



**MEDITERRANEAN ACTION PLAN (MAP)
REGIONAL MARINE POLLUTION EMERGENCY RESPONSE CENTRE FOR THE
MEDITERRANEAN SEA (REMPEC)**

Twelfth Meeting of the Focal Points of the Regional
Marine Pollution Emergency Response Centre
for the Mediterranean Sea (REMPEC)

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Agenda Item 11

**PROPOSAL FOR THE DEVELOPMENT OF A REGIONAL JURISDICTION
TOGETHER WITH A REGIONAL REPORT**

Note by France

SUMMARY

Executive Summary: In order to strengthen cooperation between States Parties in the area of repression of acts of pollution, France proposes the development of a regional jurisdiction in the Western Mediterranean along with a common report that would enable the courts of the States Parties to prosecute all individuals suspected of having committed pollution, irrespective of the place of pollution, except territorial waters. France suggests accompanying this judicial cooperation with the downstream establishment of a regional "Blue Fund" to which a part of the pecuniary sanctions would be transferred.

Actions to be taken: Paragraph 28

Related documents: REMPEC/WG.37/8, REMPEC/WG.38/12, REMPEC/WG.41/11/1

Background

1 Although pollution appears to have decreased in recent years, it remains a danger for the health of the Mediterranean.

2 In 2015, in France, 78 cases of pollution were detected by aircraft. No ships were caught in the act, whereas in 2000, 46 ships were caught deliberately spilling hydrocarbons into the sea. This reduction may be explained by the dissuasive effect of penal sanctions as well as by the diversion of ships. Nevertheless, it is also due to changes in offending behaviour, in particular as regards the practice of "nocturnal spillage"¹.

3 The fight against this should continue. In order to reinforce current cooperation, it is paramount to develop specific tools, such as regional fines, to improve maritime surveillance and guarantee effective and efficient repressive measures.

4 This document is structured into the following sections.

- I. An international and regional context favourable to surpassing current limits; and
- II. A proposal for the creation of two new judicial cooperation tools.

¹ DIRECTION DES AFFAIRES MARITIMES., *Bilan annuel – Surveillance des pollutions année 2015, 06/2016.*

I. AN INTERNATIONAL AND REGIONAL CONTEXT FAVORABLE TO SURPASSING CURRENT LIMITS

5 The judicial context is favourable to increased cooperation in light of the fight against pollution in the Mediterranean, at both international and regional levels (A). Given the current limits of international law, the European report for traffic offences can be seen as a successful example of cooperation (B).

A. The international and regional context is favourable to cooperation

- **The IMO supports cooperation in the fight against pollution**

6 The International Maritime Organization (IMO) is heavily involved in the fight against pollution at sea, with numerous tools. Thanks to the various instruments adopted and put in place, such as the MARPOL convention entered into force in 1983, as well as the shipboard oil pollution emergency plan, sea pollution has been significantly reduced. In addition, the IMO participates in and supports regional anti-pollution bodies such as the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC).

- **The MENELAS network has enabled increased regional cooperation in the Mediterranean**

7 The fight against pollution gathers States around one fixed objective: Making the seas cleaner and safer. Following the example of the Bonn Agreement concerning the North Sea or of REMPEC, the regional context allows forces to be combined, means to be rationalised and Conventions to be reinforced. Interventions at a regional level appear best adapted to this fight and suppress offending behaviour, as the MENELAS² cooperation network witnesses it.

8 The latter has allowed best practices and knowledge to be shared, with regard to the member States' fight against illicit ship pollution discharges via, on the one hand, the digital platform which includes a public component and a private component³, and on the other hand, training and meetings.

9 At the meeting on 29 September 2015, it became obvious that most member countries were using the standard pollution accidents reporting format (POLREP)⁴. This is evidence of the current dynamic within which member States operate.

B. Current international law is unable to allow cooperation in respect of the repression of maritime pollution acts

- **The fight against and pursuit of contraveners remain limited**

10 Currently, traditional international law limits the effective and efficient repression of criminally reprehensible acts of pollution.

11 In fact, the sharing of zones of competence, the determination of competent jurisdictions as well as the international rules concerning execution of judicial decisions, are some of the factors limiting the efficient penalisation of criminal behaviour. The repression of pollution violations would, however, benefit from increased cooperation.

