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Note by the International Maritime Organization (IMO)

Note submitted by the International Maritime Organization (IMO)

1 Introduction

This present note is submitted by the International Maritime Organization (IMO) concerning the Regional Marine Pollution Emergency Centre for the Mediterranean Sea (REMPEC) at the request of the MAP Co-ordinator in support of the request made to the MAP Secretariat by the Bureau to submit to the MAP FPs meeting in April 2013, an initial draft plan for the implementation of the Extended Functional Review commissioned by UNEP/MAP. This note is based on the information in document UNEP/BUR/76/Inf.4 which the IMO had in hand at time of preparing this note.

2 Recommendation of the Extended Functional Review on REMPEC

In re-visiting existing structures in order to adapt MAP to the present day challenges and to add impetus to the efforts of the Mediterranean countries so they may achieve their common goals of sustainable resource management, the Review recommends that REMPEC is re-established as a “national body with a regional function” irrespective of the three business models proposed.

Page 43 refers:

“It is recommended to re-establish REMPEC as a national body with a regional function. The current setup is confusing and costly which is not justified by its benefits. A national body with a regional function will be able to deliver on the Barcelona Convention and Protocols, as well as provide the required technical implementation support to IMO. The benefits of re-establishing REMPEC as a national body are found in equality of the RACs and potential savings of 160,000 Euro annually (this amount assumes reduced cost of compensation as well as increased costs associated with value added tax). The upfront investment for this change will be between 200,000 and 400,000 Euro depending on the arrangement with current staff.”

Page 55 refers:

“Re-establish REMPEC as a national body with a regional function. Depending on the exact way the transition will happen, this step will require an estimated initial investment of 150,000 to 500,000 Euros in separation indemnities and related legal work. The low end of the estimate assumes that all staff currently employed continue under the new conditions and receive a separation indemnity for the contractual change. The high end assumes that all staff contracts are abolished and includes around 100,000 Euro for transition costs, including legal and human resources services.”

While there are slight inconsistencies between the two texts regarding the gross cost estimates, the recommendation of establishing REMPEC as a “national body with a regional function” predisposes that:

1. there is an acceptance and a subsequent decision by the Contracting Parties to the Barcelona Convention to transfer to a “national body” both the objectives and functions currently assumed by REMPEC, as a regional Centre which, in turn, has been established within the framework of the United Nations system;

2. IMO continues to co-operate with this national body for the Organization's implementation of technical co-operation projects delivered at both national and regional levels; and
3. the "national body" remains hosted by the Government of Malta with part of or all staff members wanting to remain working in the newly established national Centre.

3 Legal impact of the recommendation on the status of the Centre

The implementation of this recommendation will have an impact on the UN status of REMPEC. REMPEC was established as a result of a decision of the Contracting Parties to the Barcelona Convention and is administered by IMO as a result of legal arrangements made in 1976. These arrangements were made by the Executive Director of UNEP on the basis of the mandate he was given by the Diplomatic Conference convened in February 1976. A change from UN status with a regional dimension to a national body with a regional function is therefore not a mere procedural process and due regard would need to be given to the applicable international treaty law in force today under which REMPEC operates, namely the 1976 Emergency and the 2002 Prevention and Emergency Protocols, which are currently both in force, and any associated resolutions thereof.

4 Impact of the recommendation on the administration of the Centre

Should a decision be taken by the Contracting Parties to close down the current structure and set up of a national body with a regional function, IMO would not be involved in administering the new entity. IMO's role will be limited to separation of REMPEC's staff members and handing over the assets of the Centre to UNEP. This will also entail co-ordination with the Host Country in order to comply with the terms of the Agreement signed between IMO and the Government of Malta in 1990. Co-operation between IMO, UNEP and the new entity would be considered at a later stage after it is set up and commences its operation under its new status.

