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**MEDITERRANEAN ACTION PLAN**

Third Meeting of National Legal and Technical Experts  
on the Revision of the Emergency Protocol to the  
Barcelona Convention

Malta, 20-22 January 2002

**REPORT OF THE THIRD MEETING OF NATIONAL LEGAL  
AND TECHNICAL EXPERTS ON THE REVISION OF THE  
EMERGENCY PROTOCOL TO THE BARCELONA CONVENTION**

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## Introduction

1. The Third Meeting of National Legal and Technical Experts on the Revision of the Emergency Protocol to the Barcelona Convention was held in Malta from 20 to 22 January 2002 at the kind invitation of the Maltese Government. The Meeting was convened pursuant to a decision of the Twelfth Ordinary Meeting of the Contracting Parties to the Barcelona Convention, held in Monaco from 14 to 17 November 2001.
2. The principal objective of the Meeting was to finalize the text of a new Protocol to be submitted to a Conference of Plenipotentiaries for adoption.

## Attendance

3. The Meeting was attended by legal and technical experts from the following Contracting Parties: Algeria, Bosnia and Herzegovina, Croatia, Cyprus, European Community, Egypt, France, Greece, Israel, Italy, Lebanon, Libyan Arab Jamahiriya, Malta, Monaco, Morocco, Slovenia, Syrian Arab Republic, Tunisia and Turkey.
4. Representatives of the following United Nations bodies, specialized agencies and non-governmental organizations also attended the Meeting as observers: International Maritime Organization (IMO), Accord entre la France, l'Italie et la Principauté de Monaco relatif à la protection des eaux du littoral méditerranéen (RAMOGE), Bonn Agreement, Mediterranean Information Office for Environment, Culture and Sustainable Development (MIO-ECSDE), International Institute of Maritime Law of IMO and Nature Trust.
5. A complete list of participants is attached as Annex I to the present report.

## **Agenda item 1:      Opening of the Meeting**

6. The Meeting was opened by H.E. Mr Francis Zammit Dimech, Minister for the Environment of Malta, whose statement is reproduced in full in Annex IV to this report. He also reaffirmed Malta's commitment to offering the best possible facilities for REMPEC, as reflected in the progress made in rehousing the Centre.
7. Mr Jean-Claude Sainlos, Senior Deputy Director, Marine Environment Division, IMO, conveyed the greetings of the Secretary-General of IMO, Mr William O'Neil, and thanked the Maltese authorities for hosting the Meeting and for their continuous support for REMPEC. Observing that regional cooperation was a significant part of IMO's strategy for the implementation of global conventions and referring to IMO's long-standing cooperation with UNEP in that area, notably in connection with the OPRC Convention, he stressed the importance of broadening regional cooperation to include a preventive component. The Meeting therefore had a crucial task before it, culminating as it would in the adoption by the Conference of Plenipotentiaries of a new expanded Protocol.
8. Mr Lucien Chabason, UNEP/MAP Coordinator, expressing thanks to the Maltese authorities for hosting both the Meeting and the Conference of Plenipotentiaries, and for their strong commitment to MAP activities in general, said that the adoption of an appropriate new expanded legal framework for combating pollution from ships was particularly important in the context of the growing risks of accidental and operational pollution in the Mediterranean Sea Area owing to increased traffic. The new Protocol would also bring to a successful conclusion the process of revision and updating of the Barcelona system of legal instruments, providing the Mediterranean with a comprehensive advanced legal framework for cooperation. It was to be hoped that most of those instruments would be in force in time for Earth Summit II, to be held in Johannesburg in September 2002. Given the prevailing spirit of cooperation among Mediterranean States, he trusted that a consensus text would

emerge from the Meeting for adoption by the Conference of Plenipotentiaries to be held immediately after the present Meeting.

**Agenda item 2: Rules of procedure**

9. It was agreed that the rules of procedure for meetings and conferences of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea against Pollution and its related Protocols would apply *mutatis mutandis* to the Meeting (UNEP/IG.43/6/Annex XI).

**Agenda item 3: Election of officers**

10. The Meeting elected its Officers as follows:

Chairperson:	Mr Jonathan Pace	(Malta)
Vice-Chairpersons:	Mr Daniel Silvestre	(France)
	Mr Malek Smaoui	(Tunisia)
Rapporteur :	Mr Mohamed Aly Borhan	(Egypt)

**Agenda item 4: Adoption of the agenda and organization of work**

11. The Meeting adopted the agenda contained in document REMPEC/WG.20/4/1 UNEP(DEC)/MED WG.197 (see Annex III) and the draft timetable contained in document REMPEC/WG.20/4/3 UNEP(DEC)/MED WG.197, noting the annotated provisional agenda contained in document REMPEC/WG.20/4/2 UNEP(DEC)/MED WG.197.

**Agenda item 5: Discussion of the final Draft Protocol concerning Cooperation in Preventing Pollution from Ships and in Combating Pollution of the Mediterranean Sea by Oil and other Hazardous and Noxious Substances in Cases of Emergency**

12. Mr Patrino, Director of REMPEC, introduced the Introductory Note by the Secretariat on the draft Protocol (UNEP(DEC)/MED WG.197/1). He recalled that the Contracting Parties, at their Tenth Ordinary Meeting held in Tunis in November 1997, had adopted a Resolution on the Regional Strategy on Prevention of the Pollution of the Marine Environment by Ships and had decided to enlarge the competence of REMPEC. A first Ad Hoc Meeting of National Legal Technical Experts on the Amendments to the Emergency Protocol had been held in Malta in November 1998, immediately preceding the REMPEC's Focal Points Meeting. The experts had prepared a draft text for discussion by the Focal Points, who had agreed on some amendments and decided that further preparatory work should be carried out in close cooperation between UNEP/MAP, IMO and REMPEC. Experts nominated by UNEP/MAP, IMO and REMPEC met in Malta in March 1999, and prepared a new text, which had been further refined following the Erika accident (12 December 1999).