² J. Sironneau, J-M. Massin, P. Jannot, H. Benelbaz. and P. Hili, « Infractions relatives aux rejets à partir des navires », *Le Lamy environnement – l'Eau*, Partie 5 5 Eaux marines, étude 576, version updated on 10/2016.

³ REMPEC, IMO, MAP and UNEP, *Mediterranean Network of Law Enforcement Officials relating to MARPOL within the framework of the Barcelona Convention and related activities*, Note by the Secretariat, 11/06/2015, REMPEC/WG.37/8.

⁴ REMPEC, IMO, MAP and UNEP, *Report of the Meeting of the Mediterranean Network of Law Enforcement Officials relating to MARPOL within the framework of the Barcelona Convention (MENELAS), 29 September -1 October 2015*, REMPEC/WG.38/12, 21/01/2016.

- **European report for traffic offences is an example of a common observation tool for violations of international law**

12 At the core of the European Union, the European report for traffic offences has provided continuity of repression on roads beyond borders. The following mechanism has been implemented: The member State, the territory on which the offence was committed, sends a notification to the perpetrator. In the event the fine is unpaid, the file is transferred to the presumed domicile State of the perpetrator of the offence, for payment of the fine.

13 The Contracting Parties should therefore seek inspiration from this tool and adapt it to regional contexts, in accordance with maritime realities, with the aim of fighting sea pollution more efficiently.

II. PROPOSAL FOR THE CREATION OF TWO NEW JUDICIAL COOPERATION TOOLS

14 Consequently, the Secrétariat général de la mer, in its capacity of REMPEC representative for France, proposes to create, on the one hand, greater jurisdictional competence accompanied by a tool to observe infringements (A) and on the other hand, the reinforcement of the execution of judicial decisions against polluters with the creation of a "Blue Fund" (B).

A. The creation of greater jurisdictional competence along with the setting up of common reports can be an instrument ahead of the procedural level

15 Single reports, used for purposes of proceedings, would enable a rationalisation of the tools handling the offence. Drawn-up by officials of any member State, the report could serve as an element of proof to any State Party that wishes to pursue the presumed perpetrator of an offence. Such a system would be of particular interest for spills in waters under the jurisdiction of several countries. Despite potential judicial limitations, its implementation is perfectly feasible and fully desirable.

- **This instrument must be adapted to the context of REMPEC**

16 Although based on the same logic as the report for traffic offences, the common report would nevertheless be different. The offence is not of the same nature: an act of pollution constitutes an offence and is therefore likely to result in a criminal penalty whereas road behaviour can only be the object of administrative penalties. On the other hand, the scale is not the same since it would involve States with different judicial systems.

17 It should be noted that report for traffic offences have encountered difficulties in implementation since they constitute disputes on a large scale, demand additional costs (translation, database) and the low amounts involved in these financial penalties are no motivation for State services to pursue or undertake recovery proceedings. Therefore, these limits do not apply to maritime pollution: they will not concern disputes on a large scale and the fines are not of a comparable amount.

18 As a result, three systems can be envisaged: for each of the models, usual international rules do not change. The jurisdictions of the member States are competent, irrespective of the polluted area (Mediterranean basin).

- .1 **Model 1:** Cooperation between member States concerning State action at sea. Each State authorises all other member States to intervene in its waters, except for territorial waters, in matters concerning research and identification of maritime pollution.
- .2 **Model 2:** Cooperation between member States concerning State action at sea, with bilateral or multilateral agreements between the different member States of REMPEC. Otherwise, the competent jurisdiction is that of the enforcement officers.
- .3 **Model 3:** No cooperation between member States concerning State action at sea. However, a regional agreement exists, on jurisdictional competence.

- **Needs must be identified, in particular the content of the reports and subsequent modifications to the law**

19 In order to create useful reports, several subjects must necessarily be dealt with upstream:

- .1 Indication of ships position by the States and information on intervening officers.
- .2 Training of enforcement officers: for example, all officials should use the same references and the same analytical tool for spills⁵.
- .3 If the goal is to enable officers from other member countries to enforce in the waters of the coastal State (except territorial waters), the coastal State must expressly agree to this.
- .4 The jurisdictional competence prevails.

