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MEDITERRANEAN ACTION PLAN

Second Meeting of Mediterranean Experts on
the preparation of a Protocol on the prevention
of pollution of the Mediterranean Sea resulting
from the transboundary movements of hazardous
wastes and their disposal

Rome, Italy, 21-24 September 1994

REPORT OF THE SECOND MEETING OF MEDITERRANEAN EXPERTS ON THE PREPARATION OF A PROTOCOL ON THE PREVENTION OF POLLUTION OF THE MEDITERRANEAN SEA RESULTING FROM THE TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL

Introduction

1. The Seventh Ordinary Meeting of the Contracting Parties (Cairo, 8-11 October 1991) requested the Secretariat to convene a meeting of a working group of technical and legal experts for the preparation of a draft protocol for the prevention of pollution of the Mediterranean Sea by the transboundary movement of hazardous wastes and their disposal. The First Meeting of Mediterranean Experts was convened in Cervia (Italy) from 23-25 April 1993 and its report is contained in document UNEP(OCA)/MED WG.64/3.
2. The Eighth Ordinary Meeting of the Contracting Parties (Antalya, 12-15 October 1993) decided to convene the Second Meeting of Mediterranean Experts during 1994, with a view to convening a Conference of Plenipotentiaries during 1995 for the adoption of the protocol.
3. At its meeting held in Rabat from 8-9 June 1994, the Bureau of the Contracting Parties requested the Secretariat to organize the meeting before the end of September 1994.
4. The meeting was convened in Rome (Italy) from 21-24 September 1994 at the kind invitation of the Ministry of Foreign Affairs of Italy. The Italian Ministry of the Environment and La Facolta dell'Arte e della Scienza collaborated in the organization of the meeting.

Participation

5. Experts from the following Contracting Parties to the Barcelona Convention attended the meeting: Croatia, Egypt, European Economic Community, France, Israel, Italy, Libyan Arab Jamahiriya, Slovenia, Spain, Tunisia and Turkey.
6. The following United Nations bodies, specialized agencies and other intergovernmental and non-governmental organizations were represented by observers: UNEP/Basel Convention Secretariat, Food and Agriculture Organization of the United Nations (FAO), World Health Organization (WHO), Greenpeace International, International Juridical Organization for Environment and Development (IJO), Mediterranean Information Office for Environment, Culture and Sustainable Development (MIO/ECSDE), Hellenic Marine Environment Protection Association (HELMEPA), La Facoltà dell'Arte e della Scienza, and MAREVIVO.
7. The list of participants is attached as Annex II to this report.

Agenda item 1 - Opening of the meeting

8. Mr. F. Marri-Caciotti, Ministry of Foreign Affairs, welcomed delegates to Italy and laid stress on the leading role played by the Mediterranean Action Plan in promoting important measures to deal with the environmental crisis in the Mediterranean.

He said that Italy would consolidate and enhance its contribution to MAP's work, as well as its cooperation with Mediterranean States, with a view to preventing environmental pollution of the Mediterranean. Adoption of the Protocol under discussion would represent a significant step forward in implementing preventive strategies.

Despite the adoption of the Basel Convention, there had been no decrease in transboundary movements of waste in the Mediterranean area. Italy, for its part, prohibited the export of toxic wastes to non-OECD countries and it considered that only total prohibition of international traffic in wastes to non-OECD countries would ensure the promotion of self-sufficiency and reduction of waste production. The proposed Protocol was not only urgent and necessary for the Mediterranean, but would also strengthen the objectives of the Basel Convention.

He concluded by expressing the hope that the Protocol could be adopted by a Conference of Plenipotentiaries in 1995 and urged participants to work in a spirit of collaboration.

9. Mrs. L. Lanz iotta, representing the Municipality of Rome, extended the Municipality's welcome to participants. Rome was especially concerned by protection of the marine environment and had recently established an Action Centre for the Mediterranean whose main objective was to enhance collaboration among major cities and enterprises in Mediterranean countries.

She expressed the hope that the meeting would have a successful outcome and thus represent a significant step forward towards mutual understanding and open dialogue.

10. Mr. G. Brunelli, Ministry of the Environment, emphasized that the issue being discussed by the meeting was of great concern to Italy. The transport of hazardous wastes represented a weak link in environmental protection and it was to be hoped that a solution could be found and the draft Protocol finalized.

11. Mr. S. Illuminato, President of La Facolta dell'Arte e della Scienza, read out a telegram from Mr. Oscar Luigi Scalfaro, President of the Italian Republic, who conveyed his best wishes for the success of the meeting's work.

He said that the complexity of the Mediterranean Action Plan's initiatives made it necessary not only to enhance cooperation among governmental bodies but also with local authorities and non-governmental private organizations.

12. Mr. L. Chabason, Coordinator of the Mediterranean Action Plan, opening the meeting, expressed the Coordinating Unit's sincere gratitude and appreciation to the Government and people of Italy, the Municipality of Rome, and the Facolta dell'Arte et della Scienza for hosting the meeting.

After recalling the background to the preparation of the draft Protocol, he stressed that the text was fully consistent with the Basel Convention while at the same time reflecting a more stringent regional approach. The draft contained two innovatory provisions: the commitment by the Parties to ensure that adequate information was made

available to the public; and the institution of a verification procedure entrusted to the body designated as responsible for carrying out the secretariat functions.

13. The issue of transboundary movements of hazardous wastes had become very sensitive at the international level, but it was particularly important for the Mediterranean region due to its geographical location as a crossroads and to its special characteristics. As environmental laws and regulations in the industrialized countries became increasingly strict and as the cost of waste disposal rose, the practice of exporting hazardous wastes to developing countries would continue and even possibly increase. Developing countries would, therefore, remain vulnerable to potential exposure to hazardous wastes until international and regional mechanisms were set up to control and manage the problem.