13. A Second Meeting of National Legal and Technical Experts had been held in Monaco in April 2001 and had reached agreement on a text, which was reproduced in Annex I to document UNEP(DEC)/MED WG.197/1. At that meeting, the European Community had expressed a reservation ad referendum regarding Article 1(e) concerning the definition of "international regulations". The Second Meeting of National Legal and Technical Experts had decided to recommend the adoption of a new Protocol, in view of the extensive and substantive amendments incorporated in the draft, and that the draft Protocol should be circulated to the Contracting Parties for comments.

14. During the summer of 2001, the European Community had submitted further amendments, which had been circulated to the Contracting Parties. The MAP Focal Points meeting, held in Athens in September 2001, had requested the Secretariat to convene an open-ended *ad hoc* meeting of the Working Group of Experts on the Amendments to the Emergency Protocol to the Barcelona Convention, which was held in Malta, 29-30 October 2001, with the aim of discussing the proposed amendments and facilitating the negotiation process for the finalization of the text of the new Protocol. On 2 November 2001, Turkey had submitted a new proposal for amendments to the draft Protocol (Annex II to document UNEP(DEC)/MED WG.197/1).

15. The Twelfth Ordinary Meeting of the Contracting Parties held in Monaco in November 2001 agreed to adopt a new Protocol rather than to amend the present Protocol. It also recommended that the Secretariat finalize the text adopted by the Second Meeting of National Legal and Technical Experts on the Amendments to the Emergency Protocol to the Barcelona Convention (Monaco, 26 April 2001), taking into account the inputs from the Contracting Parties, and to make the necessary arrangements to convene a Third Meeting of National Legal and Technical Experts followed by a Conference of Plenipotentiaries to adopt the new Protocol, to be held in January 2002 in Malta, at the kind invitation of the Maltese Government. At this meeting, the European Community indicated that it would submit a final proposal with regard to its new proposed amendments, taking into account the relevant comments raised during the meeting. It pointed out that the Council of the European Union would need to be consulted and promised to make every effort to provide the Secretariat with its final proposal as soon as possible. The proposals of the European Community were received in mid-December and were attached as Annex III to document UNEP(DEC)/MED WG.197/1. The document also contained the draft text adopted by the Second Meeting of National Legal and Technical Experts (Annex I) and the amendments proposed by Turkey (Annex II).

16. The representative of the European Community explained why the single reservation made by her delegation in Monaco had given rise to more extensive reconsideration of the draft text. The basic issue concerned the definition of international regulations and the legal status of European Community action in this respect. She recalled that four Contracting Parties were currently members of the European Union, and were likely to be joined by several more in the near future. In the case of Member States of the European Union, European directives related to the prevention and control of marine pollution applied in addition to the existing regulations adopted under the aegis of IMO. She added that, as well as legal issues, the lessons learned from the Erika accident also needed to be taken more fully into account in order to develop a more effective prevention system.

17. The representative of the Libyan Arab Jamahiriya expressed disappointment that there was no interpretation into Arabic for the present Meeting, in which many participants were Arabic speakers. Mr Chabason, MAP Coordinator, recalled that the practice was to use English and French in technical expert meetings and in addition to use Arabic and Spanish for meetings of the Contracting Parties, Plenipotentiaries and the Bureau.

18. At the proposal of the Chairperson, the Meeting agreed to base its discussion on the draft text adopted by the Second Meeting of Experts, together with the amendments proposed by Turkey and the European Community, which included the results of the open-ended *ad hoc* meeting held in Malta in October 2001. The Meeting also agreed to deal with substantive amendments and that a small drafting group would be established to deal with editorial adjustments. The Chairperson invited comments on the text of the draft Protocol contained in Annex I to UNEP(DEC)/MED WG.197/1. The numbering of the articles in the Report corresponds to the numbering in this Annex.

### Preamble

19. The representative of Tunisia said that, rather than adding a provision after the fifth preambular paragraph solely acknowledging the contribution of the European Community, as suggested in Annex III to the document, it would be preferable to acknowledge the contribution of all Contracting Parties.

20. In response, the representative of the European Community explained that the proposal to acknowledge the contribution of the European Community should be considered together with the proposed amendment to Article 14 in order to enable the Community to accept the definition of "international regulations" as contained in the present wording of Article 1(e) in Annex I. In contrast, combining the acknowledgement of the contributions of States Parties with that of the European Community would fail to recognize the specific nature of the European Community as a Contracting Party.

21. Several speakers, among them the representatives of the European Union Member States, supported the amendment proposed by the European Community. In particular, the representative of Italy emphasized that, especially since the Erika accident, it was important to ensure safety of navigation and protection of the marine environment, both within the framework of international maritime law and under European regulations.

22. Following further discussion, it was agreed that the fifth preambular paragraph, which acknowledged the role of IMO, should be followed by two additional preambular paragraphs, the first, which was a new proposal by Tunisia, emphasizing the efforts of the Mediterranean coastal States, and the second acknowledging the contribution of the European Community to the implementation of international rules and standards.

23. The representative of Turkey proposed either to delete the reference to the United Nations Convention on the Law of the Sea (UNCLOS), or to qualify it by indicating that nothing in the Protocol was to be construed as altering the rights or obligations of any Party under any instruments or international agreements. The Meeting discussed the issue of the precise manner in which reference should be made to UNCLOS to take into account the fact that several Contracting Parties were not parties to it. The European Community emphasized that any reference to the matter should indicate that not only many Mediterranean coastal States, but also the European Community was a party to the Convention

24. After consultation between delegations, the Meeting agreed to add the words "which is in force and to which many Mediterranean coastal States and the European Community are parties".

