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Intergovernmental Review Meeting of
Mediterranean Coastal States and
First Meeting of the Contracting Parties
to the Convention for the Protection of
the Mediterranean Sea against Pollution
and its related protocols

Geneva, 5-10 February 1979

Note by the Executive Director

Attached are the comments sent to UNEP by the United Nations Office of Legal Affairs concerning the draft rules of procedure for Meetings and Conferences of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea against Pollution (UNEP/IG.14/3). These comments are presented to participants for their information.

29 JAN 1979

UNITED NATIONS



NATIONS UNIES

INTEROFFICE MEMORANDUM

MEMORANDUM INTERIEUR

TO: Ms. Patricia Bliss, Programme Officer
A: Regional Seas Programme Activity Centre, UNEP
Geneva

DATE: 23 January 1979

REFERENCE:

THROUGH:
S/C DE:

FROM: John F. Scott, Acting Director
DE: General Legal Division
Office of Legal Affairs

A handwritten signature in dark ink, appearing to read "J. F. Scott".

SUBJECT: Draft rules of procedure for Meetings and Conferences of the Contracting
OBJET: Parties to the Convention for the Protection of the Mediterranean Sea
Against Pollution (UNEP/IG.14/3)

1. Please refer to your memorandum of 6 November 1978, relating to the above subject transmitted to the Legal Office through Mr. John Truman, Legal Liaison Officer, UNEP, Nairobi.

2. We have carefully reviewed the provisions of the draft rules relating to invitations to States that are not parties to the Convention as well as to organizations and other entities and to the question of participation of these invitees in Meetings and Conferences of the Contracting Parties to the Barcelona Convention. We have noted that rules 5 to 8 are specifically intended to take into account:

- " - the specific aims of the Convention and Protocols and of the Mediterranean Action Plan as a Whole;
- " - the unique interest and unquestionable right of the coastal States to safeguard their marine environment;
- " - the small number of coastal States; and finally,
- " - the need to keep the Meetings and Conferences of the Contracting Parties as efficient and effective as possible."

(See UNEP/WG.19/6, pages 2 - 3, paragraph 12)

3. Although the rules are more restrictive than ones normally found in United Nations practice, it should be borne in mind that from a legal standpoint the Contracting Parties are an independent entity with the right to adopt its own rules of procedure under Article 18 of the Barcelona Convention. It should be mentioned that participation by the representatives of one intergovernmental organization in the organs of another is normally governed by provisions in a relationship agreement or arrangement. This is so for the UN/specialized agencies relations (see Articles 57 and 63 of the UN Charter) and for the major intergovernmental organizations, and the rules of procedure of the organs of these organizations in most cases merely provide for participation in accordance with the relevant agreements. As to participation in subsidiary organs of intergovernmental organs this is usually provided for in the resolutions of the parent organ establishing them.

4. The Contracting Parties are not obliged to follow United Nations practice or precedents. Substantively therefore, the draft rules do not appear to present any legal difficulties. We feel, however, that much of the drafting is rather awkward, particularly in the English version, and, should be improved in the interest of style and clarity. Our comments and suggested reformulation of the draft rules, with particular attention to invitations and participation, are given below.

I. Draft rules relating to invitations to and participation in Meetings and Conferences

Rule 5 Coastal States of the Mediterranean Sea

1. The Executive Director shall invite any coastal State of the Mediterranean Sea that was invited to participate in the 1976 Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region for the Protection of the Mediterranean Sea against Pollution and that is not a Contracting Party to attend Meetings and Conferences of the Contracting Parties.
2. Representatives designated by the States invited in accordance with paragraph 1 may participate without the right to vote in the deliberations of Meetings and Conferences of the Contracting Parties.

Rule 6 Other States

1. The Executive Director shall, with the consent of the Contracting Parties, invite any State other than those referred to in rule 5 that is a member of the United Nations or of any of its specialized agencies or of the International Atomic Energy Agency and makes such a request and has a direct concern in the protection of the Mediterranean Sea against pollution to attend a particular Meeting or Conference of the Contracting Parties.
2. Representatives designated by the States invited in accordance with paragraph 1 may, upon invitation of the President and with the consent of the Meeting or Conference, participate without the right to vote in its deliberations in matters of direct concern to such States.

