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PLAN OF ACTION FOR THE MEDITERRANEAN

Analysis of the framework convention and related protocols
with their technical annexes for the protection
of the Mediterranean environment

1. Considerable progress has already been made in preparatory work towards the elaboration of a regional agreement on pollution control in the Mediterranean. As a result of the Intergovernmental Consultation convened in Rome under the auspices of the Food and Agriculture Organization of the United Nations (FAO) from 19 to 23 February and from 27 to 31 May 1974, a set of guidelines was adopted as a basis for the drafting of a framework convention on the protection of the marine environment against pollution in the Mediterranean.*/ This initiative was endorsed by the twelfth session of the General Fisheries Council for the Mediterranean (GFCM), held at Varna from 11 to 15 March 1974, and by the Inter-Parliamentary Conference of Coastal States on the Control of Pollution in the Mediterranean Sea, convened by the Interparliamentary Union in Rome from 29 March to 3 April 1974.
2. In continuation of the work so initiated, a draft Framework Convention will be prepared under the auspices of FAO for preliminary consideration by the Meeting of Mediterranean States convened at Barcelona by UNEP from 28 January to 4 February 1975, with a view to subsequent formal submission to Governments in the context of preparations for a conference of plenipotentiaries tentatively proposed for September/October 1975. The draft will be based on the guidelines approved by the 1974 Rome Consultation, taking into account governmental comments received by FAO in response to its Note Verbale of 1 August 1974 and follow-up requests issued in November 1974.
3. In addition to the draft Framework Convention, which is to lay down the general basis for regional co-operation in this field, separate Protocols will be prepared on specific subjects (including co-operation in pollution emergencies; ocean dumping of wastes; land-based pollution; pollution from ships; and pollution related to seabed exploration and exploitation). It is envisaged that one or more of these Protocols and related Technical Annexes may be adopted simultaneously with the Framework Convention by the proposed 1975 conference of plenipotentiaries, while other such instruments will be adopted later.

*/ FAO Fisheries Reports No.148 (1974).

Relationship with existing international treaties

4. In preparing the draft Framework Convention and related Protocols and Annexes, particular attention will be paid to existing international instruments, both in order to avoid duplication or contradiction, and in order to make optimal use of suitable models from other regions.
5. A complete survey of existing and proposed international conventions for the control of marine pollution and their relevance to the Mediterranean was prepared by the FAO Legal Office for use by the 1974 Rome Consultation 1/, indicating the current state of international legal controls at the global, regional and sub-regional level and the actual participation of Mediterranean coastal States in the relevant instruments. FAO should be requested to prepare an updated version of this document for submission to the proposed conference of plenipotentiaries in September/October 1975.
6. As the abovementioned survey indicates, many of the gaps in existing controls are gaps of application rather than of substantive coverage, and these can be closed by increased participation by Mediterranean coastal States in the relevant global conventions and by regional co-operation to ensure more effective enforcement of their provisions. Accordingly, both the FAO Rome Consultation and the Inter-Parliamentary Conference mentioned above called on Mediterranean States to ratify and implement the relevant existing global conventions.
7. Yet, though it is an important element of the future action required, a call for increased participation in existing international instruments would not in itself be sufficient to ensure adequate protection of the Mediterranean environment. There are also a number of important gaps in the substantive coverage provided by existing conventions, and these can only be closed by regional agreement to supplement global controls, and to provide the necessary focal point and co-ordinating machinery for action at the regional level.
8. For this purpose, the Mediterranean States can benefit from the experience of other areas where regional instruments have already been adopted (especially the Baltic and the North East Atlantic), either for comprehensive protection of the marine environment or for specific aspects of marine pollution control.

Provisions relating to general policy and institutional arrangements

9. The guidelines approved by the Rome Consultation represent a broad consensus on a number of points, which need only be formulated and elaborated in standard legal terms in order to serve as a basis for the drafting of a text. Nevertheless, the discussions at the Consultation and subsequent comments from governments also identified a number of subjects concerning which certain basic decisions of a political nature will have to be made; so far as these subjects are concerned, the task of the draftsmen is consequently limited to the presentation of possible alternatives. This is the case of parts of the Framework Convention and of the Protocols.

1/ FAO Doct. FID:PPM/74/5 (February 1974).

10. As regards the substantive scope of application, there was agreement to use as a starting point the definition principles for the assessment and control of marine pollution as formulated by the Joint Group of Experts on the Scientific Aspects of Marine Pollution (GESAMP).^{1/} Each Protocol will determine its own scope of application with respect to specific types and sources of pollution. As regards the territorial scope of application, there was agreement that both the high seas and the territorial seas of the Mediterranean should be covered. The overall geographical delimitation of the region remains to be specified in the Framework Convention and the Protocol(s), especially in so far as the relevant provisions may relate to adjoining ocean regions. This delimitation is partly bound up with the extent of participation: it was agreed that "all riparian States of the Mediterranean" may become parties to the framework convention and/or the protocols, with the possibility of providing for accession by other States subject to approval by a qualified majority of the actual Contracting Parties at the time.

11. The Rome Consultation agreed on a definition of the general obligations of the Contracting Parties, and on specific obligations regarding certain aspects of the control of pollution (including pollution caused by dumping from ships and aircraft; pollution from ships; pollution resulting from exploration and exploitation of the seabed; pollution from land-based sources; co-operation in dealing with pollution emergencies, etc.). The Framework Convention thus provides a residual basis for these obligations, whether or not they become the subject of simultaneous or subsequent Protocols, in which case they are to be further elaborated with the help of Technical Annexes. It follows that the Protocols, although envisaged to be optional, would not leave any of these specific subjects legally uncovered.