### Article 1 (e) (Definitions)

25. The representative of the European Community suggested that reference should be made to the United Nations itself, under the aegis of which UNCLOS had been adopted, as well as to the specialized agencies. It was pointed out that the definition dealt with international regulations. These were not adopted by the United Nations itself, but through United Nations specialized agencies. The representative of the European Community withdrew the proposed amendment.

### Article 2, para. 1 bis (General provisions)

26. The Meeting endorsed the proposal by the European Community to refer to a broader spectrum of participants in cooperation. After an exchange of views, it was decided, on the proposal of France, that the term "socio-economic actors" would be more appropriate than

“economic operators”, as originally proposed in the English version, with the equivalent term in French, and that the corresponding term consistent with the wording of the mandate of the Mediterranean Commission on Sustainable Development (MCSD) would be used for the Arabic version.

#### Article 4 (Monitoring)

27. Following the proposal by the representative of Israel to qualify the term “relevant international regulations”, the Meeting agreed to use the term “applicable” instead of “relevant”, in conformity with standard usage in international instruments.

#### Article 6, para. 1 (b bis bis) (Dissemination and exchange of Information)

28. The Meeting agreed to include a reference to “other relevant applicable regulations”, as proposed by the European Community.

#### Article 8 (Reporting procedure)

29. Following a comment by the representative of Israel concerning the lack of unity in the use of the words “incidents” and “pollution incidents”, a discussion ensued and the Meeting decided to clarify the text by adding a new paragraph 1 *ter bis* explaining the meaning of the term “incident” in paragraphs 1, 1 *bis* and 1 *ter* of Article 8.

30. Paragraphs 1 *quater* and 2 *bis* were slightly amended in order to make the text more uniform and consistent.

#### Article 8, para.1

31. The amendment proposed by the European Community to clarify paragraph 1 (b) of Article 8 by showing that it covered hazardous and noxious substances carried both in bulk and in packaged form was approved.

32. Introducing a suggested addition to paragraph 1 of Article 8, the representative of the European Community emphasized the vulnerability of the Mediterranean Sea to the risks posed by the transport of huge amounts of hazardous cargo in relation to its nature as a semi-enclosed sea and its size. Thus each Party should require the master of every ship sailing in its territorial waters to comply with reporting obligations.

33. There was general support for that objective. However, the representative of France, while strongly supporting the European Community amendment, indicated that, in order for it to be effective, the modalities of its implementation should be defined. Discussion then focused on the question raised by the representative of the Libyan Arab Jamahiriya about the manner in which coastal States Parties could ensure that masters of ships of non-Party States respected the relevant obligations. Following comments from the floor, it was agreed to amend the text proposed by the Malta Meeting in October 2001. It was also agreed, in line with the suggestions of Tunisia and France, to include a provision regarding the assistance of REMPEC to Contracting Parties in the implementation of the respective provisions and the notification of such provisions to flag States through IMO.

34. The Meeting agreed to insert a new paragraph reflecting these considerations.

#### Article 8, para. 1 bis

35. With regard to reporting procedure, the Meeting had before it a European Community proposal to refer to “laws applicable to that Party” rather than “national law”. The representative of the European Community explained that the proposal followed from the

European Community's acceptance of the definition of international regulations in Article 1; it was merely intended to cover the case of States members of the European Union, for which Community law took precedence over national law, and should not make any difference to other Contracting Parties.

36. Concerns as to whether the proposed wording covered national laws were expressed by the experts from Tunisia and Libyan Arab Jamahiriya, the latter raising the question of national sovereignty. After clarifications and a number of proposals from the floor, the Meeting agreed on the wording "in accordance with applicable laws".

Article 8, para. 1 *ter*

37. The Meeting agreed to a proposal by Turkey to add the words "the relevant provisions of " before the "Protocol for the Protection ...".

Article 9 *bis*, para. 2 (Emergency measures on board ships, on offshore installations and in ports)

38. The representative of the European Community reformulated its original amendment to Article 9 *bis*, paragraph 2, proposing to retain paragraph 2 as agreed upon by the Monaco Meeting and adding a new paragraph 2 *bis* formulated in line with the text of the additional subparagraph in paragraph 1 of Article 8.

39. Following this reformulation, in which the word "invite" was changed to "ensure", the representative of Israel asked that the term "require" be used instead. The representative of Cyprus noted that a provision applying to ships of third parties should not be more stringent than provisions applying to ships flying flags of States Parties. Following these comments, the representative of the European Community proposed the wording "take appropriate measures with a view to ensuring", which was less stringent on ships flying flags of third parties than those flying flags of the Parties, and the Meeting approved the proposal.

40. After further discussion the Meeting decided also to harmonize the wording of Articles 8.1 and 9 *bis*, paragraph 2 *bis*, and to use the same phrase - "take appropriate measures with a view to ensuring" - in both of those paragraphs.

Article 10, para. 2 (Assistance)

41. A proposal by Turkey to amend the wording of this paragraph raised the question of the role of the Regional Centre in coordinating response operations. There was a common understanding that a more proactive role for REMPEC should be encouraged, as indicated by the representative of Croatia. Particularly in the event of disagreement among the Parties, the Centre should be in a position to take the initiative in offering its services, with the approval of the Parties, rather than merely responding to their requests. However, it was clear that even if it offered assistance, REMPEC could not take action without the approval of all the Parties concerned. Moreover, the proposed wording did not of course preclude mutual assistance as also provided for under Article 10. The Meeting agreed to include the wording "with the approval of all the Parties concerned".

