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MEDITERRANEAN ACTION PLAN

Meeting of the Bureau of the Contracting Parties
to the Convention for the Protection of the
Mediterranean Sea against Pollution and its
related Protocols

Paris, 30-31 January 1995

**FEEDBACK OF THE FIRST MEETING OF LEGAL AND TECHNICAL EXPERTS
TO EXAMINE AMENDMENTS TO THE BARCELONA CONVENTION,
ITS RELATED PROTOCOLS AND THE MEDITERRANEAN ACTION PLAN
(BARCELONA 14-18 NOVEMBER 1994)**



**United Nations
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MEDITERRANEAN ACTION PLAN

**RESULTS AND ANALYSIS OF THE MEETING OF THE OF LEGAL AND
TECHNICAL EXPERTS TO EXAMINE AMENDMENTS TO THE
BARCELONA CONVENTION AND ITS RELATED PROTOCOLS AND THE
MEDITERRANEAN ACTION PLAN (MAP)**

Barcelona, 14-18 November 1994

prepared by the Secretariat

Introduction

After the decision made by the Contracting Parties at their Meeting in 1993 in Antalya to start a process of revision of the entire Barcelona system, i.e. the Convention, the Protocols and the Mediterranean Action Plan, and to put the relevant texts and programmes in line with the new trends initiated by the UNCED in Rio in 1992, the Meeting held in Barcelona from 14 to 18 November 1994 was the first occasion offered to the Contracting Parties to initiate such a process.

The Meeting, of technical and legal nature, was attended by government-designated experts and thus it was expected to provide the secretariat with clear indications of the intentions of the Contracting Parties concerning the proposed changes to the texts.

The Meeting therefore examined two documents "Proposed Amendments to the Convention for the Protection of the Mediterranean Sea against pollution and its related Protocols" (UNEP(OCA)/MED WG. 82/3) and (UNEP(OCA)/MED WG. 82/3 Add.1) prepared by the secretariat, which reported all the amendments to the Convention and the Protocols proposed by Contracting Parties as well as a number of specific proposals by the secretariat.

The following is the secretariat analysis of the discussions and the deliberations of the Meeting as well as their expected follow-up.

Mediterranean Action Plan

Although only a short exchange of views was made during the Meeting, the following can be concluded from the discussion.

The secretariat believes that the general feeling of the participants is to fully take up the deliberation of Rio and of Tunis but not to transform the Action Plan - nor the Convention - into a development programme but to keep it as an environmental protection programme which would contribute to the process of sustainable development. It was also expressed, although not unanimously, that the coverage of the Action Plan could be broader than the Convention. Some issues were identified as not adequately covered at present by MAP and which should instead receive more attention, i.e. the lack of wide information on MAP and MAP activities throughout the Mediterranean countries, the inefficient link with the large financial donors and the slow and inefficient financing system. In the opinion of the secretariat, the lack of a proper monitoring system of the implementation of the agreed activities by the Contracting Parties was also a reason of concern. In addition to the general discussion, the Spanish delegation made a specific proposal concerning the future structure and functioning of MAP which can be summarized as follows: the Coordinating Unit would remain under the auspices of UNEP; an executive Council would be established to follow up the activities between Contracting Parties' Meetings; a Commission on Sustainable Development would substitute the focal points of Blue Plan and Priority Actions Programme and the Socio-economic Committee; the structure and the Institutional arrangements of RACs should be uniformed; one third of the total budget should be equally shared by all Contracting Parties and two thirds would continue to be based on the UN scale

of assessment; the MAP would be divided into four chapters: Sustainable Development in the Mediterranean Basin; Convention and Protocols; Research and Monitoring; and Institutional and Financial Arrangements.

The secretariat will keep all the above remarks in mind and will prepare a proposal for a new Mediterranean Action Plan which will cover the basic need to propose a Plan in line with the new UNCED trends and which will be based on the analysis of the achievements and shortcomings of twenty years of activities.

