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**MEDITERRANEAN ACTION PLAN (MAP)  
REGIONAL MARINE POLLUTION EMERGENCY RESPONSE CENTRE FOR THE  
MEDITERRANEAN SEA (REMPEC)**

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Sixteenth Meeting of the Focal Points of the Regional  
Marine Pollution Emergency Response Centre for the  
Mediterranean Sea (REMPEC)

REMPEC/WG.61/6/8/1  
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Sliema, Malta, 13-15 May 2025

**Agenda Item 6 : Illegal and accidental oil and HNS pollution from ships**

**Possible Creation and Operation of a regional “Blue Fund”**

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### **Note by the Secretariat**

This document provides information on the Legal Analysis to assess the implications of the possible creation and operation of a regional “Blue Fund”, including in terms of governance and financing, in the Mediterranean region, as prepared by the Secretariat, which is set out in the Annex thereto.

## **Background**

1 In 2017, in order to strengthen cooperation between the Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (the “Barcelona Convention”) in the area of repression of acts of pollution, a Contracting Party to the Barcelona Convention proposed the development of regional jurisdictional and judicial cooperation in the Mediterranean, along with a common report that would enable the courts of the Contracting Parties to the Barcelona Convention to prosecute all individuals, irrespective of the place of pollution. It was suggested accompanying this judicial cooperation with the downstream establishment of a regional “Blue Fund”, to which a part of the pecuniary sanctions would be transferred.

2 COP 22<sup>1</sup> adopted Decision IG.25/16 on the Mediterranean Strategy for the Prevention of, Preparedness, and Response to Marine Pollution from Ships (2022-2031)<sup>2</sup>, hereinafter referred to as the “Mediterranean Strategy (2022-2031)”, and the Action Plan for the implementation of the said Strategy includes:

.1 actions 1.4.4 and 1.7.4 under Common Strategic Objective (CSO) 1 (Prevent, prepare for, and respond to, operational, illegal and accidental oil and HNS pollution from ships) aiming at setting up the modalities of possible creation and operation, including in terms of governance and financing, of a regional “Blue Fund”; and

.2 action 2.4.2 under CSO 2 (Promote and support the development and implementation of innovative global solutions to mitigate and respond to climate change) and action 3.4.3 under CSO 3 (Reduce and monitor air emissions from ships to a level that is not harmful to the marine environment, or the health of the coastal population of the Mediterranean) aiming at including enforcement of Annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL), in the context of the setting up of the modalities of possible creation and operation, including in terms of governance and financing of a regional “Blue Fund”.

3 Moreover, the Fifth Meeting of the Mediterranean Network of Law Enforcement Officials relating to MARPOL within the framework of the Barcelona Convention (MENELAS) (Floriana, Malta, 22-23 February 2023) highlighted that further work was necessary to develop the modalities of possible creation and operation of a regional “Blue Fund”, including in terms of governance and financing, and asked the Secretariat (REMPEC), in this respect, to develop draft terms of reference for the provision of consultancy services for the development of such modalities.

4 COP 23<sup>3</sup> agreed to include the following activity in the Programme of Work and Budget of the Mediterranean Action Plan (MAP) of the United Nations Environment Programme (UNEP) for 2024-2025<sup>4</sup>:

1.2.9.b Modalities of possible creation and operation of a regional “Blue Fund”, including in terms of governance and financing, as well as a comprehensive legal analysis, finalised.

5 The Mediterranean region, with its unique challenges and opportunities, requires tailored approaches for the successful implementation of the Mediterranean Strategy (2022-2031) by the Contracting Parties to the Barcelona Convention, including relevant stakeholders. The possible creation and operation of a regional “Blue Fund” may have significant legal implications for Contracting Parties to the Barcelona Convention, including in terms of governance and financing. Hence, understanding the

<sup>1</sup> Twenty-second Ordinary Meeting of the Contracting Parties to the Barcelona Convention and its Protocols (Antalya, Türkiye, 7-10 December 2021).

<sup>2</sup> UNEP/MED IG.25/27, Decision IG.25/16.

<sup>3</sup> Twenty-third Ordinary Meeting of the Contracting Parties to the Barcelona Convention and its Protocols (Portorož, Slovenia, 5-8 December 2023).

<sup>4</sup> UNEP/MED IG.26/22, Decision IG.26/14.

legal implications of the possible creation and operation of a regional “Blue Fund”, including in terms of governance and financing, in the Mediterranean region, becomes crucial before developing the draft terms of reference referred to above.

6 To this effect, a consultancy was envisaged to support the Secretariat with its efforts towards assessing the legal implications of the possible creation and operation of a regional “Blue Fund”, including in terms of governance and financing, in the Mediterranean region, as well as recommending possible options for a way forward for consideration by the present meeting.

7 Prof. Dr Norman Martínez was appointed as the consultant to conduct the Legal Analysis to assess the implications of the possible creation and operation of a regional “Blue Fund”, including in terms of governance and financing, in the Mediterranean region (hereinafter referred to as the “Legal Analysis”), on behalf of the Secretariat (REMPEC).

### **Legal Analysis**

8 The Legal Analysis outlines the feasibility, challenges, and potential approaches for establishing the regional Blue Fund. It was presented during the Sixth Meeting of MENELAS which took place in Malta on 4-5 December 2024. Delegates were provided the draft Legal Analysis to assess the implications of the possible creation and operation of a regional “Blue Fund”, including in terms of governance and financing, in the Mediterranean region, as presented in document REMPEC/WG.59/3.

9 During the discussions after the presentation of the draft Legal Analysis, a number of CPs expressed their positions on the draft Legal Analysis. Several CPs expressed their concerns on the necessity to establish such a fund, its scope, goals and use as well as the various potential approaches for its possible creation and modus operandi (i.e. how it would function, who would contribute, who would benefit, for which type of activities, who would act as Secretariat, etc). Moreover, some MENELAS representatives noted that any decision to support such an initiative would require political authority which they evidently lack. Furthermore, several delegates aptly pointed out that legal reforms may be required to redirect pecuniary sanctions to such a regional mechanism.