Note:

Since the consent of the Contracting Parties is required prior to the issuance of an invitation under paragraph 1, consideration should be given to the manner in which such consent is to be expressed. Invitations could be issued on the basis of a decision taken at a previous Meeting or Conference or alternatively, in the absence of such decision, the Executive Director could circulate the request from the State concerned to the Contracting Parties for their views. This being a procedural question it could be settled by a simple majority as provided in rule 45 for procedural decisions at Meetings or Conferences. This comment applies also to rule 8, paragraph 1, below.

Rule 7 the United Nations, its specialized agencies and the International Atomic Energy Agency

1. The Executive Director shall invite the United Nations to attend Meetings and Conferences of the Contracting Parties, and shall similarly invite any specialized agency that participates in the activities of the Mediterranean Action Plan, as well as the International Atomic Energy Agency if it so participates. 7 *

1. The Executive Director shall invite the competent United Nations Organs, the specialized agencies and the International Atomic Energy Agency to attend Meetings and Conferences of the Contracting Parties provided that the organization or organ concerned participates in the activities of the Mediterranean Action Plan. 7 *

2. Representatives of the organizations and organs invited in accordance with paragraph 1, may upon the invitation of the President and with the consent of the Meeting or Conference, participate in an observer capacity, without the right to vote, in deliberations in matters related to the activities of the bodies they represent.

Note:

We are suggesting two alternative texts for paragraph 1 of this rule. In our view the United Nations has an obvious interest in environmental protection activities in any part of the world and therefore its invitation to attend Meetings and Conferences of the Contracting Parties should not be subject to any specific restriction. The first alternative text suggested reflects this view. If, however, the Contracting Parties feel that the restriction relating to participation in the activities of the Mediterranean Plan is to apply also to the United Nations then it would be preferable if the restriction were not made applicable to the United Nations as an organization but only to those of its organs that might be concerned. If this is the case, the second alternative text could be used. In the event that the second alternative is used the heading of the rule should be adjusted accordingly as follows:

United Nations organs, UN specialized agencies and the International Atomic Energy Agency

Rule 8 Other organizations

1. The Executive Director shall, with the consent of the Contracting Parties, invite any intergovernmental organization other than those referred to in rule 7, and any international non-governmental organization, that has a direct concern in the protection of the Mediterranean Sea against pollution, to attend any Meeting or Conference of the Contracting Parties.

2. Observers designated by the organizations invited in accordance with paragraph 1 may, upon the invitation of the President and with the consent of the Meeting or Conference, participate without the right to vote in its deliberations in matters of direct concern to them.

* Alternative texts.

II. General observations on other draft rules

5. In addition to our comments and suggestions concerning the draft provisions on invitations we are taking this opportunity to suggest further changes in various other provisions of the draft rules where we believe the drafting needs improvement. Our suggestions and comments in this regard appear below.

6. Chapter titles and rule headings - The use of headings in the draft rules is inconsistent and rather confusing. Several rules do not have a heading and in cases where a heading is used it is not always clear whether this is a chapter title or a rule heading. In our experience we find that it is important for rules to have clear chapter titles with all rules dealing with a particular topic grouped under the appropriate title, and for easy reference it is also useful to have a heading for individual rules or sequences of related rules.

7. Rule 1 - This rule does not really belong under the heading "Definitions", which is appropriate for rule 2. We suggest "Scope of application" or merely "Scope" as a heading for this rule, with a chapter title "General Provisions" for both these rules. As to the text of the rule our suggested reformulation is as follows:

These rules of procedure shall apply to any Meeting or Conference of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea against Pollution convened in accordance with the relevant provisions of the Convention and its related Protocols.

In our view reference to Article 18, which merely directs the Contracting Parties to adopt rules of procedure for their Meetings and Conferences, is not necessary.

8. In our view, the rules relating to the convening of, the dates and venue of Meetings and Conferences could be rearranged in a more logical sequence and reformulated as follows:

Rule 3 Convening of Meetings and Conferences

The Executive Director shall be responsible for convening, in accordance with these rules, any Meeting or Conference to be held pursuant to the provisions of the Convention and its related Protocols.