Mediterranean Commission on Sustainable Development

Following the decision made at the Ministerial Conference MED 21 held in Tunis, the Meeting unanimously confirmed the need to establish a Mediterranean Commission on Sustainable Development. It was agreed that such a Commission should operate under the umbrella of MAP in close cooperation with the U.N. Commission on Sustainable Development and that the text of the Convention should not report details on its establishment but only a mention. The secretariat fully agrees with this decision and is at present working on the practical arrangements to be proposed such as terms of reference, functions, composition and *modus operandi*.

Barcelona Convention

An extensive discussion was held on the text of the Convention. In line with the wish to extend the scope of the Convention, some proposals were made on the opportunity to change its title. Since no final decision was made, the secretariat will make a proposal in line with the agreement not to transform the Convention into a development programme, still keeping in mind its due contribution to the sustainable development of the Region.

The geographical coverage of the Convention (Art.1) was largely debated. The secretariat believes that the final decision of the Meeting, i.e. to implicitly include internal waters by deleting paragraph 2 of the Art. 1, to include estuaries by adopting a new definition of "pollution" (Art. 2) and to include the possibility to extend the coverage to coastal areas (Art. 1) is adequate and sufficiently expands the geographical coverage of the Convention.

Under Art. 3, the discussion on the modification of paragraph 2 showed the need to operate the changes to the legal instruments preferably by general consensus in order to create a basis for stronger and more effective cooperation.

The secretariat believes that the changes operated in Art. 4 are a fundamental step forward in the process of modernizing the Convention. The Art. 4, in fact, as it was adopted by the Meeting, incorporated under "general obligations" the precautionary principle, the polluter pays principle, the environmental impact assessment and the integrated management of the coastal zones. These changes bring the Convention in line with the most up-to-date international conventions and effectively make it an instrument for achieving sustainable development.

Art. 5, as modified by the Meeting, now incorporates the banning of incineration at sea which will be properly reflected in the Dumping Protocol.

The discussion on Art. 6 introduced the need to include in the Convention the concept of "elimination" of pollution. Although the concept was unanimously accepted, the Meeting concluded that it had to be accompanied by a "qualification" which would reflect the practical, technical and financial difficulties that the total elimination of pollution implied, and agreed to add "to the fullest possible extent". The same terminology was agreed for Art. 7.

Art. 8, as modified, while also including the new concept of elimination of pollution, substantially improves the text of the existing article since it is more explicit and it includes the atmospheric input of pollution.

The secretariat is especially satisfied for the inclusion of a new article on Nature Conservation and Biodiversity (Art. 9A). Such an article now adequately covers the concept of Biological Diversity and traces the lines of action to be followed by Contracting Parties for its proper inventory, legal coverage and management.

A new article (Art. 9B) was introduced to cover the new Protocol on the transboundary movements of hazardous wastes and their disposal. In the discussion of the new text, the problem was raised of the need to properly express that the risk of pollution covered by this protocol derives from the actual "export" and disposal of the wastes and not by the "movements", i.e. the transport, of the wastes.

Art. 10 was not modified by the Meeting but the secretariat believes that the decision taken to prepare a specific annex to the Convention describing in detail the pollution monitoring activities will strengthen the importance of such activities and will allow the more efficient implementation of, and follow up to, this essential component.

Art. 11, as modified by the Meeting, now includes the principle of transfer of environmentally sound technology, including clean production technologies which is a fundamental element towards the process of achieving sustainable development.

A new article was proposed by the secretariat to the Meeting on environmental legislation (Art. 11A). The purpose of such an article was to respond, in the opinion of the secretariat, to a concern related to the somehow scarce follow up to the decisions and the commitments taken by the Contracting Parties as part of the implementation of the Convention and the Protocols. The Meeting did not accept the text as proposed but considered the subject important and asked the secretariat to re-draft the article. The secretariat believes that an appropriate legislative follow up at national level together with the creation of a compliance mechanism are the key elements for achieving effectiveness of the whole Barcelona system and, as a result, will prepare a new text to be examined.

A new article (Art. 11B) on public information and participation was also proposed by the secretariat. The Meeting did not agree on the specific text but accepted the principle of the right of the citizens to have access to information on environmental matters and to participate, as appropriate, to the decision making process. The secretariat was accordingly asked to propose a new text.

