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MEDITERRANEAN ACTION PLAN

Fifth Meeting of the Working Group of Experts designated
by the Contracting Parties on the Draft Protocol on Integrated
Coastal Zone Management (ICZM) in the Mediterranean

Loutraki, Greece, 10-11 December 2007

REPORT

**OF THE FIFTH MEETING OF THE WORKING GROUP OF EXPERTS
DESIGNATED BY THE CONTRACTING PARTIES ON THE DRAFT PROTOCOL
ON INTEGRATED COASTAL ZONE MANAGEMENT (ICZM)
IN THE MEDITERRANEAN**

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Management in the Mediterranean

Introduction

1. Pursuant to the decision of the 14th Ordinary Meeting of the Contracting Parties to the Barcelona Convention and its Protocols, the fifth meeting of the Working Group of legal and technical experts designated by the Contracting Parties was held at the Club Hotel Loutraki, Loutraki, Greece, on 10 and 11 December 2007. The purpose of the meeting was to continue to review, and to finalize, the draft text of a protocol on integrated coastal zone management (ICZM) for consideration and approval by the 15th Ordinary Meeting of the Contracting Parties and subsequent adoption by the Conference of Plenipotentiaries to be held in January 2008.

Attendance

2. The meeting was attended by experts designated by the following Contracting Parties to the Barcelona Convention: Albania, Algeria, Croatia, Cyprus, European Community, Egypt, France, Israel, Italy, Libyan Arab Jamahirya, Malta, Monaco, Montenegro, Morocco, Slovenia, Spain, Syria, Tunisia and Turkey.

3. The Priority Actions Programme Regional Activity Centre (PAP/RAC) was represented.

4. The list of participants appears as **Annex I** to this report.

Agenda item 1: Opening of the meeting

5. The meeting was opened by Mr Paul Mifsud, MAP Coordinator, who welcomed participants to the Working Group's fifth meeting, which had been organized with the much appreciated support of France, Italy and the European Commission. The meeting would be reviewing articles still pending on the basis of proposals prepared by the Secretariat pursuant to the mandate entrusted to it by the October 2007 MAP Focal Points meeting, and preparing a draft decision on the draft Protocol for consideration by the Contracting Parties. He trusted that, with the good will of all, a consensus text would be finalized at the current meeting.

Agenda item 2: Election of officers

6. The meeting elected its officers as follows:

Chairperson:	Mr Didier Guiffault (France)
Vice-chairpersons:	Mr Hawash Shahin (Syria)
	Ms Athena Mourmouris (Greece)
	Mr Abdelaâli Beghoura (Algeria)
Rapporteur:	Ms Etleva Canaj (Albania)

Agenda item 3: Adoption of the agenda and organization of work

7. The Chairperson drew participants' attention to the provisional agenda (UNEP(DEPI)/MED WG.324/1) and the annotated provisional agenda containing the timetable of work (UNEP(DEPI)/MED WG.324/2).

8. The agenda as adopted is attached as **Annex II** to this report.

Agenda item 4: Review of the proposals by the Secretariat on the pending articles of the draft text of the Protocol on Integrated Coastal Zones Management (ICZM Protocol)

9. Mr Mifsud, drawing attention to the working document on the draft ICZM Protocol (UNEP(DEPI)/MED WG.324/3) containing proposals by the Secretariat concerning pending articles, explained that the new draft text before the Working Group represented consolidated proposals including alternative wording or comments submitted by Contracting Parties after the fourth meeting of the Working Group, points raised at the MAP Focal Points' Meeting in Madrid and further feedback received since that meeting. The Secretariat had sought to reflect those comments in a flexible compromise text that would be acceptable to all, in the interests of meeting common concerns rather than merely reflecting individual country positions with the ultimate aim of achieving overall consensus on an instrument of unique importance.

10. The Chairperson, speaking as the representative of France, strongly endorsed the call for consensus at what was now the final stage of a very important process in drafting a balanced instrument conducive to sustainable development in the Mediterranean coastal zones. The representatives of Greece and Morocco likewise stressed the importance of balance and consensus in the new Protocol.