14. Around 90 per cent of the annual total of 300-400 million tons of hazardous wastes were generated in industrialized countries. Some of them were dealt with using disposal technologies, but the rest was transported in the search for disposal sites on land or at sea and lower costs. A proportion of the hazardous wastes was transported to developing countries, including those in the Mediterranean, which often did not have adequate means to dispose of them in an environmentally sound manner. It was thus evident that the Mediterranean States should take the necessary national and regional measures, including the rapid conclusion of a legal instrument, to deal with the issue.

Agenda item 2 - Rules of procedure

15. The Secretariat stated that the rules of procedure adopted for the meetings and conferences of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea against Pollution and its related protocols (UNEP/IG/43/6/Annex XI) would apply mutatis mutandis to the Second Meeting of Mediterranean Experts.

Agenda item 3 - Election of officers

16. In accordance with rule 20 of the rules of procedure and after informal consultations, the meeting unanimously elected the following officers :

Chairperson	:	Ms. A. Fantar (Tunisia)
Vice-Chairpersons	:	Mr. G. Brunelli (Italy) Mr. A. Piavaux (EEC)
Rapporteur	:	Mr. A. Boargob (Libyan Arab Jamahiriya)

Agenda item 4 - Adoption of the agenda and organization of work

17. The meeting adopted the provisional agenda contained in document UNEP(OCA)/MED WG.79/1. The meeting also approved the organization of work suggested by the Secretariat as it appears in document UNEP(OCA)/MED WG.79/2.

18. It was decided to focus on pending issues, namely, Articles 1(t) and (u), 2 (b) and 9 and the Annexes, as well as on any new issues and developments which might be raised.

Agenda item 5 - Review of the draft Protocol on Hazardous Wastes

19. The Coordinator of the Mediterranean Action Plan (MAP) introduced the draft Protocol for the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal (UNEP(OCA)/MED/WG.79/3) and requested the meeting to deal firstly with the pending issues and subsequently with other related developments.

20. The representative of France repeated the strong reservation which had already been expressed at the Eighth Ordinary Meeting of the Contracting Parties to the Barcelona Convention regarding the appropriateness of elaborating a special protocol on the transboundary movements of hazardous wastes and their disposal. The already comprehensive legal context in this area might lead to ambiguity in the complex implementation of the provisions contained in the various texts already existing. As the draft Protocol was nevertheless on the agenda, he also expressed his delegation's reservations regarding the substance of the draft, especially its scope. He emphasized that the draft should be based on a clear definition taking into account the special needs of the Mediterranean Area. If it was not possible to identify such needs, implementation of the provisions of the Basel Convention would suffice to achieve the objective of protecting human health and the environment.

21. The representative of the European Economic Community emphasized that he only represented the Commission of the European Community at the meeting and any decisions taken would be without prejudice to the position to be adopted subsequently by the Community's authorities.

Article 1 (t) and (u) - Definitions

22. The representative of Turkey explained that the reason for the reservation by her country was that the definition given in subparagraph (u) did not cover the case of Turkey which, as an OECD country, was a particular target for the export of hazardous waste, but was also a developing country.

23. The representative of Israel also expressed opposition to the proposed definitions because several countries which were not members of the OECD were developed countries. According to the definition in Article 1 (t), Israel would be considered a developing country and therefore prevented from importing waste for treatment, which would be prejudicial to its growing recycling industry. He therefore proposed that subparagraph (t) be replaced by a list of developing countries or that the criterion used to assess eligibility for assistance from the Global Environment Facility be used, namely, annual per capita income lower than US\$ 4,000.

24. The meeting set up an informal working group to discuss the related issue of Article 1 (u) and Article 5.4. The group proposed that the words "which are developing countries" in the third line of Article 5.4 should be replaced by "which are not Member States of the European Economic Community".

25. The meeting accepted the text proposed by the working group with a reservation by the representative of the EEC.

26. The representative of Israel expressed a reservation on the definition of developing countries.

27. The representative of the European Economic Community expressed a reservation on the amendment to Article 5.4 "General Obligation" until the same concept had been included in the Basel Convention itself.

28. The representative of France reserved his delegation's position regarding the legal interpretation of the provisions applied to the State of transit and re-emphasized that all necessary legal provisions were already included in the Basel Convention.

Article 2 (b) - Geographical coverage

29. After some discussion on the need to include the paragraph, it was agreed to delete Article 2 as a whole.

Article 9 - Illegal traffic

30. The representative of the Secretariat of the Basel Convention described the experience of the Secretariat in implementing the similar Article in the Basel Convention. A report had been submitted to the open-ended ad hoc committee recommending that there should be better monitoring of illegal traffic at the international, regional and local levels, with links between the levels. The Secretariat had explored the possibility of cooperation with Interpol and a number of regional organizations with a view to improving monitoring.

31. With regard to paragraph 2 of this Article, the representatives of France and Spain questioned the need to specify high penalties. The representative of Spain considered that it was in any case a subjective notion and should be replaced by the idea that the penalty should be proportionate to the threat.

32. In reply, the Coordinator of MAP pointed out that there was a wide variety of possible penalties in different countries and experience had shown that where economic interests were at stake, it was sometimes cheaper to pay a fine than halt the traffic.

33. The representative of Italy emphasized the need to include all the persons involved in the chain of illegal traffic.

34. Concerning paragraph 4, the representative of the European Economic Community expressed the view that it would be preferable to eliminate wastes in the importing country in an environmentally sound manner rather than to undertake another potentially dangerous journey. The principle of the polluter pays implied that, unless there was no possibility of treating the waste on the spot, the importer should dispose of it because he was at fault for having let it enter the country.

35. The meeting considered the text of Article 9 submitted by the informal working group set up to prepare a revised text, taking into account the remarks made. It decided to reverse the order of the words "exporter" and "generator" in the first line of paragraph 3, and to replace the word "otherwise" in paragraph 4 by "if not possible". It further

decided to add a new paragraph to be added after paragraph 4 based on Article 9.4 of the Basel Convention.