Several amendments were proposed to Art. 13 describing the functions of the secretariat, the Meetings of the Contracting Parties as well as the Commission on Sustainable Development. The Meeting re-confirmed the wish to see the Commission in the framework of the Action Plan and asked the secretariat to re-draft the article by confining it to the description of the functions of the secretariat.

During the discussion on Art. 14, the Meeting accepted the proposal of the secretariat to include in the new text the definition of the Bureau, including its terms of reference, composition and tasks, and the status and the role of NGOs. The secretariat was therefore asked to re-draft the article and propose a text. The proposal to include the establishment of National Committees for the Convention, the Protocols and MAP was not accepted but the Meeting agreed that it could be re-considered in the framework of MAP. The secretariat believes that such a structure could effectively ensure a proper coordination at national level of the different but inter-connected activities of the Barcelona system.

The Meeting discussed the opportunity to revise Art. 20 and Art. 21 in order to make the reporting and the compliance control mechanisms more efficient. The two articles, as proposed by the secretariat, were not accepted. However, the Meeting agreed that, as to the reports by the Contracting Parties on the implementation of the Convention and the Protocols, reporting formats had to be developed and formally adopted. As to the compliance control, the secretariat believes that the establishment of specific mechanisms, at the international and the national level, are indispensable if the Barcelona system wants to improve its effectiveness and actually contribute to the sustainable development of the region.

Dumping Protocol

The modifications proposed by Spain to the text of the Dumping Protocol were not very numerous but very important and efficiently contributing to the substantial updating of the Protocol. In particular, the concept of the banning of incineration at sea was included in the Protocol as well as that of "elimination" of pollution. The prohibited wastes were now included in a reverse list. The secretariat believes that the new text of the Protocol is considerably improved and that with small re-drafting could be easily adopted.

Emergency Protocol

No amendments were proposed to the Emergency Protocol.

Land-Based Sources Protocol

Italy had submitted for discussion a number of amendments to the text and the annexes of the Protocol. Although the proposed amendments were presented and discussed, the secretariat feels that not enough time was left to the Meeting to advance with the revision of this important protocol. Two were the main issues discussed : The introduction of the concept of "hydrographic basin" and the setting of the year 2005 as the target for the elimination of all toxic, persistent and bioaccumulative inputs from land-based sources. Since no conclusions were reached, the Meeting agreed to ask all Contracting Parties to send written comments on the amendments proposed by Italy as well as on other articles of the Protocol to the secretariat by the end of December 1994 to allow the secretariat to re-draft a new Protocol and re-submit it for discussion.

Specially Protected Areas Protocol

Although this Protocol is the object of extensive revision, the secretariat believes that, in view of the preparatory work carried out by RAC/SPA together with experts and government representatives, the consensus on the new text is quite large and that the revision would be completed shortly.

The new text of the protocol is now based on the following new concepts : a number of specific provisions for the protection of wildlife; the inclusion of an annex with the list of threatened or endangered species to be protected; the extension of the coverage to high seas; and the preparation of a list of SPAs of Mediterranean importance.

Although the Meeting expressed a favourable position towards the new text, some doubts were raised on the real possibility to extend the coverage of the Protocol to international waters and to the existence of two separate lists of SPAs (national and Mediterranean).

Conclusions and follow up

The secretariat is of the opinion that the Meeting has clearly indicated the directions to follow in operating the revision of the Barcelona System. The decisions related to the extension of the geographical coverage of the Convention and the establishment of the Commission on Sustainable Development in the framework of MAP are of utmost importance and clearly reveal the intention of the Contracting Parties to proceed closely in line with the UNCED deliberations as well as the Conference MED 21.

However, the secretariat is still convinced that in order to create an efficient system, the Convention and the Protocols have to create in parallel a mechanism of control of the compliance to the provisions of the legal texts as the key element which would make the Barcelona system an effective tool to achieve sustainable development.

As far as the specific legal texts are concerned, the secretariat will prepare new revised texts of the Convention, the Dumping Protocol and the Specially Protected Areas Protocol for the second Meeting of legal and technical Experts to be held in Barcelona from 7 to 11 February 1995 and the new texts of the Mediterranean Action Plan and the Land-Based sources Protocol for the Joint Meeting of the Scientific and Technical Committees and the Socio-economic Committee to be held in Athens from 6 to 10 March 1995.