Article 10 *bis*, para. 5 (Reimbursement of costs of assistance)

42. An amendment to paragraph 5 of Article 10 *bis*, originally proposed by the European Community and modified by the open-ended *ad hoc* meeting held in Malta in October 2001, was approved.



Article 10 *ter*, para. 1 (Port reception facilities)

43. In view of the importance of the issue of port reception facilities and the discussions that had taken place at all the previous meetings, the representatives of Algeria, Egypt, Monaco, Morocco and the European Community presented different proposals. A small drafting group was set up and arrived at an agreed text that was discussed by the Meeting. During the discussion, it was recalled that the proposed new text incorporated an important element of the MARPOL Convention and of a recent European Union directive on the subject. In particular, the representative of Algeria emphasized the importance of cooperation in bearing the costs of port reception facilities and the principle of financing their operation by users. After a detailed discussion aimed at ensuring that such facilities were used in an efficient manner without causing undue delay to ships, and that the Parties explored ways and means to charge reasonable costs for the use of such facilities, the text was adopted as amended.

Article 10 *quater* (Environmental risks)

44. Article 10 *quater* was the subject of amendments proposed by Turkey and the European Community. Following the explanation provided by the representative of the European Community, and taking into consideration the views expressed by other delegations, Turkey withdrew its proposal regarding this Article. The representative of IMO proposed new wording for Article 10 *quater* with a reference to the global mandate of IMO. It was also agreed that the term “environmental safety” should be replaced by “environmental risks”. Article 10 *quater* was adopted as amended.

Article 10 *quinquies* (Access to ports by ships in distress)

45. Amendments were proposed to the Article by both the European Community and Turkey. After taking note of the explanations provided by the Secretariat concerning the added value of this issue for the Protocol, in line with similar initiatives that were in progress in IMO and in the European Community as a follow-up to recent incidents, the Article was adopted with the text as proposed by the meeting in Malta in October 2001. The title of the Article was also changed to make it consistent with the contents.

Article 11 (Subregional agreements)

46. A proposed amendment by Turkey sought to ensure that the subregional agreements covered by Article 11 were consistent with the Barcelona Convention and in conformity with international law. After the Meeting agreed that, under the terms of the Barcelona Convention itself, any agreement for the implementation of the Protocol would necessarily have to be in accordance with the Convention and international law, the Article was adopted as originally formulated.

Article 14 (Effect of the Protocol on domestic legislation)

47. Introducing the proposed amendment to Article 14, the representative of the European Community recalled that the proposed wording formed part of the agreement relating to the definition of international regulations in Article 1 and the reference to the role of the European Community in the Preamble. Taking this into consideration, the Meeting adopted the text as proposed by the European Community.

Article 16 (Signature)

48. In agreeing to Article 16 of the Protocol, the representative of the European Community pointed out the difficulties caused by having the first dates for signature so close to the final Meeting of Technical and Legal Experts. The Meeting noted that a one-day gap

between negotiations and adoption was usual in the context of the Barcelona Convention and that the timetable for the Protocol negotiations had been set by the Twelfth Ordinary Meeting of the Contracting Parties. However, the experts suggested that in future negotiations to amend or adopt Protocols, a longer interval should be observed.

#### Meetings of the Focal Points

49. The representative of Greece proposed that a provision similar to that contained in the SPA Protocol should be included providing for meetings of the Focal Points designated by the Contracting Parties under the Protocol. However, in view of the opinions expressed that such structural provisions should not be contained in a legal instrument, but should be left to the Meetings of the Contracting Parties, this proposal was withdrawn.

#### **Agenda item 6: Other business**

50. The draft resolutions prepared by the Secretariat were reviewed by the Meeting, which gave guidance to the Secretariat for their finalization.

#### **Agenda item 7: Adoption of the report of the Meeting**

51. The report of the Meeting was adopted, as amended.

#### **Agenda item 8: Closure of the Meeting**

52. After the customary exchange of courtesies, the Chairperson closed the Meeting at 21.00 pm on Tuesday, 22 January 2002.

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## **ANNEX II**

### **AGENDA**

1. Opening of the Meeting.
2. Rules of procedure.
3. Election of officers.
4. Adoption of the Agenda and organization of work.
5. Discussion of the final Draft Protocol concerning Co-operation in Preventing Pollution from Ships and in Combating Pollution of the Mediterranean Sea by Oil and other Hazardous and Noxious Substances.
6. Other business.
7. Adoption of the report of the Meeting.
8. Closure of the Meeting.

### ANNEX III

## DRAFT PROTOCOL CONCERNING COOPERATION IN PREVENTING POLLUTION FROM SHIPS AND IN COMBATING POLLUTION OF THE MEDITERRANEAN SEA BY OIL AND HAZARDOUS AND NOXIOUS SUBSTANCES IN CASES OF EMERGENCY

### *The Contracting Parties to the present Protocol,*

*Being Parties* to the Convention for the Protection of the Mediterranean Sea against Pollution, adopted at Barcelona on 16 February 1976 and amended on 10 June 1995,

*Desirous* of implementing Articles 6 and 9 of the said Convention,

*Recognizing* that grave pollution of the sea by oil and hazardous and noxious substances or a threat thereof in the Mediterranean Sea Area involves a danger for the coastal States and the marine environment,

*Considering* that the cooperation of all the coastal States of the Mediterranean Sea is called for to prevent pollution from ships and to respond to pollution incidents, irrespective of their origin,

*Acknowledging* the role of the International Maritime Organization and the importance of cooperating within the framework of this Organization, in particular in promoting the adoption and the development of international rules and standards to prevent, reduce and control pollution of the marine environment from ships,

