose other than the mere disposal thereof, if not contrary to the aim of this Protocol.] (art. 19-1.O; art. 4-1.R)

OR

[1. - "Dumping" means:

(a) - any deliberate disposal at sea of wastes or other matter from ships, aircraft, platforms or other man-made structures at sea;

(b) - any deliberate disposal at sea of ships, aircraft, platforms or other man-made structures at sea.

"Dumping" does not include:

(a) - the disposal at sea of wastes or other matter incidental to or derived from the normal operations of ships, aircraft, platforms, or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to ships, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such ships, aircraft, platforms or structures;



(b) - placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Protocol.] (art. 3-1.L)

[2. - "Ships and aircraft" means sea-going vessels and air-borne craft of any type whatsoever. This expression includes air-cushion craft, floating craft whether self-propelled or not, and fixed or floating platforms.] (art. 19-2.0; art. 4-2.R)

OR

[2. - "Ships and aircraft" means waterborne or airborne craft of any type whatsoever. This expression includes air-cushioned craft and floating craft whether self-propelled or not.] (art. 3-2 L)

3. - "Sea" means the Mediterranean Sea, as delimited in article.... of the Convention.

4. - "Commission" means the Commission established in art.... of the Convention.

Article 4. -

The dumping into the sea of substances or materials listed in Annex I to this Protocol is prohibited. (art. 4-1-a.L; art. 5-0; art. 5.R)

Article 5. -

The dumping into the sea of substances or materials listed in Annex II to this Protocol, requires, in each case, a prior special permit from the appropriate national authorities. (art. 4-1-b.L)

Article 6. -

The dumping into the sea of all other substances or materials requires a prior general permit from the appropriate national authorities. (art. 4-1-c.L)

Article 7. -

The permits referred to in articles 5 and 6 shall be issued only after careful consideration of all the factors set forth in Annex III to this Protocol. (art. 4-2.L)

Article 8. -

The provisions of articles 4, 5 and 6 shall not apply in case of force majeure due to stress of weather or any other cause when the safety of human life or of a ship or aircraft is threatened. Such dumping shall immediately be reported to the Commission, together with full details of the circumstances and of the nature and quantities of the substances or materials dumped. (art. 8-1.0; art. 8-.R)



Article 9.

If a Party in a critical situation [of an urgent and exceptional nature] considers that a substance or material listed in Annex I to this Protocol cannot be disposed of in land without unacceptable danger or damage [above all for the safety of human lives], the Party concerned shall forthwith consult the Commission. The Commission shall recommend methods of storage or the most satisfactory means of destruction or disposal under the prevailing circumstances. The Party shall inform the Commission of the steps adopted in pursuance of these recommendations. [Such steps shall not prejudice the interests of the other Parties]. The Parties pledge themselves to assist one another in such situations.] (art. 9.O; art. 9.R)

OR

[A Party may issue a special permit as an exception to article 4, in emergencies posing unacceptable risk relating to human health and admitting no other feasible solution. Before doing so the Party shall consult any other country or countries that are likely to be affected and the Commission which, after consulting other Parties and international organizations as appropriate, shall promptly recommend to the Party the most appropriate procedures to adopt. The Party shall follow these recommendations to the maximum extent feasible consistent with the time within which action must be taken and the general obligation to avoid damage to the marine environment and shall inform the Commission of the action it takes. The Parties pledge themselves to assist one another in such situations.] (art. 5-2.L)

Article 10.

1. - Each Party shall designate an appropriate national authority to:

- (a) - issue the special permits provided for in article 5;
- (b) - issue the general permits provided for in article 6;
- (c) - keep records of the nature and quantities of the substances or materials permitted to be dumped and the location, time and method of dumping.  
(art. 5-1.L)

2. - The appropriate national authorities of each Party shall issue the permits provided for in articles 5 and 6 in respect of the substances or materials intended for dumping:

- (a) - loaded in its territory; or
- (b) - loaded by a ship or aircraft registered in its territory or flying its flag, [or operating under its authority,] when the loading occurs in the territory of a State not Party to this Protocol. (art. 6-2.L)

Article 11.

1. - Each Party shall apply the measures required to implement the present Protocol to all:

- (a) - ships and aircraft registered in its territory or flying its flag, [or operating under its authority];
- (b) - ships and aircraft loading in its territory substances or materials which are to be dumped;





(c) - ships and aircraft, [under its jurisdiction], believed to be engaged in dumping [within its territorial sea]. (art. 7-1.L; art. 15-1.0; art. 15-1.R)

[2. - Nothing in this Protocol shall abridge sovereign immunity to which certain ships and aircraft are entitled under international law.] (art. 15-6.0; art. 15-6.R)

OR

[2. - This Protocol shall not apply to those ships and aircraft entitled to sovereign immunity under international law. However each Party shall ensure by the adoption of appropriate measures that such ship and aircraft [owned or operated by it], [registered in its territory, flying its flag or operating under its authority] act in a manner consistent with the object and purpose of this Protocol, and shall inform the Commission accordingly.] (art. 7-4.L)

Article 12. -

Each Party undertakes to issue instructions to its maritime inspection ships and aircraft and to other appropriate services to report to its authorities any incidents or conditions, [on the high seas], [in the area to which this Protocol applies], which give rise to suspicions that dumping in contravention to the provisions of this Protocol has occurred or is about to occur. That Party shall, if it considers it appropriate, report accordingly to any other Party concerned. (art. 15-2.0; art. 15-2.R)

Article 13. -

1. - Nothing in this Protocol shall prejudice the present or future legal views of any Party concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction. (art. 13.L)

2. - Nothing in this Protocol shall affect the right of each Party to adopt other measures, in accordance with international law, to prevent dumping at sea.