10 On those many queries, the Secretariat clarified that all was still to be defined and that the objective under this agenda item was to have an open exchange of views on the various elements, encouraging all participants to contribute to the discussions accordingly, with a view to submitting the Legal Analysis, together with recommendations, to the Sixteenth Meeting of the Focal Points of REMPEC.

11 Notably, several CPs expressed their support for the establishment of the regional Blue Fund, subject to the approval of their higher authorities. In relation to this, it has been also mentioned that initially less formal mechanisms could be preferable. Furthermore, the Meeting reviewed the proposed conclusions and recommendations for possible options for a way forward, as detailed in chapters 8 and 9 of the Legal Analysis and found that these could guide the CPs when further discussing the possible creation and operation of a regional “Blue Fund”.

12 Remarkably, the Meeting noted that there were three potential approaches for the possible creation and operation of a regional “Blue Fund” in the Mediterranean region, as follows:

- .1 a formal approach, which could be either an amendment to the Barcelona Convention; or an amendment to the 2002 Prevention and Emergency Protocol; or the adoption of a new Protocol to the Barcelona Convention; or the adoption of a COP Decision.
- .2 an informal approach based on a voluntary or trust fund model like The MedFund or the PEMSEA; and
- .3 a hybrid approach transitioning from an informal approach at first to a formal approach at a later stage.

13 The Meeting highlighted that each approach had advantages and challenges with:

- .1 a formal approach providing long-term legal certainty but facing procedural delays and political challenges;
- .2 an informal approach offering flexibility and expediting implementation but possibly lacking stability, sustainability and enforcement authority; and
- .3 a hybrid approach combining elements of the informal and formal approaches, hence aiming to balance early flexibility with future legal certainty.

14 Finally, the Meeting noted the various concerns raised by the CPs regarding the potential creation and operation of a regional “Blue Fund”, including questions about the necessity of establishing such a fund, as well as issues related to its governance and financing.

15 At this juncture, it may be noted that CPs differ in their willingness to participate and/or support the initiative of establishing a regional Blue Fund. Some CPs even question the necessity of a such a mechanism in the first place whereas others appear to have a more positive approach. In light of the concerns indicated, it is yet to be seen whether there will be sufficient interest among CPs to advance the matter. Therefore, further discussions among CPs may focus on exploring the various options for establishing the regional Blue Fund, particularly in terms of its creation, structure, membership, contributions, governance, and specific goals.

16 The Legal Analysis concluded that, the establishment of a regional Blue Fund is legally feasible and may offer significant potential to enhance pollution prevention and response in the Mediterranean. While a formal framework provides long-term stability, informal and hybrid approaches offer flexibility for swifter implementation.

17 The detailed assessment can be found in the Legal Analysis contained in the Annex, to the present document.

### **Key Findings of the Legal Analysis**

18 The Barcelona Convention and its Protocols provide a suitable framework for establishing the regional Blue Fund, with options ranging from formal regulatory actions such as treaty amendments or adoption of new instruments to informal mechanisms. In this vein, the Legal Analysis came up with three different approaches as follows:

- .1 **Formal Approach:** Amend the Barcelona Convention; or amend the 2002 Prevention and Emergency Protocol; or adopt a new Protocol to the Barcelona Convention; or adopt a COP Decision;
- .2 **Informal Approach:** Establish a voluntary mechanism modelled like The MedFund or PEMSEA;
- .3 **Hybrid Approach:** Begin with an informal mechanism, transitioning to a formal framework over time.

### Next Steps

19 Taking into consideration the outcome of the Sixth Meeting of MENELAS which took place in Malta on 4-5 December 2024, the Secretariat recommends that the Contracting Parties:

- .1 **discuss the need for the regional Blue Fund.** CPs are to exchange views on whether such a mechanism is needed and could contribute to the overall objectives of REMPEC in protection of the marine environment in the Mediterranean region.
- .2 **define the Objectives.** CPs to discuss and clearly define the objectives of the regional Blue Fund.
- .3 **consider the establishment of a Working Group.** CPs to discuss and agree on the establishment of a dedicated Working Group (or under the existing MENELAS Working Group), comprising representatives from interested CPs to further explore the legal, financial, and administrative aspects of the formation of the regional Blue Fund.
- .4 **develop a Roadmap.** CPs To consider and request the Secretariat to draft a detailed roadmap, in consultation with the Working Group, which outlines the legal basis, governance, operational mechanisms, and financial administration of the regional Blue Fund. This may be presented to the next MENELAS Meeting with a view to submission to the Seventeenth Meeting of the Focal Points of REMPEC.

### Actions requested by the Meeting

20 **The Meeting is invited to:**

- .1 **take note** of the information provided in the present document;
- .2 **discuss** the Legal Analysis, as set out in the Annex to the present document;
- .3 **discuss** the next steps as contained in paragraph 19 and
- .4 **comment** as deemed appropriate.

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**Annex**

**Legal Analysis to assess the implications of the possible creation and operation of a regional “Blue Fund”, including in terms of governance and financing, in the Mediterranean region**

## EXECUTIVE SUMMARY

The Mediterranean region faces challenges in combating marine pollution, with Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (the “Barcelona Convention”) (CPs) striving to improve compliance with international standards, including those prescribed by the International Convention for the Prevention of Pollution from Ships (MARPOL). To advance this objective, the establishment of a regional Blue Fund has been proposed to enhance regional cooperation. The intended fund would pool pecuniary sanctions from MARPOL violations to support initiatives aimed at preventing and responding to ship-source pollution across the Mediterranean. The regional Blue Fund would be primarily based on the polluter pays principle, a cornerstone of international environmental law. It would draw in resources from administrative sanctions imposed on polluters into a dedicated regional fund.