5 Impact of the recommendation on separation of staff and their compensation

Staff members at REMPEC are holders of UN contracts with the IMO, initially as "project staff" but, since 2009, as staff of the Organization. However, their salaries and other emoluments are, since the creation of the Centre to date, paid exclusively by funds provided by UNEP/MAP, not by resources held by IMO such as its regular budget which is composed of assessments on IMO Member States. These contracts are fixed-term contracts and IMO staff members employed at REMPEC have the same rights and entitlements as other staff members of the Organization, even though their salaries and emoluments do not derive from the Organization's resources. In spite of this parallel status (i.e. IMO employees, but paid by UNEP), the impact of any need to separate REMPEC staff might include two main points; consideration of relocation within the Organization, should suitable positions become vacant; or entitlement to financial compensation, should the positions they hold be abolished without any suitable new posting.

Contractually, IMO has a *prima facie* responsibility for any financial liability that may arise if staff members' contracts were to be terminated since REMPEC staff members are IMO employees. The question is to then determine if these expenditures are recoverable and, if yes, from who?

Primarily, it will be IMO to bear the costs of compensation, as it would be the case with any other IMO staff members separating from the Organization. However, IMO staff

members working at REMPEC are fully financed by the Mediterranean Trust Fund, on the basis of the unequivocal premise established between the Contracting Parties to the Barcelona Convention, UNEP and IMO that the Centre would be co-managed by IMO on the understanding “that the exercise of functions and responsibilities by IMCO should not lead in an increase in its budget” (operative paragraph 3 of Resolution 7 of the Diplomatic Conference of 1976), a fundamental premise which has since been repeated in each project document signed between IMO and UNEP. In this regard, it has to be noted that the issue of separation indemnities is no different than the one of other staff entitlements when joining or leaving REMPEC (e.g. installation grants or repatriation). All these costs are absorbed by the budget approved by the Contracting Parties as being part and parcel of contractual obligations and a similar treatment should be given to separation indemnities.

Accordingly, as the establishment of the Centre is the result of a decision of the Contracting Parties, it would be for the Contracting Parties to ultimately bear the cost of their decision to close the Centre. In this regard, an analysis of the figures put forward by the Consultant will need to be undertaken to ensure that these are adequate to cover any compensation agreed upon.

6 Impact of the recommendation on existing fixed assets

Under article 7.5 -Terms and Conditions of the Project Document signed between IMO and UNEP regarding the implementation of the programme of Work by REMPEC; “non-expendable equipment purchased with funds administered by UNEP remains the property of UNEP until its disposal is authorized by UNEP, in consultation with IMO. The proceeds of the sale of equipment (duly authorized by UNEP) shall be credited to the accounts of UNEP, or the appropriate trust fund or earmarked fund.”

The main issue with regards to the transfer of assets will be the one of their removal in the eventuality that the new Centre is not located in Malta or the Maltese authorities, under the new host Country Agreement with UNEP/MAP, agree to allocate alternative premises to the one REMPEC currently occupies. There are cost implications in the physical transfer of assets which would need to be covered by the MTF. In this regard, it is worth noting that the Centre contains a substantial archive, some of which will have to be transferred to IMO as it contains records on the implementation of projects which were signed by IMO (e.g. SAFEMED I and II, previous Life projects). It is a requirement under some of the contractual agreements signed for these projects that records are kept for a period of up to 10 years. Furthermore, REMPEC holds a substantial equipped library with more than 3000 books and documents.

7 Impact of the recommendation on Intellectual property rights

REMPEC has produced a number of tools in the form of guidance, manuals etc. some of which have been registered under the ISBN system with the corresponding copyright. Other issues that need consideration are those of data stored in the servers and website as well as the use of the database acquired from Lloyds LMIU under the SAFEMED Project. Under this specific contract, REMPEC has the right to make use of this database for the purpose of the activities of the Centre. However, in view of the anticipated change of status of the Centre, the issue of whether these rights may be transferred to a national entity would need to be addressed with the co-contractor.