Article 14. -

1. - Each Party to the Protocol shall be represented in the Commission when the Commission deals with matters related to the Protocol.

2. - The Commission shall meet at regular intervals to deal with matters related to the Protocol. The Commission may equally meet in special circumstances when it is so decided in accordance with its Rules of Procedure. (art. 16.0)

Article 15. -

As far as the Protocol is concerned, it shall be the duty of the Commission:

(a) - to exercise overall supervision over the implementation of this Protocol; (art. 17-a.0)

(b) - to receive and consider the records of the permits issued, in accordance with articles 5 and 6, and the dumping which has taken place; (art. 17-b.0)



(c) - to review generally the conditions of the sea, the efficacy of the control measures being adopted and the need for any additional or different measures; (art. 17-c.0)

(d) - to make appropriate recommendations, in accordance with article 9;

(e) - to keep under review the contents of the Annexes to this Protocol and adopt such amendments as may be required; (art. 17-d.0)

(f) - to request that a Conference for the purpose of revising this Protocol be convened;

(g) - to discharge such other functions as may be appropriate under the terms of this Protocol. (art. 17-e.0)

Article 16. -

1. - The Commission may, by a two thirds majority decision, request the depositary Government to convene a Conference for the purpose of revising this Protocol. (art. 25.0)

2. - The Commission may, by unanimous decision, to modify the Annexes to this Protocol. Such amendments shall enter into force after unanimous approval by all Parties. (art. 18-2.0)

Article 17. -

This Protocol shall be opened for signature at....., from....to..... by the States invited to the Conference of the Environment of the Eco-Region of the Mediterranean Sea, held in Barcelona from....to....., which have signed the Convention. (art. 20.0)

Article 18. -

This Protocol shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Government of .....

Article 19. -

From....., this Protocol shall be open for accession by any State referred to in Article 17. The Parties may unanimously invite other States to accede to the Protocol. The instruments of accession shall be deposited with the Government of..... (art. 22.0)

Article 20. -

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

2. - For each State ratifying, accepting, approving or acceding to the Protocol after the deposit of the ... instrument of ratification, acceptance, approval or accession, the Protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession.



Article 21. -

At any time after two years from the date on which this Protocol has entered into force with respect to a Party, that Party may withdraw from the Protocol by means of a notice in writing addressed to the depositary Government. Any such withdrawal shall take effect twelve months after the date of its receipt. (art. 24.0)

Article 22. -

The depositary Government shall inform the Parties and the States referred to in article 17:

(a) - of signatures to this Protocol and of the deposit of instruments of ratification, acceptance, approval or accession, in accordance with articles 17, 18 and 19;

(b) - of the date on which the Protocol will come into force, in accordance with article 20;

(c) - of the receipt of a notice of withdrawal, in accordance with article 21;

(d) - of the receipt of notification of approval of the amendments of the Annexes to this Protocol and of the entry into force of such amendments, in accordance with article 16-2.

Article 23. -

The original of this Protocol, of which the Arabic, English, French and Spanish texts are equally authentic, shall be deposited with the Government of....., which shall send certified copies thereof to the Parties and to the States referred to in article 17, and which, after the entry into force of the Protocol, shall transmit a certified copy to the Secretary-General of the United Nations for registration and publication, in accordance with article 102 of the Charter of the United Nations.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

Done at....., this.....day of.....



ANNEX I

The following substances are listed for the purpose of Article 4 of the Protocol.

1. Organohalogen compounds and compounds which may form such substances in the marine environment, excluding those which are non toxic, or which are rapidly converted in the sea into substances which are biologically harmless. (Oslo and Rome text)
2. Organosilicon compounds and compounds which may form such substances in the marine environment, excluding those which are non toxic, or which are rapidly converted in the sea into substances which are biologically harmless. (Oslo and Roma text)
3. Mercury and mercury compounds. (London, Oslo, Rome text)
4. Cadmium and cadmium compounds. id.
5. (a) (Persistent plastics and other persistent synthetic materials for example netting and ropes, which may float or may remain in suspension in the sea in such a manner as to interfere materially with fishing, navigation or other legitimate uses of the sea.) (London text)  
  
(b) (Persistent plastics and other persistent synthetic materials which may float or remain in suspension in the sea, and which may seriously interfere with fishing or navigation, reduce amenities, or interfere with other legitimate uses of the sea.) (Oslo and Rome text).
6. (a) (Crude, fuel, heavy diesel and lubricating oils, hydraulic fluids, and any mixtures containing any of these, taken on board for the purpose of dumping.) (London text)  
  