This legal analysis aims to assess the feasibility of establishing and operating such a Blue Fund, focusing on legal structures, governance, and financing. Drawing on precedents such as the Mediterranean Trust Fund (MTF), the International Oil Pollution Compensation Funds (IOPC), and The MedFund, the report analyses and identifies potential pathways for creating the regional Blue Fund, exploring both formal and informal options. Findings from a questionnaire distributed to CPs, despite limited number of responses, show support for the concept but also highlight challenges, particularly concerning legal frameworks, financial contributions, and governance. The Legal Analysis outlines three potential approaches for the regional Blue Fund’s establishment, namely: Formal, Informal and Hybrid approaches. The analysis concludes that while the regional Blue Fund is legally feasible, its ultimate success depends on the choice of either a formal or an informal framework as well as on the commitment of CPs.

The Legal Analysis was presented during the Sixth Meeting of MENELAS which took place in Malta on 4-5 December 2024. During an exchange of views, several CPs expressed their concerns on the necessity to establish such a fund, its scope and use as well as the various potential approaches for its possible creation and modus operandi (i.e. how it would function, who would contribute, who would benefit, for which type of activities, which organisation would act as Secretariat, etc).

The creation of a Regional Blue Fund represents a legally viable and strategically significant step towards regional cooperation in combating marine pollution in the Mediterranean. While formal mechanisms ensure long-term stability, informal and hybrid approaches provide flexibility and promise swifter progress. Be that as it may, further discussions are recommended during the upcoming meeting of the REMPEC Focal Points to deliberate on a possible way forward.



## 1 INTRODUCTION

In 2017, in order to strengthen cooperation between the CPs in the area of repression of acts of pollution, France proposed the development of regional jurisdictional and judicial cooperation in the “Western Mediterranean”, along with a common report that would enable the courts of the CPs to prosecute all individuals, irrespective of the place of pollution. It was suggested accompanying this judicial cooperation with the downstream establishment of a regional Blue Fund, to which a part of the pecuniary sanctions would be transferred.<sup>5</sup>

The proposal for the establishment of a regional Blue Fund is primarily based on the polluter pays principle, which holds polluters financially responsible for the environmental damage they cause. This principle has long been a cornerstone of international environmental law and is explicitly referenced in the Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea (hereinafter “the 2002 Prevention and Emergency Protocol”), as a method for environmental impact assessment and pollution control. The regional Blue Fund, as envisioned, would apply this principle by directing pecuniary penalties collected from vessels responsible for illicit ship pollution discharges into the Fund.

The proposal put forward by France was also addressing other critical elements, such as jurisdictional concerns. Specifically, relevant discussions acknowledged the need to clarify where illicit discharges were detected, by which CPs, and under whose jurisdiction the pollution occurred. At the meeting, France provided further details on its proposal. In particular, France explained that, to strengthen cooperation between CPs in the area of pollution enforcement, it proposed developing a regional jurisdiction along with a joint report mechanism. This would enable the courts of CPs to prosecute individuals suspected of committing pollution offenses, irrespective of the location of the pollution, except in territorial seas. Additionally, France suggested that this judicial cooperation be accompanied by the establishment of a “Blue Fund,” to which a portion of pecuniary sanctions would be transferred. While the meeting expressed interest in the proposal, there were concerns, particularly regarding regional jurisdiction. France clarified that the reference to intervention by States in waters outside their own territorial seas was not the primary issue; rather, the proposal's core objective was to enhance cooperation in addressing illicit ship pollution discharges in the Mediterranean.<sup>6</sup>

During the Second Meeting of the MENELAS, which took place 28-29 November 2017, it was noted that the creation of a monetary fund, partially financed by regional levies for operational pollution would have several benefits. This was in line with the “polluter pays” principle, in accordance with which the costs of remedying damage caused by pollution from ships is borne by the latter. Additionally, the benefit of such fund would also be preventive, as the creation of this kind of fund would have a deterrent effect for offenders. Moreover, the creation of a regional “Blue Fund” would enable the financial resources derived by the CPs by means of their fight against operational pollution to be pooled. It was also noted that the fund could be specifically used to develop tools and protective measures for the less developed CPs.<sup>7</sup>

The Third Meeting of the MENELAS, which was held from 15 to 16 October 2019, invited France, to develop more concretely its proposal for the creation of a regional Blue Fund, and to submit this proposal to the working group within MENELAS not later than 31 March 2020. Furthermore, the said meeting stressed the importance of separating the regional Blue Fund from the harmonisation of pecuniary sanctions for illicit ship pollution discharges in the Mediterranean and agreed in principle on the need to harmonise pecuniary sanctions for illicit ship pollution discharges in the Mediterranean.<sup>8</sup>

The Fifth Meeting of the MENELAS, which took place on 22-23 February 2023, highlighted that further work was necessary to develop the modalities of possible creation and operation of a regional “Blue

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<sup>5</sup> [REMPEC/WG.41/11/2](#).

<sup>6</sup> [REMPEC/WG.41/16](#).

<sup>7</sup> [REMPEC/WG.42/4](#).

<sup>8</sup> [REMPEC/WG.48/INF.6](#).

Fund”, including in terms of governance and financing, and asked the Secretariat to develop draft terms of reference for the provision of consultancy services for the development of such modalities. Moreover, during the intersessional period, REMPEC liaised with The MedFund to obtain information on the modalities of creation and operation, including in terms of governance and financing, of this fund, with a view to supporting the work on the further development of a regional Blue Fund.<sup>9</sup>

Notably, during the Fifteenth Meeting of the Focal Points of the REMPEC, which took place on 13-15 June 2023, a delegate expressed concerns on the feasibility of the possible creation and operation of a regional Blue Fund as well as stressed that a comprehensive legal analysis should be prepared to that end.<sup>10</sup>

COP 23<sup>11</sup> agreed to include the following activity in the Programme of Work and Budget for 2024-2025 of the Mediterranean Action Plan (MAP) of the United Nations Environment Programme (UNEP), also referred to as UNEP/MAP:

1.2.9.b Modalities of possible creation and operation of a regional “Blue Fund”, including in terms of governance and financing, as well as a comprehensive legal analysis, finalised.