*Emphasizing* the efforts made by the Mediterranean coastal States for the implementation of these international rules and standards,

*Acknowledging also* the contribution of the European Community to the implementation of international standards as regards maritime safety and the prevention of pollution from ships,

*Recognizing also* the importance of cooperation in the Mediterranean Sea Area in promoting the effective implementation of international regulations to prevent, reduce and control pollution of the marine environment from ships,

*Recognizing further* the importance of prompt and effective action at the national, subregional and regional levels in taking emergency measures to deal with pollution of the marine environment or a threat thereof,

*Applying* the precautionary principle, the polluter pays principle and the method of environmental impact assessment, and utilizing the best available techniques and the best environmental practices, as provided for in Article 4 of the Convention,

*Bearing in mind* the relevant provisions of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, which is in force and to which many Mediterranean coastal States and the European Community are Parties,

*Taking into account* the international conventions dealing in particular with maritime safety, the prevention of pollution from ships, preparedness for and response to pollution incidents, and liability and compensation for pollution damage,

*Wishing* to further develop mutual assistance and cooperation in preventing and combating pollution,

*Have agreed as follows:*

### *Article 1*

#### DEFINITIONS

For the purpose of this Protocol:

- (a) "Convention" means the Convention for the Protection of the Mediterranean Sea against Pollution, adopted at Barcelona on 16 February 1976 and amended on 10 June 1995;
- (b) "Pollution incident" means an occurrence or series of occurrences having the same origin, which results or may result in a discharge of oil and/or hazardous and noxious substances and which poses or may pose a threat to the marine environment, or to the coastline or related interests of one or more States, and which requires emergency action or other immediate response;
- (c) "Hazardous and noxious substances" means any substance other than oil which, if introduced into the marine environment, is likely to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea;
- (d) "Related interests" means the interests of a coastal State directly affected or threatened and concerning, among others
  - (i) maritime activities in coastal areas, in ports or estuaries, including fishing activities;
  - (ii) the historical and tourist appeal of the area in question, including water sports and recreation;
  - (iii) the health of the coastal population;
  - (iv) the cultural, aesthetic, scientific and educational value of the area;
  - (v) the conservation of biological diversity and the sustainable use of marine and coastal biological resources;
- (e) "International regulations" means regulations aimed at preventing, reducing and controlling pollution of the marine environment from ships as adopted, at the global level and in conformity with international law, under the aegis of United Nations specialized agencies, and in particular of the International Maritime Organization;
- (f) "Regional Centre" 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 International Maritime Organization and the United Nations Environment



Programme, and the objectives and functions of which are defined by the Contracting Parties to the Convention.

### *Article 2*

#### PROTOCOL AREA

The area to which the Protocol applies shall be the Mediterranean Sea Area as defined in Article 1 of the Convention.

### *Article 3*

#### GENERAL PROVISIONS

1. The Parties shall cooperate:
  - (a) to implement international regulations to prevent, reduce and control pollution of the marine environment from ships; and
  - (b) to take all necessary measures in cases of pollution incidents.
2. In cooperating, the Parties should take into account as appropriate the participation of local authorities, non-governmental organizations and socio-economic actors.
3. Each Party shall apply this Protocol without prejudice to the sovereignty or the jurisdiction of other Parties or other States. Any measures taken by a Party to apply this Protocol shall be in accordance with international law.

### *Article 4*

#### CONTINGENCY PLANS AND OTHER MEANS OF PREVENTING AND COMBATING POLLUTION INCIDENTS

1. The Parties shall endeavour to maintain and promote, either individually or through bilateral or multilateral cooperation, contingency plans and other means of preventing and combating pollution incidents. These means shall include, in particular, equipment, ships, aircraft and personnel prepared for operations in cases of emergency, the enactment, as appropriate, of relevant legislation, the development or strengthening of the capability to respond to a pollution incident and the designation of a national authority or authorities responsible for the implementation of this Protocol.
2. The Parties shall also take measures in conformity with international law to prevent the pollution of the Mediterranean Sea Area from ships in order to ensure the effective implementation in that Area of the relevant international conventions in their capacity as Flag State, Port State and Coastal State, and their applicable legislation. They shall develop their national capacity as regards the implementation of those international conventions and may cooperate for their effective implementation through bilateral or multilateral agreements.

3. The Parties shall inform the Regional Centre every two years of the measures taken for the implementation of this Article. The Regional Centre shall present a report to the Parties on the basis of the information received.

#### *Article 5*

### MONITORING

The Parties shall develop and apply, either individually or through bilateral or multilateral cooperation, monitoring activities covering the Mediterranean Sea Area in order to prevent, detect and combat pollution, and to ensure compliance with the applicable international regulations.

#### *Article 6*

### COOPERATION IN RECOVERY OPERATIONS

In case of release or loss overboard of hazardous and noxious substances in packaged form, including those in freight containers, portable tanks, road and rail vehicles and shipborne barges, the Parties shall cooperate as far as practicable in the salvage of these packages and the recovery of such substances so as to prevent or reduce the danger to the marine and coastal environment.

#### *Article 7*

### DISSEMINATION AND EXCHANGE OF INFORMATION

1. Each Party undertakes to disseminate to the other Parties information concerning:
  - (a) the competent national organization or authorities responsible for combating pollution of the sea by oil and hazardous and noxious substances;
  - (b) the competent national authorities responsible for receiving reports of pollution of the sea by oil and hazardous and noxious substances and for dealing with matters concerning measures of assistance between Parties;
  - (c) the national authorities entitled to act on behalf of the State in regard to measures of mutual assistance and cooperation between Parties;
  - (d) the national organization or authorities responsible for the implementation of paragraph 2 of Article 4, in particular those responsible for the implementation of the international conventions concerned and other relevant applicable regulations, those responsible for port reception facilities and those responsible for the monitoring of discharges which are illegal under MARPOL 73/78;
  - (e) its regulations and other matters which have a direct bearing on preparedness for and response to pollution of the sea by oil and hazardous and noxious substances;

- (f) new ways in which pollution of the sea by oil and hazardous and noxious substances may be avoided, new measures for combating pollution, new developments in the technology of conducting monitoring and the development of research programmes.