8 Impact of the recommendation on the work programme and existing projects

The Centre implements activities within the framework of a biennial programme of work and budget adopted through decisions of the Contracting Parties at their Ordinary Meetings. These decisions are then converted into a project document, of a contractual nature, between UNEP and IMO, by which IMO is responsible for the implementation of the

programme of work by REMPEC. In addition, REMPEC has also implemented externally funded Projects in line with its mandate and objectives or based on the Regional Strategy for the Prevention of and Response to Marine Pollution from Ships adopted in 2005 by the Contracting Parties.

Currently the Centre is implementing two externally funded projects:

1. The Mediterranean Decision Support System for Maritime Safety (MEDSS4MS) is a three year project under the Med programme and EU cross border cooperation programme financed through the European Regional Development Fund. The Project commenced in 2012 and will terminate in December 2014. The signed Partnership agreement contains provisions for informing the lead partner of any event that can jeopardise the implementation of the project. A specific article refers to transfer of duties and responsibilities to the legal successor. With the closing down of the Centre, there would be a need to disengage from this project. Whilst no specific liability is expected from this Project, this would need to be investigated thoroughly; and
2. The Project for Preparedness for Oil-polluted Shoreline Clean-up and Oiled Wildlife interventions (POSOW), that is a two year project that commenced in 2012 and is due to end in December 2013. Although the administrative closure of the project will take place in mid-2014, no specific liability is expected from this Project which is well on track.

9 Impact of the recommendation on the host country agreement.

This will entail co-ordination with the host country - Malta - in order to comply with the terms of the Host Country Agreement signed between IMO and the Government of Malta in 1990. However, from a practical viewpoint, the Centre has entered into contractual agreements for the provision of basic utilities (water, electricity, telephones and internet, maintenance of premises and equipment). It is anticipated that none of these agreements should give rise to cancellation liabilities. It should also be noted that Article 11.2 of the host Country Agreement specifies that in the event the Centre is moved from Malta, the Agreement should cease to be in force after a reasonable period to allow for the removal of the Centre's assets.

10 Timelines for implementation of the recommendation

The implementation plan in the report of the Extended Functional Review recommends that the plan is implemented in three stages with the setting up of REMPEC as a national body taking place in the second stage - "actions that should be taken in the first year after the decisions by the Contracting parties" i.e. 2014. However, the report does not give any details on how to achieve this.

It is difficult to give definite timelines at this stage as key decisions still need to be taken by the Contracting Parties and subsequently by the host country. However, in the event of the establishment of a national body with a regional function, and being guided by the rationale of cost reduction which underpinned the Extended Functional Review, one can envisage two possible scenarios:

1. an administrative closure of REMPEC; or
2. an overlap between the current and the newly established REMPEC to allow for a smooth transition and handover.

In the first scenario, one can envisage a simple administrative closure of REMPEC which would involve: separation of the existing staff from service with settlement of the appropriate compensation; settlement of any liabilities related to the Programme of Work

during the closing period; sorting those archives which should be kept by IMO; and transfer of those assets belonging to UNEP, which will then become their custodian until the new national body is established.

In the second scenario, one can envisage retaining a reduced, “caretaker” staff complement in order to facilitate the handover to the new national body. In this scenario, for the purpose of cost reduction it is not recommended to keep the staff in the professional category. Consideration could be given to upgrade one position of the general staff to oversee the process of the hand over.

Against the background of the two scenarios, it is recalled that the Extended Functional Review exercise commenced with the adoption of the terms of reference by the MAP Focal Points in November 2011, was conducted by a consultant company in November 2012 and that a final decision should be taken by the Contracting Parties in December 2013 for implementation of its recommendations in 2014. It is expected, however, that based on the approved budget for the current biennium 2012-2013, all staff members will have their contracts renewed till the end of 2013, at the same time, being aware of the uncertainty of their future, staff may take steps to find alternative positions which can impact on the remainder of the programme of work for the current biennium.