The Mediterranean region, with its unique challenges and opportunities, requires tailored approaches for the successful implementation of the Mediterranean Strategy for the Prevention of, Preparedness, and Response to Marine Pollution from Ships (2022-2031) by CPs, including relevant stakeholders. The possible creation and operation of a regional “Blue Fund” may have significant legal implications for CPs, including in terms of governance and financing. Hence, understanding the legal implications of the possible creation and operation of a regional “Blue Fund”, including in terms of governance and financing, in the Mediterranean region, becomes crucial.

To this effect, this legal analysis is intended to support REMPEC with its efforts towards assessing the legal implications of the possible creation and operation of a regional “Blue Fund”, including in terms of governance and financing, in the Mediterranean region, as well as recommending possible options for a way forward for consideration by the MENELAS Designated Representatives (DRs) at the Sixth Meeting of the MENELAS to be tentatively held in Malta, from 4 to 5 December 2024, prior to consideration by the CPs at the Sixteenth Meeting of the Focal Points of REMPEC to be held in 2025.

The main objective of this exercise is to present a Legal Analysis assessing the implications of the possible creation and operation of a regional Blue Fund, including in terms of governance and financing, in the Mediterranean region (hereinafter referred to as “the Legal Analysis”).

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<sup>9</sup> [REMPEC/WG.53/INF.4](#).

<sup>10</sup> [REMPEC/WG.56/8](#).

<sup>11</sup> Twenty-third Ordinary Meeting of the Contracting Parties to the Barcelona Convention and its Protocols (Portorož, Slovenia, 5-8 December 2023).

## 2. REVIEW OF RELEVANT LITERATURE, REPORTS, AND LEGAL DOCUMENTS

The Barcelona Convention and its seven Protocols adopted in the framework of UNEP/MAP, constitute the main legally binding framework in the Mediterranean Region.

The Barcelona Convention establishes a legal framework for cooperation among the CPs to protect and preserve the marine environment of the Mediterranean region. Under the Barcelona Convention and its Protocols, in particular, pursuant to the 2002 Prevention and Emergency Protocol, the CPs pledge to take appropriate measures to prevent, abate, combat to the fullest possible extent, eliminate pollution of the Mediterranean Sea, and protect and enhance the marine environment to contribute towards its sustainable development.

Pursuant to Article 3 of the Barcelona Convention, the CPs may enter into bilateral or multilateral agreements, including regional or sub-regional agreements, for the protection of the environment, and the conservation and preservation of natural resources in the Mediterranean Sea Area. Moreover, as appropriate, CPs should make use of existing organizations, agreements, or arrangements in the Mediterranean Sea Area. The CPs shall take joint initiatives compatible with international law, through the relevant international organizations, to encourage the implementation of the provisions of this Convention and its Protocols by non-party States.

According to Article 4 of the Barcelona Convention, the CPs are obliged to take appropriate measures to prevent, abate, combat to the fullest possible extent, eliminate pollution of the Mediterranean Sea area, and protect and enhance the marine environment to contribute towards its sustainable development. Moreover, the CPs are under obligation to **apply the “polluter pays” principle**. Furthermore, CPs are expected to formulate and adopt protocols that outline measures, standards, and procedures for implementing the Barcelona Convention.

As per Article 6, CPs are required to take all measures to combat, and eliminate pollution caused by discharges from ships and ensure the effective implementation of internationally recognized rules for controlling pollution from ships, such as those under MARPOL.

According to Article 14 of the Barcelona Convention, CPs must adopt national legislation to implement its provisions and its Protocols. Pursuant to Article 21 of the Barcelona Convention, CPs may adopt additional protocols to the Barcelona Convention at a diplomatic conference. A diplomatic conference for adopting such protocols must be convened by the Organization if requested by two-thirds of the CPs (this provision offers a framework for the creation and adoption of new protocol for the regional Blue Fund).

Under Article 22 of the Barcelona Convention, any CP may propose amendments, which shall be adopted at a diplomatic conference convened by the Organization upon the request of two-thirds of the CPs. Moreover, any CP may propose amendments to a protocol, which shall similarly be adopted at a diplomatic conference convened by the Organization if requested by two-thirds of the CPs to that protocol.

The “Protocol Concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and other Harmful Substances in Cases of Emergency (1976 Emergency Protocol)” was adopted in 1976 and entered into force in 1978. The 1976 Emergency Protocol was replaced by the 2002 Prevention and Emergency Protocol. However, the former Protocol is still in force for those CPs who are yet to ratify the latter Protocol. Hereunder follows the status of adherence by the CPs to the abovementioned instruments.

	<b>Protocol Concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency</b> Adopted on 16 February 1976, in Barcellona	<b>Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea</b> Adopted on 25 January 2002, in Valletta
<b>Albania</b>	X	
<b>Algeria</b>	X	X
<b>Bosnia &amp; Herzegovina</b>	X	
<b>Croatia</b>	X	X
<b>Cyprus</b>	X	X
<b>Egypt</b>	X	
<b>France</b>	X	X
<b>Greece</b>	X	X
<b>Israel</b>	X	X
<b>Italy</b>	X	X
<b>Lebanon</b>	X	X
<b>Libya</b>	X	
<b>Malta</b>	X	X
<b>Monaco</b>	X	X
<b>Montenegro</b>		X
<b>Morocco</b>	X	X
<b>Slovenia</b>	X	X
<b>Spain</b>	X	X
<b>Syrian Arab Republic</b>	X	X
<b>Tunisia</b>	X	
<b>Türkiye</b>	X	X
<b>European Union</b>	X	X
<b>X = ratification</b>		