2. The Parties which have agreed to exchange information directly shall communicate such information to the Regional Centre. The latter shall communicate this information to the other Parties and, on a basis of reciprocity, to coastal States of the Mediterranean Sea Area which are not Parties to this Protocol.

3. Parties concluding bilateral or multilateral agreements within the framework of this Protocol shall inform the Regional Centre of such agreements, which shall communicate them to the other Parties.

### *Article 8*

## COMMUNICATION OF INFORMATION AND REPORTS CONCERNING POLLUTION INCIDENTS

The Parties undertake to coordinate the utilization of the means of communication at their disposal in order to ensure, with the necessary speed and reliability, the reception, transmission and dissemination of all reports and urgent information concerning pollution incidents. The Regional Centre shall have the necessary means of communication to enable it to participate in this coordinated effort and, in particular, to fulfil the functions assigned to it by paragraph 2 of Article 12.

### *Article 9*

## REPORTING PROCEDURE

1. Each Party shall issue instructions to masters or other persons having charge of ships flying its flag and to the pilots of aircraft registered in its territory to report by the most rapid and adequate channels in the circumstances, following reporting procedures to the extent required by, and in accordance with, the applicable provisions of the relevant international agreements, to the nearest coastal State and to this Party:

- (a) all incidents which result or may result in a discharge of oil or hazardous and noxious substances;
- (b) the presence, characteristics and extent of spillages of oil or hazardous and noxious substances, including hazardous and noxious substances in packaged form, observed at sea which pose or are likely to pose a threat to the marine environment or to the coast or related interests of one or more of the Parties.

2. Without prejudice to the provisions of Article 20 of the Protocol, each Party shall take appropriate measures with a view to ensuring that the master of every ship sailing in its territorial waters complies with the obligations under (a) and (b) and may request assistance from the Regional Centre in this respect. It shall inform the International Maritime Organization of the measures taken.

3. Each Party shall also issue instructions to persons having charge of sea ports or handling facilities under its jurisdiction to report to it, in accordance with applicable laws, all incidents which result or may result in a discharge of oil or hazardous and noxious substances.

4. In accordance with the relevant provisions of the Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil, each Party shall issue instructions to persons having charge of offshore units under its jurisdiction to report to it by the most rapid and adequate channels in the circumstances, following reporting procedures it has prescribed, all incidents which result or may result in a discharge of oil or hazardous and noxious substances.

5. In paragraphs 1, 3 and 4 of this Article, the term "incident" means an incident meeting the conditions described therein, whether or not it is a pollution incident.

6. The information collected in accordance with paragraphs 1, 3 and 4 shall be communicated to the Regional Centre in the case of a pollution incident.

7. The information collected in accordance with paragraphs 1, 3 and 4 shall be immediately communicated to the other Parties likely to be affected by a pollution incident:

- (a) by the Party which has received the information, preferably directly or through the Regional Centre; or
- (b) by the Regional Centre.

In case of direct communication between Parties, these shall inform the Regional Centre of the measures taken, and the Centre shall communicate them to the other Parties.

8. The Parties shall use a mutually agreed standard form proposed by the Regional Centre for the reporting of pollution incidents as required under paragraphs 6 and 7 of this Article.

9. In consequence of the application of the provisions of paragraph 7, the Parties are not bound by the obligation laid down in Article 9, paragraph 2, of the Convention.

#### *Article 10*

### OPERATIONAL MEASURES

1. Any Party faced with a pollution incident shall:

- (a) make the necessary assessments of the nature, extent and possible consequences of the pollution incident or, as the case may be, the type and approximate quantity of oil or hazardous and noxious substances and the direction and speed of drift of the spillage;
- (b) take every practicable measure to prevent, reduce and, to the fullest possible extent, eliminate the effects of the pollution incident;

- (c) immediately inform all Parties likely to be affected by the pollution incident of these assessments and of any action which it has taken or intends to take, and simultaneously provide the same information to the Regional Centre, which shall communicate it to all other Parties;
- (d) continue to observe the situation for as long as possible and report thereon in accordance with Article 9.

2. Where action is taken to combat pollution originating from a ship, all possible measures shall be taken to safeguard:

- (a) human lives ;
- (b) the ship itself; in doing so, damage to the environment in general shall be prevented or minimized.

Any Party which takes such action shall inform the International Maritime Organization either directly or through the Regional Centre.

#### *Article 11*

#### EMERGENCY MEASURES ON BOARD SHIPS, ON OFFSHORE INSTALLATIONS AND IN PORTS

1. Each Party shall take the necessary steps to ensure that ships flying its flag have on board a pollution emergency plan as required by, and in accordance with, the relevant international regulations.
2. Each Party shall require masters of ships flying its flag, in case of a pollution incident, to follow the procedures described in the shipboard emergency plan and in particular to provide the proper authorities, at their request, with such detailed information about the ship and its cargo as is relevant to actions taken in pursuance of Article 9, and to cooperate with these authorities.
3. Without prejudice to the provisions of Article 20 of the Protocol, each Party shall take appropriate measures with a view to ensuring that the master of every ship sailing in its territorial waters complies with the obligation under paragraph 2 and may request assistance from the Regional Centre in this respect. It shall inform the International Maritime Organization of the measures taken.
4. Each Party shall require that authorities or operators in charge of sea ports and handling facilities under its jurisdiction as it deems appropriate have pollution emergency plans or similar arrangements that are coordinated with the national system established in accordance with Article 4 and approved in accordance with procedures established by the competent national authority.
5. Each Party shall require operators in charge of offshore installations under its jurisdiction to have a contingency plan to combat any pollution incident, which is coordinated with the national system established in accordance with Article 4 and in accordance with the procedures established by the competent national authority.