Article 11

11. In response to a query by the representative of Italy about the addition of the words "where appropriate" in an article on which there had been no reservations, it was recalled that the proposal was based on feedback received, with the representative of Greece confirming that the addition had been proposed by Greece to allow for flexibility in implementing the joint actions provided for in the article. There being general agreement that the new wording provided for greater flexibility, the proposal was retained.

Article 13

12. Mr Michel Prieur, Legal Consultant, introduced the new version of article 13 proposed by the Secretariat and suggested that the reference to archaeological and historical elements of the cultural heritage be incorporated into paragraph 1, bearing in mind the proposed deletion of paragraph 3, to which Spain had made a reservation.

13. The representative of Spain said that the amendment proposed by the Secretariat addressed his country's concern that article 13 would conflict with its national legislation on the free trade of goods and private ownership. Spain therefore withdrew its reservation and was also amenable to the additional amendment suggested by the Legal Consultant.

14. It was generally agreed that preservation and protection of the cultural heritage of coastal zones, including preservation in situ, were the key issues. The need to take into account the difficulties of protecting underwater cultural heritage was also deemed important. The representative of Italy, however, expressed concern that the proposed deletion of paragraph 3 of the article removed any obligation on States Parties to prohibit trade in elements of the cultural heritage of coastal zones. He therefore proposed wording that was designed to take into account that concern, while also seeking to accommodate the views of the Spanish Government on the subject. The representative of Spain, however, supported by other representatives, objected to the proposal. The representative of Italy therefore entered a study reservation to the proposed new version of article, which he later withdrew after consulting with his national authorities.

15. The Working Group agreed to the wording of article 13, as amended by the Secretariat.

Article 3

16. The Legal Consultant introduced the proposed amendments to article 3 and drew attention to the reservation by Turkey concerning the reference in paragraph 2 (b) to the specific situation of islands.

17. In the interest of conciseness, the representative of Italy proposed to integrate wording from paragraph 2 (b) of the article into the proposed paragraph 1 (b). In the light of the discussion of that proposal and the opinion of Mr. Prieur, it was decided that the proposal effectively altered the substance of the text. As such, it qualified as a new proposal and was therefore ineligible for further consideration. While responding that he would not insist on his proposal, the representative of Italy nevertheless emphasized his view that its acceptance would have strengthened the commitment to cover the landward limit of the coastal zone.

18. The representative of Turkey reminded the Working Group that Turkey had also made the same reservation to preambular paragraph 6 of the draft Protocol. Its position was that a country's islands merited no distinction from its mainland insofar as the geomorphological composition was frequently very similar in both instances, in addition to which the impact of article 12 was weakened by references to islands. Furthermore, having recently received comments from a number of its national authorities, Turkey now also wished to make reservations to article 12 on the basis of that same position, as well as to preambular paragraph 7 and article 4 on the ground that it was not party to the United Nations Convention on the Law of the Sea, and to article 16 on the ground that it was not party to the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

19. The Chairperson said that, in accordance with the agenda which it had just adopted, the Working Group was not mandated to consider reservations other than those made at its fourth meeting. Discussion of matters other than the proposals by the Secretariat on the pending articles could not therefore be entertained.

20. The representative of Malta insisted on retaining the concept of islands in the text; to do otherwise would pose serious difficulties for small and densely populated island States such as his own. The representative of Greece agreed with that position and suggested that the text might be reworded with a view to avoiding misunderstandings. The Chairperson therefore established a contact group, primarily comprising the representatives of Turkey, Malta, Greece and Cyprus, to draft appropriate text. Mr Evangelos Raftopoulos, MAP Legal Adviser, pointed out that, during its discussion, the contact group might wish to take into account article 4, paragraphs 1 and 2, of the draft Protocol. The wording of those paragraphs was derived from the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean (SPA Protocol), which, as already mentioned by other speakers, had set a precedent for taking into account the situation of countries that were not party to the United Nations Convention on the Law of the Sea.

