





**Information Note for the attention of the members of the Bureau of the Contracting Parties to the Barcelona Convention**

**Institutional status of relationships between UNEP and IMO regarding the REMPEC Regional Activity Centre**

**A. Introduction**

1. The Bureau of the Contracting Parties to the Barcelona Convention at its meeting of July 2012 considered the financial situation on IMO and requested the Secretariat to prepare a note with further information of the roles, responsibilities and liabilities of UNEP and IMO with regard to the REMPEC Centre for discussion before the next Bureau meeting. Representatives of the IMO and of the Government of Malta attended the meeting as observers.

2. In light of the precarious financial situation in the region, the Bureau also requested IMO and UNEP to discuss how to manage the situation for 2013 and following years in a sustainable manner, so as to avoid putting REMPEC operations at stake, including how to act in 2013, in case needed.

3. This note reflects UNEP's initial views on the matter. Its purpose is to serve as background for the discussions convened by the Secretary-General of the IMO on 26 September 2012 in London during which the medium and long term solutions to ensure the sustainability of the Center, including the institutional arrangements will be addressed.

**B. Legal basis for the establishment of REMPEC**

4. REMPEC is a Regional Activity Centre established by the Parties to the Barcelona Convention. Its objectives and functions are defined in the 2002 Protocol concerning cooperation in preventing pollution from ships and, in case of Emergency, combating pollution of the Mediterranean Sea as well as many other decisions of the Contracting Parties to the Barcelona Convention including, in particular Decision IG.19/5 on the Mandates of the Components of MAP adopted by COP16th in Marrakesh (Morocco) in November 2009. In view of the linkage with the Centre's mandates, IMO was considered as the partner for managing the Center since its inception.

5. The Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region on the Protection of the Mediterranean Sea which on 16 February 1976 adopted, inter-alia, the Convention and the Protocol Concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful substances in Case of Emergency decided to establish a regional oil-combating Centre (ROCC) in Malta and adopted a Resolution requesting UNEP Executive Director, after consultation with the Government of Malta and IMCO (precursor of IMO) to assist in the establishment of the Centre. A note by the Secretary-General of IMCO to its 10th Assembly acknowledges "the substantial contribution" of IMCO's Secretariat "to the preparatory work for and during the Conference which included,

in particular, preparation of a draft Protocol and the development of the project concerning the establishment of a regional oil-combating Centre.”

6. The above cited Protocol concerning cooperation in case of emergency was substituted by the *Protocol concerning cooperation in preventing Pollution from Ships and, in case of Emergency, combating pollution of the Mediterranean Sea* which was adopted by the Contracting Parties at the Conference of Plenipotentiaries held in Malta on January 2002. It entered into force on 17<sup>th</sup> March 2004 and has been ratified by 13 of the 22 Contracting Parties to the Barcelona Convention. One of the major differences with the previous Protocol was to define the role and functions of the Center as follows:

*Article 1 (f) “Regional Center” means the “Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea” (REMPEC), established by Resolution 7 adopted by the Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region on the Protection of the Mediterranean Sea at Barcelona on 9 February 1976, which is administered by the IMO and UNEP, and the objectives and functions of which are defined by the Contracting Parties to the Convention.*

7. More recently, Decision IG.19/5 on the *Mandates of the Components of MAP* adopted by COP16 in Marrakesh (Morocco) in November 2009 also defines the mandate of REMPEC. While the substance of the mandate remains the same as in the Protocol, it recognizes the growing role of IMO in the Center’s administration as it establishes that *REMPEC is administered by the International Maritime Administration (IMO) in cooperation with UNEP/MAP.*

### **C. Decisions of the Parties to the Barcelona Convention regarding the operation of the Center**

8. Every two years the **Parties to the Barcelona Convention** approve the Programme of Work and staffing tables for the UNEP/MAP Components which include Regional Activity Centers (RACs) and a Programme. They have defined the following roles and responsibilities:

- a. In accordance with decision IG 17/5 on Governance adopted by COP 15, work-planning preparation is overseen by the Coordinating Unit of the MAP based on the proposals received from the Regional Activity Centes (RACs) including REMPEC. It also establishes that all RACs activities have to be undertaken for the purposes of the Barcelona Convention irrespective of their source of funding. If beyond MAP’s scope, they require Bureau approval. These provisions have been further developed by above-cited Decision IG.19/5 on Components adopted by COP16;
- b. In accordance with decision IG 19/8 of COP 16, work-planning implementation is the responsibility of RACs based on the Five Year and biennial PoW developed in accordance with the Governance paper, approved by the Meeting of Contracting Parties and implemented under the guidance of the Coordinating Unit;
- c. In accordance with decision IG 17/5, UNEP ensures the financial management of the MAP system, in particular managing and monitoring contributions and expenditures; developing the resource mobilization strategy; and, overseeing the financial

implementation of the Programme of Work in accordance with the guidance received from COP Decisions on PoW and Budget.