Pursuant to Article 25/2 of the 2002 Prevention and Emergency Protocol, for those CPs who are States Parties to both Protocols, the 2002 Protocol prevails over the 1976 Protocol. The 2002 Prevention and Emergency Protocol provides a regional framework for international cooperation and mutual assistance in preparing for and responding to oil and hazardous noxious substances pollution incidents. The 2002 Prevention and Emergency Protocol provides for REMPEC to play an important coordinating role. In addition to its core responsibilities under the 2002 Prevention and Emergency Protocol, REMPEC also serves as the Secretariat for the MENELAS, which specifically addresses issues related to illicit ship-source pollution discharges. Moreover, the Mediterranean Strategy for the Prevention of and Response to Marine Pollution from Ships (2022-2031) addresses the issue of illicit ship pollution discharges in its Common Strategic Objective (CSO), further consolidating REMPEC's role in supporting compliance with international pollution standards across the Mediterranean.

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According to Article 17 of the 2002 Prevention and Emergency Protocol, Parties are encouraged to negotiate and maintain subregional agreements to facilitate the implementation of the Protocol, particularly in addressing pollution prevention and emergency response. In light of the foregoing, the 2002 Prevention and Emergency Protocol could support the basis of the regional Blue Fund. It mandates

cooperation between Contracting Parties in preventing and responding to pollution incidents from ships, in accordance with international regulations.<sup>12</sup>

Moreover, the 2002 Prevention and Emergency Protocol explicitly references the **polluter-pays principle** as a guiding method for environmental impact assessment and pollution control. This principle may be a foundation or one of the pillars of financial model for the regional Blue Fund, where polluters, such as vessels responsible for illegal discharges, contribute through pecuniary penalties.<sup>13</sup>

Moreover, the 2002 Prevention and Emergency Protocol highlights REMPEC's role not only in coordinating pollution response actions but also in addressing prevention-related issues, including illicit ship pollution discharges. In this respect, REMPEC is tasked with facilitating communication, information exchange, and coordination between CPs. This expanded mandate enables REMPEC to play a key role in the prevention of marine pollution, aligning with broader regional efforts under the 2002 Prevention and Emergency Protocol. Consequently, the proposed regional Blue Fund could serve as an additional mechanism managed by REMPEC, not only to fund emergency responses and capacity-building initiatives but also to support preventive measures and enforcement mechanisms, particularly concerning illicit ship pollution discharges.<sup>14</sup>

The 2002 Prevention and Emergency Protocol also encourages Parties to adopt and enforce international regulations such as MARPOL. The regional Blue Fund could assist in harmonizing national efforts related to prosecuting MARPOL violations. The funds collected through pecuniary sanctions for MARPOL violations, in line with the Protocol's emphasis on compliance and enforcement, could be directed into the regional Blue Fund to support capacity-building initiatives. These initiatives would particularly benefit Mediterranean coastal States that face enforcement challenges due to financial, technical, or other constraints. However, a key consideration for further discussion by the interested CPs is whether activities supported by the regional Blue Fund should be directed primarily to CPs that contribute to the fund or be extended more broadly across the region, regardless of their financial contributions. Furthermore, the "Financial Rules and Procedures for the Funds of the Barcelona Convention" (Decision IG.21/15) outline the financial procedures for the CPs. This decision may provide another important legal reference point as it governs the financial administration of the Barcelona Convention, its protocols, and subsidiary bodies. This Decision aims to provide clear guidelines for handling all the funds entrusted to the Barcelona Convention Secretariat. These Procedures govern the financial administration of the Barcelona Convention.

Procedure 3 of the Decision establishes the structure for the MTF, which includes mechanisms such as a working capital reserve for operational continuity and the creation of funds for mandatory and voluntary contributions. This structure could potentially serve as a model for the regional Blue Fund, particularly in terms of trust fund management and financial oversight. However, a key distinction is that the MTF requires decisions by the COP, involving all CPs, whereas the operation of a regional Blue Fund may not necessarily need such a formal and high-level decision-making process.

Procedure 4 outlines the mechanisms for contributions to the MTF, including both mandatory and discretionary contributions from CPs. The Decision mandates that all budget expenditures are charged to established funds, and any changes to the budget require approval from the CPs.

At this point it must be noted that MARPOL is the most important international convention covering the prevention of pollution of the marine environment by ships from operational or accidental causes. MARPOL includes regulations aimed at preventing and minimizing pollution from ships and currently includes six technical Annexes.

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<sup>12</sup> See Article 3.

<sup>13</sup> See Article 4.

<sup>14</sup> See Articles 6 and 12.

**Annex I Regulations for the Prevention of Pollution by Oil (entered into force in 1983)**

Covers prevention of pollution by oil from operational measures as well as from accidental discharges; the 1992 amendments to Annex I made it mandatory for new oil tankers to have double hulls and brought in a phase-in schedule for existing tankers to fit double hulls, which was subsequently revised in 2001 and 2003.

**Annex II Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk (entered into force 2 October 1983, provisions took effect in 1987)**

Details the discharge criteria and measures for the control of pollution by noxious liquid substances carried in bulk; some 250 substances were evaluated and included in the list appended to the MARPOL; the discharge of their residues is allowed only to reception facilities until certain concentrations and conditions (which vary with the category of substances) are complied with. In any case, no discharge of residues containing noxious substances is permitted within 12 miles of the nearest land.

**Annex III Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form (entered into force in 1992)**

Contains general requirements for the issuing of detailed standards on packing, marking, labelling, documentation, stowage, quantity limitations, exceptions and notifications. For the purpose of this Annex, “harmful substances” are those substances which are identified as marine pollutants in the International Maritime Dangerous Goods Code (IMDG Code), or which meet the criteria in the Appendix of Annex III.