21. Despite the efforts of the contact group and further discussions of possible wording, no compromise text was produced and the representative of Turkey remained resolute that the Turkish reservation would continue to stand in the face of any reference to the notion of islands. He was, however, responsive to suggestions that the Turkish concerns to avoid discrimination in favour of islands might be met by wording which referred to specific difficulties arising from the geomorphological characteristics of any territory or part thereof but which excluded all mention of islands.

22. At a later stage in the discussion, the Chairperson recalled an amendment proposed by Greece to paragraph 2 (b), designed to meet the concerns of Turkey. The representative of Turkey, noting that his delegation did not have the authority to withdraw Turkey's reservation to that article at the current meeting, stated none the less that he welcomed the amendment and would report positively thereon to his Government with a view to the reconsideration of Turkey's reservation.

23. Noting that statement and subject to Turkey's reservation, the Working Group agreed to the revised text of article 3.

Article 8

24. The amended version of article 8, paragraph 2, was introduced by Mr Prieur, who pointed out that the paragraph began, in (a), with the principle of the establishment of a 100-metre setback and continued in (b) and (c) with exemptions to and adaptations of that principle. He subsequently suggested that (b) and (c) might in fact be merged, since they both concerned waivers to the limit laid down in (a).

25. Although the revised paragraph was considered to be very much closer to a consensus text than earlier versions, it prompted a number of comments and alternative proposals. It was widely agreed that several terms were unclear or open to different interpretations and should be clarified. Among them were "non-urbanized coastal zones" and "zones in the course of urbanization" which, depending on the country, might or might not imply that they were subject to urban development plans. Several proposals for alternative wording were submitted. It was also agreed that the phrase "in accordance with commonly agreed criteria" in (a) should be deleted, there being no formal legal mechanism for determining such criteria.

26. Another term to be defined, possibly in article 2 of the draft Protocol, was "setback". On the subject of the 100-metre limit, the representative of Cyprus continued to maintain that no fixed limit should be set, and the representative of Greece, while expressing her preference for no fixed limit, suggested qualifying the term by adding the words "preferably" and "in particular in low-lying areas". The Greek proposals included, *inter alia*, the rephrasing of "geomorphological constraints" to read "geomorphological or other local constraints", which was endorsed by a number of participants. In that connection, the representative of Malta proposed the inclusion of a specific reference to small islands and small island States and, under (b), to the exercise of legal title over private and public land.

27. The Working Group also had before it a French proposal based on strict adherence to the principle of the 100-metre setback but allowing for adaptations. Finally, it considered an Italian proposal recasting the entire paragraph with a first subparagraph setting out the 100-metre setback principle and a second giving Contracting Parties maximum flexibility in defining different widths of setback on grounds of "national interest". That proposal was received cautiously by several speakers on account of the wide discrepancy between the principle laid down in the first subparagraph and the broad latitude for exemption in the second. A discussion also ensued on the implications of "national interest".

28. Following further clarifications by Mr Prieur, including the suggestion to refer to non-urbanized zones as "natural zones", the Chairperson suggested that a contact group composed primarily of the sponsors of the various proposals should meet to draft a consolidated compromise text incorporating those proposals. The basis for its work should be the agreement that had emerged from the discussion, namely, that the text should comprise the core principle of a 100-metre non-construction zone, followed by the conditions under which that principle could be waived or adapted to ensure flexibility of implementation.

29. A new text drafted by the contact group was circulated for consideration by the Working Group. An explanation of the legal implications of the term "non-urbanized" was given by Mr Prieur, who stressed the need to consider the text in the light of the draft Protocol as a whole, with particular reference to articles 5 (a), 6 (f) and 18 (3). On that basis, he proposed further alternative wording for the first phrase of subparagraph (a) to the effect that States Parties should establish a zone where no construction was allowed, excluding any land area of the coastal zone on which buildings were already in place.