36. The meeting approved the text as amended.

Annex I - Categories of wastes which are hazardous wastes

37. The representatives of France, Spain and the European Economic Community expressed strong reservations on the title of the Annex as well as on the inclusion of YO, Y46 and Y47 among the categories. They pointed out that it had not been included in the text of the Basel Convention and that to include it in a regional instrument without justification would create distortions in the implementation of the relevant texts.

38. The observer for Greenpeace pointed out that the approach was the same as that of the Bamako Convention and that, under Lome IV, radioactive wastes had been included. Furthermore, with the exception of fissile material there was currently no international control system regulating the transboundary movement of radioactive waste, there was simply a voluntary code of practice in the context of the IAEA.

39. The representative of the Secretariat of the Basel Convention explained that radioactive waste had not been included in the Basel Convention because the IAEA view that it required special treatment had been endorsed.

40. The representative of the World Health Organization (WHO) requested the inclusion of an additional item, namely, wastes arising from the rehabilitation of chemically contaminated soils.

41. The meeting adopted the Annex without amendment with the exception of some typographical errors in the English text, and with reservations by the European Economic Community, France and Spain.

Annex II - List of hazardous characteristics

42. The representative of the European Economic Community stated that he would withdraw his reservation concerning the title of Annex I if it was agreed to add to the end of Article 3.1(a) "and possess any of the characteristics contained in Annex II to this Protocol".

43. The meeting adopted Annex II without amendment.

Annex III - Disposal operations

44. The meeting adopted the Annex and agreed to add a paragraph to the effect that the operations mentioned were not approved operations but simply constituted an exhaustive list of known operations.

Annex IV (A) - Information to be provided on Notification

45. Some representatives expressed the view that the wording of item 16 was not clear and the meeting agreed upon revised wording.

46. The representative of the Secretariat of the Basel Convention informed the meeting that, in conjunction with the OECD and the European Economic Community, the Secretariat had elaborated a harmonized Notification Document and a harmonized Movement Document, together with accompanying documents explaining how they should be completed. It was expected that the documents would be approved at the open-ended Ad-hoc committee meeting to be held in December 1994.

Annex IV (B) - Information to be provided on the Movement Document

47. The representative of Egypt requested the inclusion of an item referring to insurance documents.

48. The meeting agreed to include a new paragraph 14 on insurance, based on Article 6.11 of the Basel Convention.

49. In view of the information provided by the representative of the Secretariat of the Basel Convention, it was also agreed to include under the Notes in Annex IV (A) and Annex IV (B) a paragraph regarding the need to utilize notification and movement documents such as those developed within the framework of the Basel Convention, the OECD and the European Economic Community.

50. The meeting adopted a revised text of Annexes IV (A) and IV (B).

51. The Chairperson noted that discussion of the pending issues had been completed and that the meeting had before it a clean text with no square brackets.

52. The representatives of the European Economic Community, France and Spain stated that they had a number of reservations which they wished to see included in the text of the draft Protocol.

53. The observer for Greenpeace pointed out that all the other issues had already been discussed and approved by the First Meeting and had subsequently been distributed to the Contracting Parties.

54. On the proposal of the Secretariat, it was decided that an informal session of the meeting should be held with a view to resolving the problems raised by the representatives of France, Spain and the European Economic Community so that the text of the draft Protocol could be finalized. Two informal sessions were held, but delegations were unable to reach a compromise on a few major issues. However, one amendment was agreed upon and was incorporated in the final text of the draft Protocol (Annex I to this report).

55. During the informal session, a constructive discussion took place regarding the possibility of including amendments in Article 3 "Scope of the protocol", however, a consensus could not be reached due to the problems which arose regarding the wording of Article 3.1(d).

56. The representatives of the European Economic Community, France and Spain requested that their reservations be included in the text of the draft Protocol and in addition the representative of France and Spain requested that Article 3 "Scope of the protocol" be placed in square brackets.

57. After discussion, it was agreed that the text in question should not be placed in square brackets since it had been agreed upon by the First Meeting in Cervia (1993). The reservations would be included in the draft text as requested.

58. The representative of France requested the inclusion of the following declaration in the report of the meeting:

"Considering that waste containing radionuclides is already the subject of special regulations both at the Community level in the form of a regulation and within the framework of the International Atomic Energy Agency,

Further considering that such waste is not covered by the Basel Convention,

Also considering that, for these reasons, its inclusion in the scope of this Protocol would create distortions between these texts,

France proposes that Article 3 "Scope of the Protocol" should be completed by repeating paragraph 3 of Article 1 of the Basel Convention and expresses its reservation with regard to the title of Annex I of the Protocol".

59. The representative of the Secretariat pointed out that the report of this meeting, including the draft Protocol, would be transmitted to the next meeting of the Bureau of the Contracting Parties (Tunis, 2-3 November 1994) for its consideration.

Agenda item 6 - Any other matters

60. On the proposal of the representative of Spain, the meeting reaffirmed the decision taken during the Eighth Ordinary Meeting of the Contracting Parties (Antalya, Turkey, 12-15 October 1993) urging the Contracting Parties which had not yet done so to ratify the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal as soon as possible.

61. The representative of Spain expressed a general reservation on the text of the draft Protocol as a whole pending consultations regarding amendments to the articles which had already been approved at the First Meeting in Cervia (1993).

62. The observer for HELMEPA briefed the meeting on the activities of her organization relating to the HELMEPA Junior project, whose objective was to help the younger generation understand what marine pollution meant, not only ship-generated and garbage pollution, but also pollution caused by hazardous wastes. The project was aimed at motivating and promoting voluntary participation - without any financial obligation - by 3,500 Greek school children from 15 geographical areas of Greece so as to protect seas and beaches in Greece and to help the school children transmit the message of

environmental awareness on the part of all. The ultimate target was to ensure that the children, through a programme of 12 activities, would participate in the management of the project itself.

63. The Coordinator noted with satisfaction the progress made. The draft Protocol would be submitted to the forthcoming meeting of the Bureau, which would take a decision on the follow-up to be given.