Rule 4 Ordinary and Extraordinary Meetings

1. Ordinary Meetings shall be held once every two years.

2. Extraordinary Meetings shall be held at any other time deemed necessary, upon the request of UNEP or of any Contracting Party, provided that such request is supported by at least two Contracting Parties.

Rule 4A Dates of Meetings and Conferences

1. An ordinary Meeting shall fix the opening date and the proposed duration of the next ordinary Meeting.

2. An extraordinary Meeting shall, unless otherwise specified in the request for holding such a Meeting, be convened within ninety days following the date of receipt of the request by the Executive Director.

3. The opening date and the duration of any Conference decided upon in accordance with the provisions of the Convention and its related Protocols shall be established by agreement of the Contracting Parties that requested the convening of the Conference.

9. Rule 4B - Place of Meetings /and Conferences/ - It is not clear whether this rule (numbered as rule 3 in the Working Group's text is intended to apply only to Meetings. If it is to apply to Conferences too, this should be reflected in the heading. The text of the rule could read:

/1/ Unless the Contracting Parties decide otherwise, Meetings /and Conferences/* shall be held at the seat of the Co-ordinating Unit.

/2. The Executive Director shall establish the place at which a Conference is to be held after consultations with the Contracting Parties.7 *

10. Rule 15 - The final sentence of this rule should be revised to read:

It shall be transmitted to the Contracting Parties at the same time as the communication convening the extraordinary Meeting or the Conference.

11. Rule 16 - Administrative and financial implications of proposals - In this rule reference should be made to substantive proposals submitted in connexion with agenda items before the Meeting rather than to "substantive agenda items" a term whose meaning is unclear. Furthermore, we feel that the words "until the Meeting has received" are open to more than one interpretation and could create difficulties - how does one determine when the Meeting has received a report? It is suggested that the rule be reformulated as follows:

The Executive Director shall report to the Meeting on the administrative and financial implications of all substantive proposals submitted for its consideration. Unless the Meeting decides otherwise, no such proposal shall be considered until at least forty-eight hours after the Executive Director's report on the administrative and financial implications involved has been circulated to the Contracting Parties participating in the Meeting.

* Alternative texts.

12. Rule 20 - Election of officers - The rule as now drafted is somewhat contradictory and unclear. Paragraph 1 provides that a President, two Vice-Presidents and a Rapporteur are to be elected at the commencement of each Meeting or Conference. Paragraph 2 goes on to provide that the officers elected for Meetings are to serve for two years. It is not clear from these provisions whether any extraordinary Meetings that might be convened within the two-year period are also to elect these officers or whether the officers elected at the ordinary Meeting are to serve in the same capacity for extraordinary Meetings. We believe the latter approach to be more practical. As to the two-year term provided for in paragraph 2, it should be borne in mind that the period between one ordinary Meeting and the next such Meeting could extend beyond or be somewhat shorter than two years and it would therefore seem desirable to revise the text so that the officers of the Bureau serve until their successors are elected at the next ordinary Meeting. This would ensure continuity and obviate the need for election of officers at extraordinary Meetings and at the expiry of the two-year term. In the light of the foregoing, we suggest the following reformulation for the first two paragraphs of this rule:

1. At the commencement of each ordinary Meeting and each Conference, a President, two Vice-Presidents and a Rapporteur shall be elected from among the representatives of the Contracting Parties.

2. The President, two Vice-Presidents and Rapporteur elected at an ordinary Meeting shall remain in office until their successors are elected at the next ordinary Meeting and shall serve in that capacity at any intervening extraordinary Meetings. In exceptional circumstances these officers may be re-elected for one further consecutive term.

13. Rule 21 - If our suggestion regarding the term of office of elected officers (see rule 20 above) is adopted, this rule becomes unnecessary and should be deleted.

14. Rules 27 - 29 - Languages - We note that in rule 27, Arabic, English, French and Spanish are referred to as both the official and the working languages of the Meeting or Conference. Normally, this terminology is used when the number of working languages is smaller than the number of official languages. Since this is not the case for Meetings and Conferences of the Contracting Parties and consequently no differentiation is necessary, the rules on languages should refer only to the "languages of the Meeting or Conference". The text for rule 27 would then read as follows:

Rule 27

Arabic, English, French and Spanish shall be the languages of Meetings and Conferences of the Contracting Parties.