30. A number of speakers pointed out that such exclusion would legitimize illegal constructions, which were a major problem for some countries, and that the supremacy of international law over national legislation could pose additional difficulties. Another concern was to ensure that the Protocol did not affect plans already in place, to which end it was suggested that the time of its entry into force should be mentioned.

31. With such concerns in mind, various speakers favoured the second option drafted by the contact group of [coastal zones that are not covered by urban or development plans]. On the other hand, numerous speakers agreed with the representative of Italy that, in the interests of developing a strong and legally viable Protocol that was not open to wide interpretation, the essential aim was to establish a principle applicable to all coastal zones, without exception, in paragraph 2 (a) and to provide for adaptations of that principle in paragraph 2 (b).

32. In the light of the views expressed, it was suggested that further alternative wording should be produced for the first part of paragraph 2 (a) with a view to satisfying the differing country criteria and concerns and avoiding any reference to urban or development plans.

33. In response to concerns expressed about the strict 100-metre limit and the possibly narrow interpretation of that provision by national courts, it was proposed that new wording should be found to link subparagraph (a) clearly with (b) providing for adaptations. Another concern raised again in connection with the non-construction zone was the possible prejudice to existing private property rights or rights to the use of property, and consequent demands for compensation.

34. A revised version of paragraph 2 (a) prepared in consultation with the legal advisers and reflecting the concerns expressed met with general approval, although full agreement could not be reached on a reference to existing property rights. Most speakers considered the reference to be superfluous, but the representative of Malta, in particular, wished it to be made clear at some point in the text that there would be no economic devaluation of individual property rights.

35. A number of proposals were made for improving the structure and wording of paragraph 2 (b), which, it was widely agreed, concerned adaptations rather than exemptions. It was considered unnecessary to specify that such adaptations should not be contrary to the objectives and principles of the Protocol, particularly in the light of article 35, paragraph 2, of the Protocol which contained a blanket provision in that regard. A suggestion to refrain from specifying any adaptations, on grounds of simplification and flexibility, failed to command support, but the concern for greater clarity was widely shared.

36. The text of paragraph 2 (b) was revised in the light of the proposals and comments made and submitted for consideration by the Working Group. As Mr Prieur explained, the revised text was intended to achieve greater clarity and also to provide more leeway for the introduction of exceptions into national legislation.

37. The revised text was generally well received as a positive step forward and a number of further refinements were suggested and agreed. The representative of Greece

additionally expressed concern that the term “urbanization” was too broad to allow for the inclusion of individual constructions. Alternative wording to accommodate that possibility was extensively discussed and it was eventually agreed to add the words “individual housing” to the phrase in question.

38. The representative of Italy cautioned against the enumeration of geographical or other local constraints that were intrinsically subject to change, such as those relating to population density or social needs. Others were concerned by the departure of the revised text from the previous version in omitting to mention adaptation in areas covered by planning instruments provided for by the competent authorities of the States Parties in their national legal instruments. A proposal to reincorporate that wording into the text nevertheless failed to be taken on board. The representative of Monaco consequently insisted for the record that provision should be made for adaptation in the case of zones covered by existing instruments in order to ensure that countries such as her own were in a position to implement article 8. Echoing that same sentiment, the representative of Cyprus also stated for the record that she would submit a written statement on the matter after having consulted her national authorities.

39. With those two caveats, the Working Group agreed to the revised text, as amended in the light of its discussion.

Article 21

40. Following an introduction by Mr Prieur, the representative of Greece explained Greece’s reservation to the word “shall” as being prompted by its concern about the implicit obligation to adopt new financial measures, whereas existing measures might suffice. Greece’s proposal to change “shall” to “may” was accepted.

Article 29

41. Article 29 was adopted subject to an observation by Turkey that it was not party to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991). The representative of Monaco stated that, subject to verification, Monaco was not party to that Convention either.