Agenda item 7 - Adoption of the report of the meeting

64. The meeting adopted its report on 24 September 1994.

Agenda item 8 - Closure of the meeting

65. After the customary exchange of courtesies, the Chairperson declared the meeting closed on Saturday, 24 September 1994, at 12.30 hours.

ANNEX I

DRAFT PROTOCOL FOR THE PREVENTION OF POLLUTION OF THE MEDITERRANEAN SEA BY TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL

The Contracting Parties to the present Protocol,

Being Parties to the Convention for the Protection of the Mediterranean Sea against Pollution, adopted at Barcelona on 16 February 1976,

Conscious of the danger threatening the environment of the Mediterranean Sea area as a whole caused by the transboundary movements and disposal of hazardous wastes,

Convinced that the most effective way of protecting human health and the marine environment from the dangers posed by hazardous wastes is the reduction and elimination of their generation, e.g. through substitution and other clean production methods,

Recognizing the increased will for the prohibition of transboundary movements of hazardous wastes and their disposal in other States, especially in developing countries,

Taking into account the 1992 Rio Declaration on Environment and Development and especially Principle 14 which declares that States "should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities or substances that cause severe environmental degradation or are found to be harmful to human health",

Aware of the growing international concern regarding the need to ensure that pollution originating in one State is not transferred to other States and, consistent with this objective, and of the need to reduce transboundary movements of hazardous wastes to a minimum as far as possible, with the ultimate aim of phasing out such movements,

Recognizing also that any State has the sovereign right to ban the entry, transit or disposal of hazardous wastes in its territory,

Taking into account also the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, adopted on 22 March 1989, in

particular Article 11, and decision I/22 adopted by the First Meeting of the Conference of the Parties to the Basel Convention,

Taking into account further that many States, among them Contracting Parties to the Barcelona Convention, have taken legal measures and entered into international agreements consistent with the Basel Convention to ban transboundary movements of hazardous wastes, for example, the Fourth ACP/EEC Convention signed in Lomé on 15 December 1989 by the European Economic Community and the African, Caribbean and Pacific Group of States, and the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, adopted under the auspices of the Organization of African Unity on 30 January 1991,

Recognizing further the differences in levels of economic and legislative development among the various Mediterranean coastal States, and realizing that hazardous waste should not be allowed to be transported in order to take advantage of such economic or legislative disparities to the detriment of the environment and of the social well-being of developing countries,

Bearing in mind the fact that the most effective way of dealing with the threats represented by wastes for human health and the environment consists of decreasing or even prohibiting the transfer of activities which generate hazardous wastes,

Have agreed as follows:

Article 1 - Definitions

For the purposes of this Protocol:

- (a) "Convention" means the Convention for the Protection of the Mediterranean Sea against Pollution, adopted at Barcelona on 16 February 1976;
- (b) A "Party" means a Contracting Party to this Protocol in accordance with Article 23, paragraph 1, of the Convention;
- (c) "Wastes" means substances or material which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law;
- (d) "Hazardous wastes" means wastes as specified in Article 2 of this Protocol;
- (e) "Disposal" means any operation specified in Annex III to this Protocol;
- (f) "Transboundary movement" means any movement of hazardous wastes from an area under the national jurisdiction of one State to or through an area

under the national jurisdiction of another State or to or through an area not under the national jurisdiction of any State, provided at least two States are involved in the movement;

(g) "Approved site or facility" means a site or facility for the disposal of hazardous wastes which is authorized or permitted to operate for this purpose by a relevant authority of the State where the site or facility is located;

(h) "Competent authority" means one governmental authority designated by a Party to be responsible, within such geographical areas as the Party may think fit for receiving the notification of a transboundary movement of hazardous waste, and any information related to it, and for responding to such a notification;

(i) "Clean production methods" means those which avoid the generation of hazardous wastes in conformity with Articles 4 and 7 of this Protocol;

(j) "Environmentally sound management" of hazardous wastes means taking all practicable steps to ensure that hazardous wastes are collected, transported and disposed of (including after-care of disposal sites) in a manner which will protect human health and the environment against the adverse effects which may result from such wastes;

(k) "Area under the national jurisdiction of a State" means any land, marine area or airspace within which a State exercises administrative and regulatory responsibilities in accordance with international law in regard to the protection of human health or the environment;

(l) "State of export" means a Party from which a transboundary movement of hazardous wastes is planned to be initiated or is initiated;

(m) "State of import" means a Party to which a transboundary movement of hazardous wastes is planned or takes place for the purpose of disposal therein or for the purpose of loading prior to disposal in an area not under the national jurisdiction of any State;

(n) "State of transit" means any State, other than the State of export or import, through which a movement of hazardous wastes is planned or takes place;

(o) "Exporter" means any person under the jurisdiction of the State of export who arranges for hazardous wastes to be exported;

(p) "Importer" means any person under the jurisdiction of the State of import who arranges for hazardous wastes to be imported;

(q) "Generator" means any person whose activity produces hazardous wastes or, if that person is not known, the person who is in possession and/or control of those wastes;

(r) "Disposer" means any person to whom hazardous wastes are shipped and who carries out the disposal of such wastes;

(s) "Illegal traffic" means any transboundary movement of hazardous wastes as specified in Article 8;

(t) "Person" means any natural or legal person;

(u) "Developing countries" means those countries which are not Member States of the Organization for Economic Co-operation and Development (OECD);^(*)

(v) "Developed countries" means those countries which are Member States of the Organization for Economic Co-operation and Development (OECD);^(*)

(w) "Organization" means the body referred to in Article 2 (b) of the Convention.

Article 2 - Scope of the Protocol ^(**)

1. Hazardous wastes for the purposes of this Protocol shall be:

(a) Wastes that belong to any category in Annex I to this Protocol;

(b) Wastes that are not covered under paragraph (a) above but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the State of export, import or transit;

(c) Wastes that possess any of the characteristics contained in Annex II to this Protocol;

* Reservation by Israel

** Reservation by the European Economic Community

** Reservation by France

** Reservation by Spain

(d) Hazardous substances that have been banned, whose registration has been canceled or refused through government regulatory action in the country of manufacture for human health or environmental reasons, or have been voluntarily withdrawn or omitted from the government registration required for use in the country of manufacture.