*Article 12*

ASSISTANCE

1. Any Party requiring assistance to deal with a pollution incident may call for assistance from other Parties, either directly or through the Regional Centre, starting with the Parties which appear likely to be affected by the pollution. This assistance may comprise, in particular, expert advice and the supply to or placing at the disposal of the Party concerned of the required specialized personnel, products, equipment and nautical facilities. Parties so requested shall use their best endeavours to render this assistance.
2. Where the Parties engaged in an operation to combat pollution cannot agree on the organization of the operation, the Regional Centre may, with the approval of all the Parties involved, coordinate the activity of the facilities put into operation by these Parties.
3. In accordance with applicable international agreements, each Party shall take the necessary legal and administrative measures to facilitate:
  - (a) the arrival and utilization in and departure from its territory of ships, aircraft and other modes of transport engaged in responding to a pollution incident or transporting personnel, cargoes, materials and equipment required to deal with such an incident; and
  - (b) the expeditious movement into, through and out of its territory of the personnel, cargoes, materials and equipment referred to in subparagraph (a).

*Article 13*

REIMBURSEMENT OF COSTS OF ASSISTANCE

1. Unless an agreement concerning the financial arrangements governing actions of Parties to deal with pollution incidents has been concluded on a bilateral or multilateral basis prior to the pollution incident, Parties shall bear the costs of their respective action in dealing with pollution in accordance with paragraph 2.
2.
  - (a) If the action was taken by one Party at the express request of another Party, the requesting Party shall reimburse to the assisting Party the costs of its action. If the request is cancelled, the requesting Party shall bear the costs already incurred or committed by the assisting Party;
  - (b) if the action was taken by a Party on its own initiative, that Party shall bear the cost of its action;
  - (c) the principles laid down above in subparagraphs (a) and (b) shall apply unless the Parties concerned otherwise agree in any individual case.
3. Unless otherwise agreed, the costs of the action taken by a Party at the request of another Party shall be fairly calculated according to the law and current practice of the assisting Party concerning the reimbursement of such costs.

4. The Party requesting assistance and the assisting Party shall, where appropriate, cooperate in concluding any action in response to a compensation claim. To that end, they shall give due consideration to existing legal regimes. Where the action thus concluded does not permit full compensation for expenses incurred in the assistance operation, the Party requesting assistance may ask the assisting Party to waive reimbursement of the expenses exceeding the sums compensated or to reduce the costs which have been calculated in accordance with paragraph 3. It may also request a postponement of the reimbursement of such costs. In considering such a request, assisting Parties shall give due consideration to the needs of developing countries.

5. The provisions of this Article shall not be interpreted as in any way prejudicing the rights of Parties to recover from third parties the costs of actions taken to deal with pollution incidents under other applicable provisions and rules of national and international law, applicable to one or to the other Party involved in the assistance.

#### *Article 14*

### PORT RECEPTION FACILITIES

1. The Parties shall individually, bilaterally or multilaterally take all necessary steps to ensure that reception facilities meeting the needs of ships are available in their ports and terminals. They shall ensure that these facilities are used efficiently without causing undue delay to ships.

The Parties are invited to explore ways and means to charge reasonable costs for the use of these facilities.

2. The Parties shall also ensure the provision of adequate reception facilities for pleasure craft.

3. The Parties shall take all the necessary steps to ensure that reception facilities operate efficiently to limit any impact of their discharges to the marine environment.

4. The Parties shall take the necessary steps to provide ships using their ports with updated information relevant to the obligations arising from MARPOL 73/78 and from their legislation applicable in this field.

#### *Article 15*

### ENVIRONMENTAL RISKS OF MARITIME TRAFFIC

In conformity with generally accepted international rules and standards and the global mandate of the International Maritime Organization, the Parties shall individually, bilaterally or multilaterally take the necessary steps to assess the environmental risks of the recognized routes used in maritime traffic and shall take the appropriate measures aimed at reducing the risks of accidents or the environmental consequences thereof.

*Article 16*

RECEPTION OF SHIPS IN DISTRESS IN PORTS AND PLACES OF REFUGE

The Parties shall define national, subregional or regional strategies concerning reception in places of refuge, including ports, of ships in distress presenting a threat to the marine environment. They shall cooperate to this end and inform the Regional Centre of the measures they have adopted.

*Article 17*

SUBREGIONAL AGREEMENTS

The Parties may negotiate, develop and maintain appropriate bilateral or multilateral subregional agreements in order to facilitate the implementation of this Protocol, or part of it. Upon request of the interested Parties, the Regional Centre shall assist them, within the framework of its functions, in the process of developing and implementing these subregional agreements.

*Article 18*

MEETINGS

1. Ordinary meetings of the Parties to this Protocol shall be held in conjunction with ordinary meetings of the Contracting Parties to the Convention, held pursuant to Article 18 of the Convention. The Parties to this Protocol may also hold extraordinary meetings as provided in Article 18 of the Convention.
2. It shall be the function of the meetings of the Parties to this Protocol, in particular:
  - (a) to examine and discuss reports from the Regional Centre on the implementation of this Protocol, and particularly of its Articles 4, 7 and 16;
  - (b) to formulate and adopt strategies, action plans and programmes for the implementation of this Protocol;
  - (c) to keep under review and consider the efficacy of these strategies, action plans and programmes, and the need to adopt any new strategies, action plans and programmes and to develop measures to that effect;
  - (d) to discharge such other functions as may be appropriate for the implementation of this Protocol.