(b) (Crude oil and hydrocarbons from oil origin, taken on board for the purpose of dumping) (Proposed text)
7. (a) (High-level radioactive wastes or other high-level radioactive matter, defined on public health, biological or other grounds, by the competent international body in this field, at present the IAEA, as unsuitable for dumping at sea.) (London text)  
  
(b) (Radioactive substances and materials.) (Proposed text)
8. Materials in whatever form (e.g. solids, liquids, semi-liquids, gases or in a living state) produced for biological and chemical warfare. (London text)
9. The preceding paragraph or this Annex do not apply to substances which are rapidly rendered harmless by physical, chemical or biological processes in the sea provided they do not
  - i. make edible marine organisms unpalatable.
  - ii. endanger human health or that of domestic animals. (London text)





1. This Annex does not apply to wastes or other materials, containing the matters referred to in paragraphs 1 - 6 above as traced contaminants. Such wastes shall be subject to the provisions of Annexes II and III as appropriate.  
(London, Oslo, Paris text)
  
11. The consultative procedure provided for under Article XIIc (iii) should be followed by a Party if there is doubt about the harmlessness of the substances.  
(London text).



ANNEX II

The following substances and materials requiring special care are listed for the purposes of Article 5.

- A. Substances and materials containing significant amounts of the matters listed below:
- i. Arsenic, lead, copper, zinc and their compounds.
  - ii. Cyanides and fluorides.
  - iii. Pesticides and their by-products not covered in Annex I.
- B. In the issue of permits for the dumping of large quantities of acids and alkalis, consideration shall be given to the possible presence in such wastes of the substances listed in paragraph A and to the following additional substances: beryllium, chromium, nickel, vanadium and their compounds. (London and Rome text)
- C. Containers, scrap metal and other bulky wastes liable to sink to the sea bottom which may present a serious obstacle to fishing or navigation. (London text)
- D. Substances which, though of a non-toxic nature, may become harmful due to the quantities in which they are dumped, or which are liable to seriously reduced amenities. (Oslo and Rome text)
- E. (Radioactive waste or other radioactive matter not included in Annex I.

In the granting of permits for the dumping of this matter, the States Parties should take full account of the recommendations of the competent international body in this field at present the IAEA) (London text).



ANNEX III

Provisions to be considered in establishing criteria governing the issue of permits for the dumping of matter at sea taking into account Articles 6 and 7 include:

A. CHARACTERISTICS AND COMPOSITION OF THE MATTER

1. Total amount and average composition of matter dumped (e.g. per year).
2. Form, e.g. solid, sludge, liquid, or gaseous.
3. Properties: physical (e.g. solubility and density), chemical and biochemical (e.g. oxygen demand, nutrients) and biological (e.g. presence of viruses, bacteria, yeasts, parasites).
4. Toxicity.
5. Persistence: physical, chemical and biological.
6. Accumulation and biotransformation in biological materials or sediments.
7. Susceptibility to physical, chemical and biochemical changes and interaction in the aquatic environment with other dissolved organic and inorganic materials.
8. Probability of production of taints or other changes reducing marketability of resources (fish, shellfish, etc.).

B. CHARACTERISTICS OF DUMPING SITE AND METHOD OF DEPOSIT

1. Location (e.g. co-ordinates of the dumping area, depth and distance from the coast), location in relation to other areas (e.g. amenity areas, spawning, nursery and fishing areas and exploitable resources).
2. Rate of disposal per specific period (e.g. quantity per day, per week, per month).
3. Methods of packaging and containment, if any.
4. Initial dilution achieved by proposed method of release.
5. Dispersal characteristics (e.g. effects of currents, tides and wind on horizontal transport and vertical mixing).
6. Water characteristics (e.g. temperature, pH, salinity, stratification, oxygen indices of pollution - dissolved oxygen (DO), chemical oxygen demand (COD), biochemical oxygen demand (BOD) - nitrogen present in organic and mineral form including ammonia suspended matter, other nutrients and productivity).
7. Bottom characteristics (e.g. topography, geochemical and geological characteristics and biological productivity).
8. Existence and effects of other dumping which have been made in the dumping area (e.g. heavy metal background reading and organic carbon content).



9. In issuing an authorization for dumping, contracting Parties should consider whether an adequate scientific basis, taking into account seasonal variations, exists for assessing, as outlined in this Annex, the consequences of such dumping in that area, e.g. taking into account seasonal variations.

C. GENERAL CONSIDERATIONS AND CONDITIONS

1. Possible effects on amenities (e.g. presence of floating or stranded material, turbidity, objectionable odour, discolouration and foaming).
2. Possible effects on marine life, fish and shellfish culture, fish stocks and fisheries, seaweed harvesting and culture.
3. Possible effects on other uses of the sea (e.g. impairment of water quality for industrial use, underwater corrosion of structures, interference with ship operations from floating materials interference with fishing or navigation through deposit of waste or solid objects on the sea floor and protection of areas of special importance for scientific or conservation purposes).
4. The practical availability of alternative land based method of treatment, disposal or elimination, or of treatment to render the matter less harmful for sea dumping.