2. Wastes which derive from the normal operations of ships, the discharge of which is covered by another international instrument, are excluded from the scope of this Protocol.

3. The generator, the exporter or the importer, depending on the circumstances, shall bear the responsibility for checking with the competent authorities of the State of export, import or transit that a particular waste, prior to its transboundary movement, is not subject to this Protocol.

Article 3 - National definitions of hazardous wastes

1. Each Party to the Convention shall, within six months of becoming a Party, inform the Organization of the wastes, other than those listed in Annex I to this Protocol, considered or defined as hazardous wastes under its national legislation, and of any requirements concerning transboundary movement procedures applicable to such wastes.

2. Each Party shall subsequently inform the Organization of any significant changes in information it has provided pursuant to paragraph 1 of this Article.

3. The Organization shall inform all Parties of the information it has received pursuant to paragraphs 1 and 2 of this Article.

4. The Parties shall be responsible for making the information transmitted to them by the Organization under paragraph 3 of this Article available to their exporters.

Article 4 - General obligations

1. The Parties shall take all appropriate measures to prevent and eliminate pollution of the Mediterranean Sea area which can be caused by transboundary movements and disposal of hazardous wastes.

2. The Parties shall take all appropriate measures to reduce to a minimum, and where possible eliminate, the generation of hazardous wastes.

3. The Parties shall also take all appropriate measures to reduce to a minimum the transboundary movement of hazardous wastes, and if possible to eliminate such movement in the Mediterranean.

To achieve this goal, Parties have the right individually or collectively to ban the import of hazardous wastes. Other Parties shall respect this sovereign decision and not permit the export of hazardous wastes to States which have prohibited their import.

4. All Parties shall take appropriate legal, administrative and other measures within the area under their jurisdiction to prohibit the export and transit of hazardous wastes to developing countries, and Parties which are not Member States of the European Economic Community shall prohibit all imports and transit of hazardous wastes.^(*)

5. The Parties shall cooperate with other United Nations agencies, relevant international and regional organizations in order to prevent illegal traffic, and shall take appropriate measures to achieve this goal, including criminal punishment measures in accordance with their national legislation.

Article 5 - Transboundary movement and notification procedures

In exceptional cases, unless otherwise prohibited, when hazardous wastes cannot be disposed of in an environmentally sound manner in the country in which they originated, transboundary movements of such wastes can be allowed if:

1. The special situation of the Mediterranean developing countries which do not have the technical capabilities nor the disposal facilities for the environmentally sound management of hazardous wastes is taken into consideration.

2. The competent authority of the State of import ensures that the hazardous waste is disposed of in an approved site or facility with the technical capacity for its environmentally sound disposal.

3. The transboundary movement of hazardous wastes only takes place with the prior written notification of the State of export as specified in Annex IV to this Protocol, and the prior written consent of the State(s) of import and the State(s) of transit.

4. Every State involved in a transboundary movement ensures that such movement is consistent with international safety standards and financial guarantees, in particular the procedures and standards set out in the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

* Reservation by the European Economic Community

Article 6 - Duty to reimport

The State of export shall reimport the hazardous wastes if the transboundary movement cannot be completed by reason of impossibility of performance of the contract. To this end, any State of transit shall not oppose, hinder or prevent the return of those wastes to the State of export after being properly informed by the State of export.

Article 7 - Regional cooperation

1. In conformity with Article 11 of the Convention, the Parties shall cooperate as far as possible in scientific and technological fields related to pollution from hazardous wastes, particularly in the implementation and development of new methods for reducing and eliminating hazardous waste generated through clean production methods.

2. To this end, the Parties shall submit annual reports to the Organization regarding the hazardous wastes they generate and transfer within the area of the Convention in order to enable the Organization to produce a hazardous waste audit.

3. The Parties shall cooperate in taking appropriate measures to implement the precautionary approach based on prevention of pollution problems arising from hazardous wastes and their transboundary movement and disposal. To this end, the Parties shall ensure that clean production methods are applied to production processes.

Article 8 - Illegal traffic

1. For the purpose of this Protocol, any transboundary movement of hazardous wastes in contravention of this Protocol or of general principles of international law shall be deemed to be illegal traffic.

2. Each Party shall introduce appropriate national legislation to prevent and punish illegal traffic, including criminal penalties on all persons involved in such illegal activities.

3. In the case of illegal traffic due to the conduct of the generator or the exporter, the State of export shall ensure that the wastes in question are taken back by the exporter or the generator or, if necessary, by itself, into the State of export within 30 days from the time the illegal traffic has come to its attention and that appropriate legal action shall be taken against the contravenor(s).

4. In the case of illegal traffic due to the conduct of the importer or disposer, the State of import shall ensure that the wastes in question are eliminated according to environmentally sound methods by the importer within 30 days from the time the illegal

traffic has come to the attention of the State of import; if not possible, the State of export shall ensure that the wastes are taken back by the exporter, the generator or, if necessary, by itself into the State of export. The competent authorities of the importing or exporting States shall ensure that legal proceedings according to this Protocol are taken against the contravenor(s).

5. In cases where the responsibility for the illegal traffic cannot be assigned either to the exporter or generator or to the importer or disposer, the parties concerned or other parties, as appropriate, shall ensure, through cooperation that the wastes in question are disposed of as soon as possible in an environmentally sound manner either in the State of export or the State of import or elsewhere as appropriate.

6. The Parties shall forward, as soon as possible, all information relating to illegal traffic to the Organization, which shall distribute the information to all Contracting Parties.

7. The Parties shall cooperate to ensure that no illegal traffic takes place. Upon request, the Organization shall assist Parties in their identification of cases of illegal traffic and shall circulate immediately to the Parties concerned any information it has received regarding illegal traffic.