42. Following the Working Group’s consideration of the outstanding articles, representatives of several Contracting Parties observed that the agreements reached at the meeting would need to be referred to their Governments for confirmation before signature. Mr Raftopoulos explained that such agreement *ad referendum* was normal practice in international negotiations, and such confirmations could be expected in due course. Mr Mifsud urged early confirmation to enable arrangements to proceed for the meetings of the Contracting Parties and of Plenipotentiaries to be held in January 2008.

43. The representative of the European Community, referring to the European Community’s particular status as a Contracting Party comprising a number of States Parties, said, for information and in a spirit of transparency, that the dates for signatures to be deposited (article 36) should allow for the European Community’s complex and hence lengthy procedures. Furthermore, where the Protocol made a distinction between Parties and States Parties, stipulations relating to States Parties would not be binding upon the European Community.

Agenda item 5 : **Review of the draft decision on approval of the draft text of the ICZM Protocol by the 15th Meeting of the Contracting Parties**

44. The meeting reviewed and adopted the draft decision on the draft Protocol on Integrated Coastal Zones Management in the Mediterranean, which would appear as an annex to the draft report of the meeting.

Agenda item 6 : **Any other business**

45. No questions were raised under this item.

Agenda item 7 : **Adoption of the report of the meeting**

46. After informing participants that the narrative part of the report of the meeting would be forwarded shortly to members of the Working Group by electronic means, the Chairperson invited the Working Group to proceed with a final review of the text of the articles discussed at the current meeting. The Working Group agreed to the text proposed, on the understanding that such agreement was in some cases *ad referendum* and subject to the remaining reservations of Turkey.

Agenda item 8: **Closure of the meeting**

47. After the customary exchange of courtesies, the Chairperson declared the meeting closed at 7 p.m. on 11 December 2007.

ANNEX I

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* Pending notification of the Depository country on the accession by Montenegro to the Barcelona Convention as amended in 1995, Prevention Emergency Protocol, 2002, SPA & Biodiversity Protocol, 1995, the LBS Protocol as amended in 1996, and the Hazardous Waste Protocol, 1996

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SECRETARIAT DES NATIONS UNIES**

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COORDINATING UNIT FOR THE
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ANNEX II

AGENDA

1. Opening of the meeting
2. Rules and Procedures and Election of Officers
3. Adoption of the Provisional Agenda and organization of work
4. Review of the proposals by the Secretariat on the pending articles of the draft text of the Protocol on the Integrated Coastal Zones Management (ICZM Protocol)
5. Review of the draft decision "Approval of the draft text of the ICZM Protocol by the 15th Meeting of the Contracting Parties"
6. Any other business
7. Adoption of the report of the meeting
8. Closure of the meeting

ANNEX III

Draft Decision on the Draft Protocol on Integrated Coastal Zone Management in the Mediterranean

The 15th Meeting of the Contracting Parties,

Recalling the obligations set out in Article 4, paragraphs 3(e) and 5, of the Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, done at Barcelona in 1976, as amended in June 1995,

Desirous of implementing the recommendations of the Meetings of the Contracting Parties held in Tunis in 1997, Monaco in 2001, Catania in 2003, the Mediterranean Strategy for Sustainable Development adopted in Portoroz in 2005, and in particular the recommendation adopted by the 14th Meeting of the Contracting Parties, Portoroz in 2005, on the development of a draft Protocol on Integrated Coastal Zone Management in the Mediterranean,

Considering that the coastal zones of the Mediterranean Sea are the common natural and cultural heritage of the peoples of the Mediterranean and that they should be preserved and used judiciously for the benefit of present and future generations,

Noting with appreciation the work undertaken by the Working Group of Legal and Technical Experts designated by the Contracting Parties to develop a draft text Protocol on Integrated Coastal Zone Management in the Mediterranean,

Decides to approve the draft text of the Protocol on Integrated Coastal Zone Management in the Mediterranean, as contained in the Annex to this decision,

Recommends to the Conference of the Plenipotentiaries the adoption of the Protocol on Integrated Coastal Zone Management in the Mediterranean as contained in the Annex to this draft decision.