**Annex IV Prevention of Pollution by Sewage from Ships (entered into force in 2003)**

Contains requirements to control pollution of the sea by sewage; the discharge of sewage into the sea is prohibited, except when the ship has in operation an approved sewage treatment plant or when the ship is discharging comminuted and disinfected sewage using an approved system at a distance of more than three nautical miles from the nearest land; sewage which is not comminuted or disinfected has to be discharged at a distance of more than 12 nautical miles from the nearest land.

**Annex V Prevention of Pollution by Garbage from Ships (entered into force in 1988)**

Deals with different types of garbage and specifies the distances from land and the manner in which they may be disposed of; the most important feature of the Annex is the complete ban imposed on the disposal into the sea of all forms of plastics.

**Annex VI Prevention of Air Pollution from Ships (entered into force in 2005)**

Sets limits on sulphur oxide (SO<sub>x</sub>) and nitrogen oxide (NO<sub>x</sub>) emissions from ship exhausts and prohibits deliberate emissions of ozone depleting substances; designated emission control areas set more stringent standards for SO<sub>x</sub>, NO<sub>x</sub> and particulate matter. A chapter adopted in 2011 covers mandatory technical and operational energy efficiency measures aimed at reducing greenhouse gas emissions from ships.

Annexes I and II are mandatory for all States that wish to become Parties to MARPOL. This means that any State that becomes a party to MARPOL is automatically bound by Annexes I and II. These annexes form the core of the MARPOL regulatory framework. On the other hand, Annexes III, IV, V, and VI are optional. A State may choose to become a Party to MARPOL without immediately accepting all of these annexes. However, once a country ratifies/accedes any of these annexes, they become binding. Hereunder follows a table of CPs and their level of ratification/accession to the different Annexes of MARPOL:

	<b>Annex I/II</b>	<b>Annex III</b>	<b>Annex IV</b>	<b>Annex V</b>	<b>Annex VI</b>
<b>Albania</b>	X	X	X	X	X
<b>Algeria</b>	X	X	X	X	
<b>Bosnia &amp; Herzegovina<sup>15</sup></b>					
<b>Croatia</b>	X	X	X	X	X
<b>Cyprus</b>	X	X	X	X	X
<b>Egypt</b>	X	X	X	X	
<b>France</b>	X	X	X	X	X
<b>Greece</b>	X	X	X	X	X
<b>Israel</b>	X	X	X	X	X
<b>Italy</b>	X	X	X	X	X
<b>Lebanon</b>	X	X	X	X	
<b>Libya</b>	X	X	X	X	
<b>Malta</b>	X	X	X	X	X
<b>Monaco</b>	X	X	X	X	X
<b>Montenegro</b>	X	X	X	X	X
<b>Morocco</b>	X	X	X	X	X
<b>Slovenia</b>	X	X	X	X	X
<b>Spain</b>	X	X	X	X	X
<b>Syrian Arab Republic</b>	X	X	X	X	X
<b>Tunisia</b>	X	X	X	X	X
<b>Türkiye</b>	X	X	X	X	X
<b>European Union<sup>16</sup></b>					
<b>x= ratification</b>					

REMPEC has been pivotal in promoting harmonised sanctions across the Mediterranean region for violations under MARPOL. For instance, the MENELAS framework, supported by REMPEC, focuses on the prevention of illicit discharges of pollutants through the imposition of pecuniary sanctions. The discrepancies have been identified in how CPs enforce these sanctions, and through its ongoing review processes (2011-2015, 2016-2019), the network has pushed for harmonisation of pecuniary sanctions for such violations.

Considering that some of the CPs are also members of the EU, these CPs must ensure that their contributions to the regional Blue Fund align with existing EU legislation. Specifically, this refers to EU Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005, which addresses ship-source pollution and the introduction of penalties for infringements. The Directive harmonizes national laws across Member States, ensuring uniform enforcement of penalties for discharges of polluting substances in EU waters including the Mediterranean. Under the Directive, Member States are required to impose effective, proportionate, and dissuasive penalties, which may include both administrative and criminal sanctions for ship-source pollution. Thus, EU CPs contributing

<sup>15</sup> Bosnia and Herzegovina has yet to become a Party to MARPOL (its two mandatory annexes I and II) and optional annexes.

<sup>16</sup> Whilst the EU is a CP, it cannot be a Party to MARPOL and its annexes as it is not a State, but a Regional Organization. However, the European Commission holds observer status at IMO.

to the regional Blue Fund must ensure that any financial contributions, especially those derived from sanctions related to MARPOL violations, are consistent with their obligations under the Directive. Although the Directive does not mandate the creation of a fund like the regional Blue Fund, it allows Member States to adopt more stringent measures, including financial mechanisms. This may provide flexibility for EU CPs to voluntarily contribute to the Blue Fund without necessarily requiring new regional legal mechanisms, provided their contributions comply with their domestic regulations. In conclusion, Directive 2005/35/EC seems to offer a legal foundation for EU CPs to contribute to the regional Blue Fund through administrative pecuniary sanctions related to ship-source pollution.

## **2.1 International Precedents**

In assessing the potential for establishing a regional “Blue Fund” under REMPEC, it may be beneficial to review existing funds that have successfully supported marine environmental protection and pollution prevention at regional or international levels. These precedents may offer valuable insights into governance, financial structures, and operational practices that can guide the creation of a similar fund mechanism. The regional Blue Fund may seek to follow the successful models and their best practices, possibly adapting them to the Mediterranean’s and MARPOL’s specific context.