8. The Organization shall undertake the necessary coordination with the Secretariat of the Basel Convention in relation to the effective prevention and monitoring of illegal traffic in hazardous wastes. Such coordination will be mainly based on:

- (a) Exchange of information on cases or alleged cases of illegal traffic in the Mediterranean and coordination of action to remedy such cases;
- (b) Providing assistance in the field of capacity building including development of national legislation and of appropriate infrastructure in the Mediterranean States with a view to the prevention and penalization of illegal traffic of hazardous wastes;
- (c) The establishment of a mechanism to prevent and monitor illegal traffic in hazardous wastes in the Mediterranean.

Article 9 - Assistance to developing countries

1. The Parties shall, directly or with the assistance of competent or other international organizations or bilaterally, cooperate with a view to formulating and implementing programmes of financial and technical assistance to developing countries for the implementation of this Protocol.

2. To that purpose, the first meeting of the Parties to this Protocol should consider the establishment of a regional centre for training and technical assistance in the field of hazardous wastes.

Article 10 - Transmission of information

The Parties shall inform one another through the Organization of measures taken, of results achieved and, if the case arises, of difficulties encountered in the application of this Protocol. Procedures for the collection and distribution of such information shall be determined at the meetings of the Parties.

Article 11 - Information to and participation of the public

1. In the exceptional cases in which transboundary movement of hazardous wastes is permitted under Article 5 of this Protocol, the Parties shall ensure that adequate information is made available to the public transmitted through such channels as the Parties deem appropriate.

2. The State of export and the State of import shall, in accordance with the provisions of this Protocol and whenever possible and appropriate, give the public an opportunity to participate in relevant procedures with the aim of making known its views and concerns.

Article 12 - Verification

1. Any Party which has reason to believe that another Party is acting or has acted in breach of its obligations under this Protocol must inform the Organization thereof, and, in such an event, shall simultaneously and immediately inform, directly or through the Organization, the Party against whom the allegations are made.

2. The Organization shall carry out a verification of the substance of the allegation and submit a report thereon to the Parties.

Article 13 - Liability and compensation

The Parties shall cooperate with a view to setting out, as soon as possible, appropriate guidelines for the evaluation of the damage, as well as rules and procedures in the field of liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes.

Article 14 - Meetings

1. Ordinary meetings of the Parties shall take place in conjunction with ordinary meetings of the Contracting Parties to the Convention held pursuant to Article 14 of the Convention. The Parties to this Protocol may also hold extraordinary meetings in conformity with Article 14 of the Convention.
2. The functions of the meetings of the Parties shall be, inter alia:
 - (a) To keep under review the implementation of this Protocol, and consider any additional measures, including in the form of annexes;
 - (b) To revise and amend any annex to this Protocol;
 - (c) To formulate and adopt programmes, methods and measures in accordance with the relevant Articles of this Protocol;
 - (d) To consider any information submitted by the Parties to the Organization or to the meetings of the Parties in accordance with the relevant Articles of this Protocol;
 - (e) To perform such other functions as may be appropriate for the application of this Protocol.

Article 15 - Adoption

The meeting of the Parties shall adopt, by a two-thirds (2/3) majority, any additional programmes and measures for the prevention and elimination of pollution from transboundary movements of hazardous wastes and their disposal.

Article 16 - Final clauses

1. The provisions of the Convention relating to any Protocol shall apply with respect to this Protocol.
2. The rules of procedure and the financial rules adopted pursuant to Article 18 of the Convention shall apply with respect to this Protocol, unless the Parties to this Protocol agree otherwise.
3. This Protocol shall be open for signature at _____, from _____ to _____, and at Madrid from _____ to _____, by any State invited to the Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region on the Prevention of Pollution of the

Mediterranean Sea resulting from the Transboundary Movements of Hazardous Wastes and their Disposal held at _____ from _____ to _____. It shall also be open until the same dates 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 the fields covered by this Protocol.

4. This Protocol shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Government of Spain, which will assume the functions of Depository.

5. As from _____, this Protocol shall be open for accession by the States referred to in paragraph 3 above, by the European Economic Community and by any grouping referred to in that paragraph.

6. This Protocol shall enter into force on the thirtieth (30) day following the deposit of at least six (6) instruments of ratification, acceptance or approval of, or accession to, the Protocol by the Parties referred to in paragraph 3 of this Article.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

Done at _____ on this _____ day of _____ in a single copy in the Arabic, English, French, and Spanish languages, the four texts being equally authoritative.

ANNEX I ⁽¹⁾

CATEGORIES OF WASTES WHICH ARE HAZARDOUS WASTES

Waste Streams:

- Y0 All wastes containing or contaminated by radionuclides, the concentration or properties of which result from human activity
- Y1 Clinical wastes from medical care in hospitals, medical centres and clinics
- Y2 Wastes from the production and preparation of pharmaceutical products
- Y3 Waste pharmaceuticals, drugs and medicines
- Y4 Wastes from the production, formulation and use of biocides and phytopharmaceuticals
- Y5 Wastes from manufacturing, formulation and use of wood preserving chemicals
- Y6 Wastes from the production, formulation and use of organic solvents
- Y7 Wastes from heat treatment and tempering operations containing cyanides
- Y8 Waste mineral oils unfit for their originally intended use
- Y9 Waste oils/water, hydrocarbons/water mixtures, emulsions
- Y10 Waste substances and articles containing or contaminated with polychlorinated biphenyls (PCBs) and/or polychlorinated terphenyls (PCTs) and/or polybrominated biphenyls (PBBs)
- Y11 Waste tarry residues arising from refining, distillation and any pyrolytic treatment
- Y12 Wastes from production, formulation and use of inks, dyes, pigments, paints, lacquers, varnish
- Y13 Wastes from production, formulation and use of resins, latex, plasticizers, glues/adhesives

* Reservation by the European Economic Community
* Reservation by France
* Reservation by Spain