20 The official reports will have to include a certain amount of information. Harmonisation of the means of proof is primordial: in certain legal systems, fines are admissible before a judge. Hence, the Bonn Agreement recognises six means of proof which includes fines⁶.

21 There are already standard documents available that the relevant authorities have to complete in the event of pollution being reported. As an example we can quote the, "*Standard pollution observation/detection log*" (Bonn Agreement) and "*Pollution observation/detection report on polluters and combatable spills*" (IMO). The OSPAR Commission had specified, in relation to these forms, that they should be accompanied by the details from the surveillance crew (name, rank, number, responsibilities, observational training and training on the use of the Bonn Agreement code)⁷.

22 Nevertheless, it does not seem relevant to use these systems for the creation of a tool with strong probative value, but rather to create a common model.

23 The information below should be relevant:

- .1 **Identification of the enforcement officer** (name, level, functions, which administration affiliated to, name of building/aircraft, port/official base);
- .2 **Characteristics of the ship(s) suspected of having committed the offence(s)** (name of ship, flag and port of registration, type of ship, draught, direction, approximate speed, date, time, position of the ship, reasons for suspecting the ship, position of the spill in relation to the ship, section of the ship from which the spill appears to originate, whether or not the spill has stopped);
- .3 **Characteristics of the spill** (date, time, position [start/end], distance, general dimensions, description, appearance of the spill);
- .4 **Situation at zone** (sky condition, sea conditions, surface wind, direction and speed of currents);
- .5 **Identification of the witness or witnesses** (name of the witness, name of organisation they emanate from, role within the organisation, name or identity of ship or aircraft from which the observation was made, exact position of the ship [specifically the azimuth] or from the coast from which the observation was made, activity the witness was pursuing when the observation was made);

⁵ Today, there exists a wide knowledge base on this topic. In this respect, the manual, "*North Sea Manual on Maritime Oil Pollution Offences*" edited in 2010 by the OSPAR Commission proposes some very interesting information on the subject. Indeed, a code of reference exists (the Bonn Agreement) concerning spill colour. This code is the subject of an informative practical guide: *Bonn Agreement Aerial Operations Handbook*, 2009, in source : http://www.bonnagreement.org/site/assets/files/1081/ba-aoh_revision_2_april_2012-1.pdf.

⁶ CEDRE, *Preuve et jurisprudence : l'infraction constatée, il faut poursuivre le contrevenant et prouver sa culpabilité*, 01/02/2007.

⁷ OSPAR, *North Sea Manual on Maritime Oil Pollution Offences*, 2010, page 62.

- .6 **Method of observation and document** (visual observation/photograph/video camera/telerecording/sample taken/other type of observation);
- .7 **Other information if radio link could be achieved** (The captain's information on the pollution, explanations given by the captain, last port of call, next port of call, name and nationality of the captain, the owner of the ship, the head mechanic and the deck officer, indication of ship's name); and
- .8 **Writing Formalities** (indication of legal article which penalises the behaviour).

B. Downstream the procedure, judicial cooperation must be reinforced and accompanied by a "Blue Fund"

24 In order to guarantee improved repression of fraudulent behaviour, the recovery of financial penalties would reinforce the executory nature of sanctions and their dissuasive nature. When the person involved is situated in another member State than the one where the offence took place, the regional jurisdiction should facilitate transfer of the file to the State of domicile for recovery of the fine.

25 This enhanced cooperation would only involve the financial component of the infraction and would then exclude custodial measures within the field of judicial cooperation. As financial penalties are high in this field, this instrument would have a significant dissuasive element.

26 In addition, the amounts recovered could be transferred, in part, to a "Blue Fund". The latter would have as its mission the financing of the local fight against maritime pollution in the Mediterranean. This would deliver a powerful message to crews and would solidify the natural continuity of the State action at sea.

27 Fines would represent the spearhead of the anti-pollution fight, while supporting increased judicial cooperation. These new tools will enable the consolidation of the fight against pollution in the Mediterranean, which REMPEC incarnates today.

Actions requested by the Meeting

28 **The Meeting is invited to:**

- .1 **take note** of the information provided in this document; and
- .2 **examine** the proposals put forward by France from paragraph 14 onwards of the present document.