In particular, Decision IG 20/14 regarding the PoW for the biennium 2012-2013 *requested the Coordinating Unit and MAP components to limit implementation of activities under the PoW in line with the projected cash flows (OP 16) and not to start any activity until the amount available to be committed is capable of securing the agreed results (OP 17).*

- d. Human resources management is responsibility of each of the RACs. In the case of REMPEC it lays with IMO. The only responsibility for the Coordinating Unit is to keep track of the staffing lists and job descriptions as per the Governance paper (decision IG 17/5).

#### **D. Instruments regulating the operations of the Centre**

9. The relationship between UNEP and IMO for the operation of the Centre is of a programmatic nature and regulated by project documents which reflect the decisions of the Contracting Parties at the COP. Operations are guided by IMO decisions and by an MOU between IMO and the Government of Malta to which UNEP is not part. Neither UNEP nor the Barcelona Convention/Mediterranean Action Plan are mentioned in the agreement.

10. The institutional relationship between UNEP and IMO. It is regulated by a 1976 Memorandum of Understanding (MOU) signed respectively by the Executive Director Mr. Tolba and the Secretary-General Mr. Srivastava providing a framework for joint programming among both Organizations. According to the MOU, "the joint activities agreed in this MOU will be reflected in the programme and budget proposals submitted to the Governing body of IMCO". No specific MOU regarding REMPEC or activities in the Mediterranean was developed. The 2008 audit report referred to the need for specific legal agreements regulating UNEP's relationship with RACs based on which UNEP developed a model host agreements which was endorsed by COP17 on February 2012. Based on it, negotiations with countries hosting RACs and the Coordinating Unit have started. REMPEC was not subject of this process as it was considered a UN-IMO Center.

11. Programmatic relationship. Upon approval of the biennial Programme of Work, UNEP and IMO sign a two-year project document reflecting the programmatic and budgetary decisions of the Contracting Parties. The project document summarizes the legal and programmatic background for the project including references to all relevant decisions by Contracting Parties. The institutional arrangements section establishes that IMO is responsible for the operation of the Centre. It backstops the implementation of the project activities and ensures its administration and financial accountability. The Coordinating Unit of UNEP/MAP provides programmatic guidance and oversight in line with the 5 year and 2 year PoW and has overall responsibility for programme coordination and implementation.

12. Administrative relationship. IMO administers the Centre. The 10th session of the IMCO Council was informed that IMCO has been entrusted with the establishment and operation of the Regional Oil-Combating Centre (ROCC, precursor of REMPEC), that the Secretary-General of IMCO had decided that the Staff Regulations and Rules governing *UN project personnel will apply to the staff of the Centre* and that *UNEP was considering the budget for the Centre prepared by IMCO*. The 36<sup>th</sup> session of IMCO also noted that *further action is under preparation in the IMCO Secretariat for the establishment of the Centre*. The

38th session of IMCO was informed of the recruitment of a D1, and 2 P5s as well as of a number of local staff.

13. In 1990 IMO signed a host country Agreement with the Government of Malta for the Center's administration purposes which, inter-alia, establishes that the Regional Marine Pollution Centre for the Mediterranean Sea (hereinafter referred to as "the Centre") has been established in Malta and is to be operated within the administrative framework of the International Maritime Organization (IMO) and that all personnel engaged by the Organization for service with the Centre, with the exception of those who are recruited locally and assigned hourly rates, shall be deemed to be "officials" of the Organization. No reference to the Barcelona Convention/Mediterranean Action Plan (MAP) neither to UNEP is made in the agreement.

14. According to the Governance decision (17/5), the administrative role of UNEP through the Coordinating unit of UNEP/MAP focuses on overall financial management of contributions and expenditures. Once project documents are signed the Coordinating Unit authorizes quarterly advances to IMO for the implementation of the activities included in the Project Document. New advances are issued upon receipt and verification of financial reports and consistency of the new request with the provisions of the project document. Section 7 of the project document cited in para. 11 above regulates the financial relationship through monitoring and reporting arrangements.

## **E. Liabilities**

15. The existing instruments do not define a specific liability regime for REMPEC in case of total or partial termination of operations thus the standard UN inter-agency arrangements apply.