- Y14 Waste chemical substances arising from research and development or teaching activities which are not identified and/or are new and whose effects on man and/or the environment are not known
- Y15 Wastes of an explosive nature not subject to other legislation
- Y16 Wastes from production, formulation and use of photographic chemicals and processing materials
- Y17 Wastes resulting from surface treatment of metals and plastics
- Y18 Residues arising from industrial waste disposal operations
- Y46 Wastes collected from households, including sewage and sewage sludges
- Y47 Residues arising from the incineration of household wastes

Wastes having as constituents:

- Y19 Metal carbonyls
- Y20 Beryllium; beryllium compounds
- Y21 Hexavalent chromium compounds
- Y22 Copper compounds
- Y23 Zinc compounds
- Y24 Arsenic; arsenic compounds
- Y25 Selenium; selenium compounds
- Y26 Cadmium; cadmium compounds
- Y27 Antimony; antimony compounds
- Y28 Tellurium; tellurium compounds
- Y29 Mercury; mercury compounds
- Y30 Thallium; thallium compounds
- Y31 Lead; lead compounds
- Y32 Inorganic fluorine compounds excluding calcium fluoride

- Y33 Inorganic cyanides
- Y34 Acidic solutions or acids in solid form
- Y35 Basic solutions or bases in solid form
- Y36 Asbestos (dust and fibres)
- Y37 Organic phosphorus compounds
- Y38 Organic cyanides
- Y39 Phenols; phenolic compounds including chlorophenols
- Y40 Ethers
- Y41 Halogenated organic solvents
- Y42 Organic solvents excluding halogenated solvents
- Y43 Any congener of polychlorinated dibenzo-furan
- Y44 Any congener of polychlorinated dibenzo-p-dioxin
- Y45 Organohalogen compounds other than substances referred to in this Annex (e.g. Y39, Y41, Y42, Y43, Y44).

ANNEX II

LIST OF HAZARDOUS CHARACTERISTICS

<u>UN</u> <u>Class</u>	<u>Code</u>	<u>Characteristics</u>
1	H1	Explosive An explosive substance or waste is a solid or liquid substance or waste (or mixture of substances or wastes) which is in itself capable by chemical reaction of producing gas at such a temperature and pressure and at such a speed as to cause damage to the surroundings.
3	H3	Flammable liquids The word "flammable" has the same meaning as "inflammable". Flammable liquids are liquids, or mixtures of liquids, or liquids containing solids in solution or suspension (for example paints, varnishes, lacquers, etc., but not including substances or wastes otherwise classified on account of their dangerous characteristics) which give off a flammable vapour at temperatures of not more than 60.5 degrees C, closed-cup test, or not more than 65.6 degrees C, open-cup test. (Since the results of open-cup tests and of closed-cup tests are not strictly comparable and even individual results by the same test are often variable, regulations varying from the above figures to make allowance for such difference would be within the spirit of this definition.)
4.1	H4.1	Flammable solids Solids, or waste solids, other than those classed as explosives, which under conditions encountered in transport are readily combustible, or may cause or contribute to fire through friction.
4.2	H4.2	Substances or wastes liable to spontaneous combustion Substances or wastes which are liable to spontaneous heating under normal conditions encountered in transport, or in heating up on contact with air, and being liable to catch fire.

* Corresponds to the hazardous classification system included in the United Nations Recommendations on the Transport of Dangerous Goods (ST/SG/AC.10/1/Rev.5, United Nations, New York, 1988)

- 4.3 H4.3 Substances or wastes which, in contact with water emit flammable gases
- Substances or wastes which, by interaction with water, are liable to become spontaneously flammable or to give off flammable gases in dangerous quantities.
- 5.1 H5.1 Oxidizing
- Substances or wastes which, while in themselves not necessarily combustible, may generally by yielding oxygen, cause or contribute to the combustion of other materials.
- 5.2 H5.2 Organic peroxides
- Organic substances or wastes which contain the bivalent-O-O-structure are thermally unstable substances which may undergo exothermic self-accelerating decomposition.
- 6.1 H6.1 Poisonous (Acute)
- Substances or wastes liable either to cause death or serious injury or to harm human health if swallowed or inhaled or by skin contact.
- 6.2 H6.2 Infectious substances
- Substances or wastes containing viable microorganisms or their toxins which are known or suspected to cause disease in animals or humans.
- 8 H8 Corrosives
- Substances or wastes which, by chemical action, will cause severe damage when in contact with living tissue, or in the case of leakage, will materially damage, or even destroy, other goods or the means of transport; they may also cause other hazards.
- 9 H10 Liberation of toxic gases in contact with air or water
- Substances or wastes which, by interaction with air or water, are liable to give off toxic gases in dangerous quantities.
- 9 H11 Toxic (Delayed or chronic)
- Substances or wastes which, if they are inhaled or ingested or if they penetrate the skin, may involve delayed or chronic effects, including carcinogenicity.

9 H12 Ecotoxic

Substances or wastes which if released present or may present immediate or delayed adverse impacts on the environment by means of bioaccumulation and/or toxic effects upon biotic systems.

9 H13 Capable, by any means, after disposal, of yielding another material, e.g. leachate, which possesses any of the characteristics listed above.

ANNEX III

DISPOSAL OPERATIONS

The list of disposal operations contained in this Annex reflects those which occur or have occurred in practice. It does not necessarily reflect a list of acceptable disposal operations. Pursuant to Articles 4 and 5 of this Protocol, hazardous wastes must in any event be managed in an environmentally sound manner.

A. Operations which do not lead to the possibility of resource recovery, recycling, reclamation, direct reuse or alternative uses.

Section A encompasses all such disposal operations which occur in practice.