### **2.1.1 The MedFund**

Of particular relevance to the Mediterranean region is The MedFund. The MedFund is a private non-profit organization based in Monaco, that provides sustainable funding for marine biodiversity conservation. This Conservation Trust Fund raises and invests financial resources and uses the interest yield to award grants to NGOs and to national marine protected area (MPA) management authorities in various Mediterranean coastal States. It was established in 2015 as an environmental trust fund dedicated to financing MPAs in the Mediterranean. It was initiated by several CPs and aims to provide sustainable financial support for marine biodiversity conservation. Its governance structure involves States, international organizations, and NGOs, operating through an endowment fund, a sinking fund, and a revolving fund. Its endowment fund ensures long-term financial sustainability, offering a potential precedent. The MedFund is based on funding from bilateral and multilateral donors who are historically interested in this theme, but also on funding from other sources, particularly the private and philanthropic endeavours. The MedFund conducted a SWOT analysis which shows the strengths and weaknesses of The MedFund.<sup>17</sup>

In the context of the regional Blue Fund, The MedFund might serve as a valuable reference. Its model of combining public and private funding, fostering cooperation among Mediterranean States, and focusing on marine conservation aligns with the objectives of the regional Blue Fund.

### **2.1.2 Mediterranean Trust Fund**

The MTF was established under the Barcelona Convention. Under Article 24 of the Barcelona Convention, the CPs have established MTF to ensure the effective coordination and funding of the UNEP/MAP activities. The MTF is managed by UNEP under approved financial rules and regulations. It finances the implementation of the UNEP/MAP under the Barcelona Convention.

UNEP/MAP aims to promote the protection of the Mediterranean Sea from pollution and ensure the sustainable use of marine and coastal resources. Initially, MAP Phase I and the original Barcelona Convention focused primarily on pollution control. However, since MAP Phase II and the adoption of the amended Barcelona Convention, UNEP/MAP’s mandate has expanded to include sustainable development, following the key principles adopted at the 1992 Rio Conference. The MTF pools contributions from the CPs to finance regional projects addressing pollution, biodiversity protection, and sustainable development, ensuring the integration of environmental and economic objectives. These funds support initiatives under UNEP/MAP, such as pollution monitoring, marine litter management,

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<sup>17</sup> Available at: [https://themedfund.org/wp-content/uploads/2020/03/The-MedFund-TORs-Communication-Strategy\\_VF-NEW-SUBMISSION-DATE.pdf](https://themedfund.org/wp-content/uploads/2020/03/The-MedFund-TORs-Communication-Strategy_VF-NEW-SUBMISSION-DATE.pdf).



and the development of national action plans. Given the well-established role of the Barcelona Convention system as a platform for regional cooperation, particularly in protecting and enhancing the marine and coastal environment while promoting sustainable development in the Mediterranean, this experience directly supports the development and governance of the regional Blue Fund. The initiative for the Blue Fund, as initially proposed by France,<sup>18</sup> aligns closely with the UNEP/MAP-Barcelona Convention's objectives of enhancing collaboration among CPs. The proposal therefore builds on the Barcelona Convention's proven capacity to pool resources and coordinate action on environmental issues across the region, making it an ideal framework for addressing marine pollution through a cooperative and sustainable funding mechanism.

The CPs adopt the budget prepared by the Coordinating Unit. This budget is financed by assessed contributions from the CPs, voluntary contributions from CPs including the EU, and supporting organizations. The EU does not have an obligation to contribute like other CPs. Therefore, its contribution is discretionary. The contributions of the CPs are assessed based on a mutually agreed scale based on the scale of assessments for the contributions of UN Member States to the regular budget, as adjusted to Mediterranean context.

The governance of the MTF is managed under the framework of the UNEP/MAP. The primary decision-making body for the MTF is the Meeting of the Contracting Parties (COP), which convenes to approve the budget. This means that financial decisions regarding how contributions are used, the allocation of funds for different environmental projects, and the setting of priority areas are taken collectively by all CPs. The Bureau of the Barcelona Convention, elected by the CPs, is responsible for overseeing operational issues. The Bureau plays a key role in monitoring the use of funds, ensuring adherence to the strategic goals set by the COP, and guiding the Secretariat in the implementation of decisions. It acts as an intermediary between the COP and the Secretariat. The UNEP/MAP Secretariat manages the day-to-day operations of the MTF. The Secretariat plays a vital role in ensuring the smooth functioning of the fund and maintaining transparency and accountability in the use of resources.

The governance framework of the MTF, structured around the COP, Bureau, and Secretariat, offers a clear model of transparency, accountability, and regional cooperation. For the regional Blue Fund, similar governance mechanisms can be adopted. As such, the COP could retain the responsibility for approving the budget and setting the Fund's strategic direction. The Bureau could continue to provide oversight on operational and implementation issues, ensuring that the Fund's priorities align with regional environmental goals. Significantly, the Secretariat, potentially under REMPEC, could manage the Fund's daily operations, ensuring that financial contributions are used efficiently for pollution prevention, capacity-building, and emergency response in line with MARPOL and the Barcelona Convention's objectives.

In the context of the regional Blue Fund, the MTF might provide a model for how a regional fund can successfully function, relying on CPs' contributions while providing a mechanism for addressing common regional environmental challenges. The governance framework, with a clear decision-making body and transparency in fund management, makes the MTF an important reference point for the regional Blue Fund. Furthermore, by building on existing partnerships with IGOs, NGOs, and other entities, the regional Blue Fund could benefit from the technical expertise, governance structures, and public engagement strategies already established within the UNEP/MAP system.

### **2.1.3 International Oil Pollution Compensation Funds**

The modern history of the IOPC Funds began with the oil spill from the *Torrey Canyon*, which ran aground near the Scilly Isles in 1967, fouling UK and French coastlines. This environmental disaster exposed a number of serious shortcomings, in particular the absence of a binding international agreement on liability and compensation in the event of a persistent oil spill from tankers.

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<sup>18</sup> See [REMPEC/WG.41/11/2](#) and [REMPEC/WG.42/4](#).

During the negotiation of the 1969 Civil Liability Convention (CLC) and the 1971 Fund Convention, two voluntary industry schemes were introduced to provide interim solutions for oil pollution liability and compensation. These schemes were known as TOVALOP (Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution) and CRISTAL (Contract Regarding a Supplement to Tanker Liability for Oil Pollution).