Annex

DRAFT PROTOCOL ON INTEGRATED COASTAL ZONE MANAGEMENT IN THE MEDITERRANEAN

Sixth paragraph of the preamble

Convinced that, as an irreplaceable ecological, economic and social resource, the planning and management of coastal zones with a view to their preservation and sustainable development requires a specific integrated approach at the level of the Mediterranean basin as a whole and of its coastal States, taking into account their diversity and in particular the **specific needs of islands related to geomorphological characteristics**.¹

Article 3 Geographical coverage

1. The area to which the Protocol applies shall be the Mediterranean Sea area as defined in Article 1 of the Convention. The area is also defined by:

- (a) the seaward limit of the coastal zone, which shall be the external limit of the territorial sea of States Parties; and
- (b) the landward limit of the coastal zone, which shall be the limit of the competent coastal units **as defined by the States Parties** .

2. If, within the limits of its sovereignty, a State Party establishes limits different from those envisaged in paragraph 1 of this Article, it shall communicate a declaration to the Depositary at the time of the deposit of its instrument of ratification, acceptance, approval of, or accession to this Protocol, or at any other subsequent time, in so far as:

- (a) the seaward limit is less than the external limit of the territorial sea;
- (b) the landward limit is different, either more or less, from the limits of the territory of coastal units **as defined above** , in order to apply, *inter alia*, the ecosystem approach and economic and social criteria and to consider the **specific needs of islands related to geomorphological characteristics**² and to take into account the negative effects of climate change.

¹ Reservation by Turkey on the phrase “specific needs of islands related to geomorphological characteristics”

² Reservation by Turkey on the phrase “specific needs of islands related to geomorphological characteristics”

3. Each State Party shall adopt or promote at the appropriate institutional level adequate actions to inform populations and any relevant actor of the geographical coverage of the Protocol.

Article 8 **Protection and sustainable use of the coastal zone**

2. For this purpose, the States Parties :

(a) Shall establish in coastal zones, as from the highest winter waterline, a zone where construction is not allowed. Taking into account, *inter alia*, the areas directly and negatively affected by climate change and natural risks, this zone may not be less than 100 meters in width, subject to the provisions of subparagraph (b) below. Stricter national measures determining this width shall continue to apply.

(b) May adapt, in a manner consistent with the objectives and principles of this Protocol, the provisions mentioned above :

- for projects of public interest;

- in areas having particular geographical or other local constraints, especially related to population density or social needs, where **individual housing**, urbanisation or development are provided for by national legal instruments.

(c) Shall notify to the Organization their national legal instruments providing for the above adaptations.

Article 11 **Coastal landscapes**

2. The States Parties undertake to promote regional and international cooperation in the field of landscape protection, and in particular, the implementation, **where appropriate**, of joint actions for transboundary coastal landscapes.

Article 13

Cultural heritage

1. The States Parties shall adopt, individually or collectively, all appropriate measures to preserve and protect the cultural, **in particular archaeological and historical, heritage of coastal zones**, including the underwater cultural heritage, in conformity with the applicable national and international instruments.
2. The States Parties shall ensure that the preservation in situ of the cultural heritage of coastal zones is considered as the first option before any intervention directed at this heritage.
3. The States Parties shall ensure in particular that elements of the underwater cultural heritage of coastal zones removed from the marine environment are conserved and managed in a manner safeguarding their long-term preservation and are not traded, sold, bought or bartered as commercial goods.

Article 21

Economic, financial and fiscal instruments

For the implementation of national coastal strategies, plans and programmes, States Parties **may** take appropriate measures to adopt relevant economic, financial and/or fiscal instruments intended to support local, regional and national initiatives for the integrated management of coastal zones.

Article 29³

Transboundary environmental assessment

³ Turkey made an observation that it is not party to the Convention on “Environmental Impact Assessment in a transboundary context”, Espoo, 1991.