*Article 19*

RELATIONSHIP WITH THE CONVENTION

1. The provisions of the Convention relating to any protocol shall apply with respect to the present Protocol.
2. The rules of procedure and the financial rules adopted pursuant to Article 24 of the Convention shall apply with respect to this Protocol, unless the Parties agree otherwise.

**FINAL PROVISIONS**

*Article 20*

EFFECT OF THE PROTOCOL ON DOMESTIC LEGISLATION

In implementing the provisions of this Protocol, the right of Parties to adopt relevant stricter domestic measures or other measures in conformity with international law, in the matters covered by this Protocol, shall not be affected.

*Article 21*

RELATIONS WITH THIRD PARTIES

The Parties shall, where appropriate, invite States that are not Parties to the Protocol and international organizations to cooperate in the implementation of the Protocol.

*Article 22*

SIGNATURE

This Protocol shall be open for signature at Valletta, Malta on 25 January 2002 and in Madrid from 26 January 2002 to 25 January 2003 by any Contracting Party to the Convention.

*Article 23*

RATIFICATION, ACCEPTANCE OR APPROVAL

This Protocol shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Government of Spain, which will assume the functions of Depositary.

*Article 24*

ACCESSION

As from 26 January 2003, this Protocol shall be open for accession by any Party to the Convention.

*Article 25*

ENTRY INTO FORCE

1. This Protocol shall enter into force on the thirtieth day following the deposit of the sixth instrument of ratification, acceptance, approval or accession.
2. From the date of its entry into force, this Protocol shall replace the Protocol Concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and other Harmful Substances in Cases of Emergency of 1976, in the relations between the Parties to both instruments.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Protocol.

DONE at Valletta, Malta, on 25 January 2002, in a single copy in the Arabic, English, French and Spanish languages, the four texts being equally authentic.

## ANNEX IV

### Opening Speech by the Minister for the Environment of Malta,

#### Dr Francis Zammit Dimech

In 1976, the Mediterranean Coastal States and the European Community met in Barcelona to sign the Convention for the Protection of the Mediterranean Sea against Pollution. The Barcelona Convention was to become the legal and institutional framework of the Mediterranean Action Plan (MAP), which had been adopted a year before.

The main idea after the Barcelona Convention was to set the necessary structures to monitor the state of the Mediterranean Sea; identify the major environmental issues and their causes; harmonize national legislations and raise them to the standards and objectives agreed.

Following the adoption in Barcelona, Spain, in February 1976 of the Convention for the Protection of the Mediterranean Sea Against Pollution, the legal framework has been enhanced during the past 25 years through the adoption of a number of Protocols, namely the

- Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft, adopted in Barcelona, Spain, in February 1976 and amended in Barcelona in June 1995;
- Protocol Concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and other Harmful Substances in Cases of Emergency, which was adopted in Barcelona, Spain, in February 1976;
- Protocol for the Protection of the Mediterranean Sea Pollution from Land-Based Sources, adopted in Athens, Greece in May 1980 and which was amended in Syracuse, Italy in March 1996;
- Protocol Concerning Mediterranean Specially Protected Areas, adopted in Geneva, Switzerland in April 1982, and replaced by a new Protocol adopted in Monaco in June 1995;
- Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and Seabed and its Subsoil, adopted in Madrid, Spain, in October 1994; and
- Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal, adopted in Izmir, Turkey, in October 1996.

As States parties to the Emergency Protocol, we have certainly come a long way. Our mandate has been clear and will never change. But this is an on-going process and so we must continually re-assess our achievements, mostly vis-à-vis our environmental performance. Each nation is now in a position to know where it has succeeded and where it has failed. Marine pollution by oil and other harmful substances certainly features in our national, regional and/or international assessment.

Our attitude in addressing the Protocol has evolved from a defensive approach to a more preventive one in terms of the contingency plans that we have set in place and also because of the regional or sub-regional agreements that we have subsequently drawn up.

In the Mediterranean Sea, with an area less than 1% of the total area covered by the world's oceans, approximately 30% of the volume of international sea-borne trade takes place. 50% of all goods carried at sea are, to some degree, considered hazardous. It is also estimated that some 28% of the world's sea-borne oil traffic transits the Mediterranean. The high density of maritime transport and its geographical characteristics render the Mediterranean Sea, which is a semi-closed sea, extremely vulnerable to environmental accidents.

There have been various indicators denoting that in the coming future we will need to revise our approach vis-à-vis environmental issues. Globalization for instance will definitely change our attitudes to trade and alter the way we do business. Globalization will bring about many benefits, but one must be quite aware that environmental performance will certainly feature at the end of the day. Forecasts indicate a higher increase of traffic and mobilization of goods and resources. This is enough to sustain the continued need for Mediterranean countries to strengthen their pollution prevention regimes, which is the main objective underlying the text of the new Emergency Protocol.

The challenges before us are great. As REMPEC's host, and because of its strategic position in the Mediterranean, Malta feels that its vocation is to be representative of all the States bordering the Mediterranean Sea.

My appeal is that you all ensure that the Emergency Protocol, which you will be discussing in the coming days, retains its dynamic character and continues to be a model legal instrument which enshrines the preventive and precautionary approach. You have ahead of you a very busy agenda. Through your discussions, the signing of the Final Act and Protocol next Friday will become a reality.

Best wishes for a very successful meeting.