Rule 28

The following text, which is based on the standard UN text for corresponding rules, is suggested:

1. Speeches made in a language of the Meeting or Conference shall be interpreted into the other such languages.

2. A representative may speak in a language other than a language of the Meeting or Conference if he provides for interpretation into one such language.

Rule 29

The purpose of this rule should be to ensure that all the official documentation of the Meeting or Conference is made available by the Secretariat in all of the languages of the Meeting or Conference. It should therefore be couched in terms of an instruction to the Secretariat. The following reformulation is suggested:

1. The working documents of the Meeting or Conference and all its reports, resolutions, recommendations and decisions shall be made available in the languages of the Meeting or Conference.

2. A document submitted by a representative in one of the languages of the Meeting or Conference for consideration by the Meeting or Conference shall be translated into the other such languages by the Secretariat.

However, paragraph 2 of the text we have suggested is not really necessary, since it is implied by the first paragraph, read together with rule 26.

15. Rule 33 - Order of Motions - The words "subject to the provisions of Rule 31" at the beginning of the rule are misleading since the provisions of rule 31 do not affect the order of motions. Normally the application of this rule is made subject to the provisions relating to points of order, but we note that this important provision has been omitted from the draft rules as they now appear. It is suggested that a new rule entitled "Points of order" be inserted after the rule on the general powers of the President (rule 31), as follows:

Rule 31A Points of Order

Subject to the provisions of rule 46, a representative may at any time raise a point of order which shall be decided immediately by the President in accordance with these rules. A representative may appeal against the ruling of the President. The appeal shall be put to the vote immediately and the ruling shall stand unless overruled by a majority of the Contracting Parties present and voting. A representative may not, in raising a point of order, speak on the substance of the matter under discussion.

(Rule 46 is the rule relating to conduct during voting.) In rule 33, the words at the beginning of the rule should then be changed to read "Subject to the provisions of rule 31A".

16. Rule 38 - Voting on amendments - The fourth line of the English text should read:

"then on the amendment next furthest removed therefrom,"

17. Rule 39 - Withdrawal of proposals and motions - The words "or that an amendment to it is not under discussion" at the end of the first sentence should be deleted. The mere fact that an amendment has been submitted should not preclude a sponsor from withdrawing his proposal or motion. It is only when the proposal or motion has actually been amended that it ceases to be the property of the sponsor, who therefore is no longer in a position to withdraw it. Any other Contracting Party wishing to keep a proposal or motion under discussion may do so under the final sentence of the rule. It is suggested that the word "motion" be used in the draft rules when reference is being made to procedural motions and that the word "proposal" be used for substantive proposals. This rule should be revised so that it will be applicable to "proposals and motions".

18. Rule 42 - Majority required for decisions - In paragraph 1 the word "substantive" should be inserted before the word "decisions" in the second line. (Otherwise this provision could conflict with rule 45, which refers to procedural decisions; for these a simple majority is required.)

19. Paragraph 2 defines the meaning of the phrase "Contracting Parties present and voting". The term "present and voting" has been used in various international instruments (see for example Articles 18, 67 and 89 of the UN Charter) and in rules of procedure of various UN and other intergovernmental organs, and its meaning is clearly established in international practice. Since there is no provision either in the Convention or in the draft rules for voting to take place outside of a Meeting or Conference we do not think that the final sentence of the text is useful or necessary. On the other hand, we believe that the bracketed sentence serves a useful purpose in specifying clearly that abstentions are not to be taken into account when voting takes place. The text suggested below is similar to the corresponding rule in the General Assembly's Rules of Procedure (A/520/Rev.12 - rule 86).

2. For the purpose of these rules, the phrase "Contracting Parties present and voting" means Contracting Parties casting an affirmative or a negative vote. Contracting Parties which abstain from voting are considered as not voting.

20. Rules 43 and 44 - These rules should follow rule 45 which is related to and should appear immediately after rule 42.