16. Should the Contracting Parties to the Barcelona Convention decide to discontinue or significantly reduce REMPEC operations, the subsequent project documents between UNEP and IMO will include the reduced budget items in line with the new COP decision. It is UNEP's view that, as per standard practice, termination benefits and all other liabilities related to termination of any kind of contracts including of IMO staff as need be, or any other expense related to the closure of the Centre pertain to IMO as the Centre's administrator.

17. Should a reduction of operations be required before the end of a biennium due to lack of income from Contracting Parties, UNEP commits to reimburse IMO to the level agreed in the project document as soon as the funds are made available to it.

18. Liabilities arising from the implementation of projects funded by third parties. IMO traditionally negotiates and signs projects with donors which are implemented by REMPEC. UNEP/MAP is only informed of their existence once negotiations are well advanced or completed and project documents are not shared with UNEP nor with UNEP/MAP Coordinating Unit. It is UNEP's view that all liabilities related to the implementation of these projects lay with IMO.

## **F. Current situation**

19. In 2012 the disbursement of funds to REMPEC has been done incrementally as income was received. This new procedure limiting disbursements of MTF resources in line with the cash flow is in compliance with Decision IG 20/14 (PoW and Budget) adopted by COP17 in February 2012 which requested the Coordinating Unit and MAP components to limit implementation of activities under the Programme of Work (PoW) in line with the projected cash flows (OP 16). The initial release was of 45% of the resources approved for REMPEC at the COP and subsequently the project document was revised allowing for the release of up to 75% of the resources. A new revision will raise the disbursement limit to 100% in accordance to the Bureau decision of July 2012.

20. Excessive reliance on MTF funds for payment of salaries and running costs puts the smooth operations of REMPEC at risk. For the biennium 2012-2013 its core MTF budget amounted to Euro 1,5 million of which 74% was for staffing. If operating and administrative costs are also added, the percentage increases to 93%. With the current expenditure ceiling at 75% of the approved budget as established by the Bureau at its 75th meeting in July 2012, transfers had to be made from other parts of the MAP budget to cover REMPEC staffing and running costs.

21. The overall funding situation, however, is more balanced as the Centre has an additional Euro 647,000 from extra-budgetary resources which fund the Centre's activities. Most of this funding originates from projects directly negotiated between the IMO and the corresponding donor while REMPEC also implements IMO ITCP activities for which in 2012 it received \$200,000. Some of the funding comes also through projects negotiated by the Coordinating Unit for the UNEP/MAP system in accordance with the Resource Mobilization Strategy.

## **G. Prospects for the future**

22. While efforts to improve the collection of contributions and the decisions of the Bureau of the Contracting Parties to the Barcelona Convention in July have solved the challenges faced during 2012, a more sustainable budget distribution is needed as: 1) due to the current regional economic and political difficulties it is not realistic for the time being to expect a further significant enhancement in payment patterns or an increase in the level of MTF contributions ; 2) lack of an operational reserve and limitations of expenditures to income will strictly limit disbursements at list until 2017 when an operational reserve will be built.

23. The excessive share of REMPEC staffing and operational costs on MTF resources puts REMPEC operations at risk in the medium term, including during the second half of 2013. Prudence requires that options be developed and agreed upon that either reduce the burden of operational costs on MAP's core budget by sharing a larger part of these costs with other funding sources or by finding other ways to improve the ratio of activities vs. operational and staffing costs.

24. Caution should also be exerted with regard to extra-budgetary co-funding agreements thus avoiding a source of additional risks resulting from committing MTF as co-funding or

agreeing to advance funds to be later reimbursed by the donor. It is UNEP's view that these agreements should be shared with UNEP/MAP before signature.

25. UNEP is undertaking a Functional Review of the MAP system including REMPEC which will make proposals for the longer term and which will be presented for consideration by COP18 planned to take place at the end of 2013. It is UNEP's view that an institutional agreement between UNEP and IMO reflecting the arrangements adopted by the COP regarding the outlook of the Center and specifying roles, responsibilities and liabilities should follow.

### **Recommendations**

1. IMO in cooperation with UNEP should develop a contingency plan to reduce risks related to an excessive share of MTF resources for staffing costs and which may emerge in the second half of 2013.
2. Following on the results of the Review of MAP System, IMO and UNEP should develop a MOU clarifying institutional arrangements including roles, responsibilities and liabilities regarding the operation of the REMPEC Centre.
3. Project negotiations between IMO and donors which consider REMPEC as implementing agency should be preceded by consultations with UNEP/MAP at the very early stages of the process and well in advance of their signature. The documents should clearly reflect REMPEC's mandate, purposes and nature in line with relevant decisions of Contracting Parties to the Barcelona Convention. Project documents should also be shared with UNEP for no objection well in advance of their signature.