12. The institutional recommendations of the Rome Consultation express a preference for the designation of an existing international organization as the secretariat of the Framework Convention and the Protocols. Besides general meetings of the Contracting Parties, they envisage expert meetings on technical or scientific matters related to the Framework Convention and/or the Protocols. While the possibility of establishing a special fund for protecting the Mediterranean against pollution was discussed at the Consultation (and later proposed by the Inter-Parliamentary Conference), the guidelines merely provide for the financing of expenses incurred by the Secretariat. In view, however, of the potential organizational and financial implications of the technical and scientific co-operation envisaged, including information exchange, co-ordinated monitoring and research programmes, technical assistance,^{2/} etc., further provisions, and possibly additional Technical Annexes, may have to be anticipated, depending on the outcome of discussions at the Barcelona meeting and especially in its Working Committee on Comprehensive Development and Scientific Aspects.

Provisions relating to legal-procedural matters

13. Well over half of the guidelines adopted by the Rome Consultation, and - as was to be expected - half of the eventual Framework Convention as well as a major part of the Protocols, deal with matters that may be categorized as juridical form and procedure. Important as these provisions may be, their preparation is less a

^{1/} Corresponding to the standard definition employed by the United Nations; see Report of the United Nations Conference on the Human Environment, Stockholm, 1972, A/CONF.48/14/Rev.1 at p.73.

^{2/} See UNEP/WG.2/5.

matter of political decision-making than of international legal technique, relying on a highly standardized vocabulary and well established routine clauses. This part of the draft should be referred to the Working Committee on Legal Aspects, to be established at the Barcelona meeting, and subsequently to an ad hoc working group of governmental legal experts to be convened in advance of the proposed conference of plenipotentiaries.

14. Among the subjects that should be discussed and agreed in this context are the following:-

- disclaimer clauses concerning general international law (e.g., for national claims relating to territorial jurisdiction and sovereign immunity);
- questions of international liability and compensation for damage arising out of any alleged contravention of Convention or Protocol provisions;
- exemptions from specified obligations in the event of force majeure;
- procedures for the transmission of reports and notifications;
- procedures for international registration of specified activities;
- procedures for controls of compliance and for dealing with complaints of non-compliance;
- settlement of disputes regarding the interpretation of the Convention or Protocols;
- procedures for the elaboration and amendment of Technical Annexes;
- ratification, entry into force, and related final clauses.

15. The proper observance of established international usage in these matters requires legal advisory services, not only at the preparatory stage but also at the future ratification and implementation stages. In the designation of a Secretariat for the Framework Convention and Protocols this factor will have to be taken into account.

Protocols and related action required

16. On the basis of discussions at the Rome Consultation and at the UNEP Task Force Meeting, convened at Madrid on 14 and 15 October, 1974, the separate Protocols on the undermentioned subjects are envisaged and need to be prepared simultaneously with or after the draft Framework Convention, taking into account relevant existing instruments and draft instruments:

- (i) Co-operation in pollution emergencies. Draft Protocol and Technical Annex prepared simultaneously with the Framework Convention, for preliminary consideration by the Barcelona Meeting, with a view to subsequent formal submission to Governments in the context of preparations for the conference of plenipotentiaries tentatively proposed for September/October 1975. On the basis of the initial draft by an expert consultant, and in the light of discussions at the Barcelona Meeting, a working group of governmental experts and representatives of agencies concerned (including IMCO, IAEA, FAO, WHO, United Nations Disaster Relief Co-ordinator) should be convened for a review meeting not later than April 1975.

(ii) Dumping from ships and aircraft. Draft Protocol and Technical Annex prepared simultaneously with the Framework Convention, for preliminary consideration by the Barcelona Meeting, with a view to subsequent formal submission to Governments in the context of preparations for the proposed conference of plenipotentiaries.

On the basis of the initial draft submitted by the Spanish delegation, and in the light of discussions at the Barcelona Meeting, and a working group of governmental experts and representatives of agencies concerned (including IMCO, WHO, IAEA, FAO) should be convened for a review meeting not later than April 1975.

(iii) Land-based pollution. Draft Protocol and related Technical Annexes to be prepared for adoption after the proposed conference of plenipotentiaries.

On the basis of the action decided at the Barcelona Meeting, a draft would have to be prepared (preferably by a consultant team) and a working group of governmental experts (including the non-coastal States concerned) and representatives of agencies concerned (including WHO, WMO, FAO, IAEA, UNIDO) would have to be convened for review meetings at dates to be determined.

(iv) Pollution related to seabed exploration and exploitation. Draft Protocol (and possibly Technical Annexes) to be prepared for adoption after the proposed conference of plenipotentiaries. On the basis of the action decided at the Barcelona Meeting, and taking into account the results of the 1975 session of the United Nations Conference on the Law of the Sea, a draft would have to be prepared and a working group of governmental experts and representatives of agencies concerned (possibly including IMCO, FAO, IAEA) would have to be convened for a review meeting at a date to be determined.

(v) Pollution from ships. Rather than aiming at the preparation of a separate regional Protocol, concerted efforts should be undertaken for increased participation in the 1973 Convention concluded under the auspices of IMCO (including early improvement of the shore facilities required by Regulation 10) and for the designation of the Mediterranean as a Special Area for purposes of pollution by noxious liquid substances in bulk; recommendations to this effect were adopted by the Rome Consultation (Recommendation No.4), by the twelfth session of the GFCM (Resolution XII/74/7), and by the Inter-parliamentary Conference in Rome (Recommendation No.5). Joint regional initiatives along these lines are envisaged in the draft Framework Convention, in accordance with the Rome Consultation's guideline No.3d which states that "the Contracting Parties should pledge themselves to promote, within the competent specialized agencies and other international bodies, measures concerning the protection of the marine environment against all types of pollution".