- D1 Deposit into or onto land (e.g. landfill, etc.)
- D2 Land treatment (e.g. biodegradation of liquid or sludgy discards in soils, etc.)
- D3 Deep injection (e.g. injection of pumpable discards into wells, salt domes or naturally occurring repositories, etc.)
- D4 Surface impoundment (e.g. placement of liquid or sludge discards into pits, ponds, lagoons, etc.)
- D5 Specially engineered landfill (e.g. placement into lined discrete cells which are capped and isolated from one another and the environment, etc.)
- D6 Release into a water body except seas/oceans
- D7 Release into seas/oceans including sea-bed insertion
- D8 Biological treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations in Section A
- D9 Physico-chemical treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations in Section A (e.g. evaporation, drying, calcination, neutralization, precipitation, etc.)
- D10 Incineration on land
- D11 Incineration at sea
- D12 Permanent storage (e.g. emplacement of containers in mines, etc.)

- D13 Blending or mixing prior to submission to any of the operations in Section A
- D14 Repackaging prior to submission to any of the operations in Section A
- D15 Storage pending any of the operations in Section A

B. Operations which may lead to resource recovery, recycling, reclamation, direct reuse or alternative uses.

Section B encompasses all such operations with respect to materials legally defined as or considered to be hazardous wastes and which otherwise would have been destined for operations included in Section A.

- R1 Use as a fuel (other than in direct incineration) or other means to generate energy
- R2 Solvent reclamation/regeneration
- R3 Recycling/reclamation of organic substances which are not used as solvents
- R4 Recycling/reclamation of metals and metal compounds
- R5 Recycling/reclamation of other inorganic materials
- R6 Regeneration of acids or bases
- R7 Recovery of components used for pollution abatement
- R8 Recovery of components from catalysts
- R9 Used oil re-refining or other reuses of previously used oil
- R10 Land treatment resulting in benefit to agriculture or ecological improvement
- R11 Uses of residual materials obtained from any of the operations numbered R1-R10
- R12 Exchange of wastes for submission to any of the operations numbered R1-R11
- R13 Accumulation of material intended for any operation in Section B

ANNEX IV (A)

INFORMATION TO BE PROVIDED ON NOTIFICATION

1. Reason for waste export;
2. Exporter of the waste 1/;
3. Generator(s) of the waste and site of generation 1/;
4. Importer and disposer of the waste and actual site of disposal 1/;
5. Intended carrier(s) of the waste or their agents, if known 1/;
6. Country of export of the waste
Competent authority 2/;
7. Expected countries of transit
Competent authority 2/;
8. Country of import of the waste
Competent authority 2/;
9. Projected date(s) of shipment(s) and period of time over which waste is to be exported and proposed itinerary (including point of entry and exit) 3/;
10. Means of transport envisaged (road, rail, sea, air, inland waters);
11. Information relating to insurance 4/;
12. Designation and physical description of the waste including Y number and UN number and its composition 5/ and information on any special handling requirements including emergency provisions in case of accidents;
13. Type of packaging envisaged (e.g. bulk, drums, tanker);
14. Estimated quantity in weight/volume 6/;
15. Process by which the waste is generated 7/;
16. Code according to ANNEX I, classifications according to ANNEX II, H number, and UN class;
17. Method of disposal as per ANNEX III;

18. Declaration by the generator and exporter that the information is correct;
19. Information transmitted (including technical description of the plant) to the exporter or generator from the disposer of the waste upon which the latter has based his assessment that there is no reason to believe that the waste will not be managed in an environmentally sound manner in accordance with the laws and regulations of the country of import;
20. Information concerning the contract between the exporter and the disposer.

NOTES

The Organization should make use of a Notification Form and accompanying documents such as those developed within the framework of the Basel Convention, the OECD and the European Economic Community.

- 1/ Full name and address, telephone, telex or telefax number and the name, address, telephone, telex or telefax number of the person to be contacted.
- 2/ Full name and address, telephone, telex or telefax number.
- 3/ In the case of a general notification covering several shipments, either the expected dates of each shipment or, if this is not known, the expected frequency of the shipments will be required.
- 4/ Information to be provided on relevant insurance requirements and how they are met by exporter, carrier and disposer.
- 5/ The nature and the concentration of the most hazardous components, in terms of toxicity and other dangers presented by the waste both in handling and in relation to the proposed disposal method.
- 6/ In the case of a general notification covering several shipments, both the estimated total quantity and the estimated quantities for each individual shipment will be required.
- 7/ Insofar as this is necessary to assess the hazard and determine the appropriateness of the proposed disposal operation.

ANNEX IV (B)

INFORMATION TO BE PROVIDED ON THE MOVEMENT DOCUMENT

1. Exporter of the waste 1/;
2. Generator(s) of the waste and site of generation 1/;
3. Disposer of the waste and actual site of disposal 1/;
4. Carrier(s) of the waste 1/ or his agent(s);
5. The date the transboundary movement started and date(s) and signature on receipt by each person who takes charge of the waste;
6. Means of transport (road, rail, inland waterway, sea, air) including countries of export, transit and import, also point of entry and exit where these have been designated;
7. General description of the waste (physical state, proper UN shipping name and class, UN number, Y number and H number as applicable);
8. Information on special handling requirements including emergency provision in case of accidents;
9. Type and number of packages;
10. Quantity in weight/volume;
11. Declaration by the generator or exporter that the information is correct;
12. Declaration by the generator or exporter indicating no objection from the competent authorities of all States concerned which are Parties;
13. Certification by disposer of receipt at designated disposal facility and indication of method of disposal and of the approximate date of disposal.
14. The insurance documents, bond or other guarantee as may be required by the Parties, as provided in Article 5, paragraph 4.

NOTES

The Organization should make use of a Movement Document and accompanying documents such as those developed within the framework of the Basel Convention, the OECD and the European Economic Community.

The information required on the Movement Document shall where possible be integrated in one document with that required under transport rules. Where this is not possible, the information should complement rather than duplicate that required under the transport rules. The Movement Document shall carry instructions as to who is to provide information and fill out any form.

- 1/ Full name and address, telephone, telex or telefax number and the name, address, telephone, telex or telefax number of the person to be contacted in case of emergency.

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