TOVALOP, established in 1969, and CRISTAL, introduced in 1971, were designed to offer benefits comparable to those provided under the CLC and the Fund Convention for States that had not yet ratified these binding international treaties. These voluntary frameworks ensured compensation for oil pollution damage, bridging the gap until the conventions achieved widespread acceptance.

These voluntary industry frameworks were developed to provide interim solutions before formal, legally binding instruments were established. Despite their voluntary nature, they played an important role in shaping the principles of liability and compensation, laying the groundwork for the development of binding international treaties that would ultimately supersede them.

The IOPC Funds are an established compensation mechanism for pollution damage. Compensation for pollution damage caused by spills from oil tankers is governed by an international regime elaborated under the auspices of the International Maritime Organization (IMO). The IOPC Funds are funded by the oil industry and managed by governments. The IOPC Funds are primarily financed by contributions paid by entities that receive certain types of oil in large quantities after sea transport. These contributions are based on the amount of oil received in the relevant calendar year and cover expected claims, together with the costs of administering the Funds. Subject to the concept of limitation of liability, this system operates primarily based on the “**polluter-pays principle**” (pollution prevention, control, and reduction costs must be borne by the polluter, balancing public interest), ensuring that those responsible for pollution are the first contributors to its mitigation.

The IOPC Funds are two intergovernmental organizations created to provide financial compensation for oil pollution damage resulting from tanker spills. The funds operate under a framework set by the two IMO treaties, namely, the 1969 International Convention on Civil Liability for Oil Pollution Damage and the 1971 International Fund for Compensation for Oil Pollution Damage, which have since been updated with the 1992 CLC, the 1992 Fund Convention and the 2003 Supplementary Fund Protocol (these updates extended the scope and significantly increased the compensation limits available).

Indeed, the IOPC Funds provide a robust model for how a fund can be managed, with clear governance structures and financial accountability. The IOPC Funds’ governance structure includes the Assembly, which meets regularly to make critical decisions regarding compensation, policy, and budgetary matters. The Assembly elects an Executive Committee comprising 15 Member States of the 1992 Fund and Supplementary Fund (hereinafter referred to as the “Member States”). The main function of this Committee is to approve settlements of claims. The 1992 Fund shares a Secretariat with the Supplementary Fund. The joint Secretariat is headed by a director and has several staff members. Decisions are made by representatives of the Member States. The governing bodies of the Funds, consisting of Member States to each fund, meet periodically to make decisions on compensation payments, policy and budgetary matters, including the amounts to levy in contributions.

Only those entities in the Member States receiving more than 150.000 tonnes of contributing oil (crude oil and heavy fuel oil) after transport by sea in a calendar year are required to contribute to the Fund. Contributions are calculated based on the amount of oil received and are used to cover the costs of compensation payments and Fund administration. Member States are required to communicate every year to the 1992 Fund the name and address of any person in that Member State who is liable to contribute, as well as the quantity of contributing oil received by any such person. This applies whether the receiver of oil is a government authority, a State-owned company or a private company (the place of loading is irrelevant; the oil may be imported from abroad, carried from another port in the same Member State or transported by ship from an offshore production rig).

Annual contributions are imposed by the 1992 Fund to meet the anticipated payments of compensation and administrative expenses during the coming year. The amount levied is decided each year by the Assembly. The 1992 Fund has a General Fund which covers expenses for administration. The General Fund also covers compensation payments and claims-related expenditures, to the extent that the aggregate amount payable by the Fund does not exceed a specific amount. If an incident gives rise to substantial compensation payments and claims-related expenditure by the 1992 Fund, a Major Claims Fund is established to cover payments over the amount payable from the General Fund for that incident. The director issues an invoice to each contributor, following the decision taken by the Assembly to levy annual contributions. Each contributor pays a specified amount per tonne of contributing oil received. The contributions are payable by the individual contributors directly to the 1992 Fund. A Member State is not responsible for the payment of contributions levied on contributors in that Member State unless it has voluntarily accepted such responsibility.

For claims that exceed the limits of the 1992 Fund, the Supplementary Fund offers additional compensation. Annual contributions to the Supplementary Fund are also made in respect of each Member State by any person who, in any calendar year, has received total quantities of oil exceeding 150 000 tonnes after sea transport in ports and terminal installations in that Member State. However, the contribution system for the Supplementary Fund differs from that of the 1992 Fund in that there is a minimum annual receipt of 1 million tonnes of contributing oil in each Member State. In Member States where the combined quantity of contributing oil received by contributors is less than one million tonnes, the contributors are liable to pay their share based on the oil they receive, and the Member State must assume the obligation of paying the remaining amount of contributions due to the Supplementary Fund. There are currently 122 States Parties to the 1992 Fund Convention,<sup>19</sup> and 33 States Parties to the Supplementary Fund Protocol.<sup>20</sup>

IOPC Funds provide a well-established precedent for compensation mechanisms targeting pollution caused by oil spills. These funds operate under the "polluter pays" principle, ensuring that the entities responsible for pollution (e.g., oil transport companies) bear the financial responsibility for mitigating its adverse impact. The governance structure of the IOPC Funds involves active participation by Member States, which collectively oversee compensation payments, policy decisions, and financial management. Hence, the lessons learned from the IOPC Funds seem to be relevant to the regional Blue Fund, particularly in how it could integrate financial contributions.

#### **2.1.4 Conservation Trust Funds**

Conservation Trust Funds (CTFs) are long-term financing mechanisms designed to ensure the sustainable use of natural resources and biodiversity conservation. CTFs operate around the world as conservation finance institutions that manage a diverse suite of financing mechanisms for nature conservation. The vast majority of CTFs are designed to be independent from government control and financing, mission driven, and accountable. CTFs have become essential institutions for conservation in their countries. Over the past decade, the majority of CTFs were capitalized and received funding from: national and local governments; multilateral organizations such as the Global Environment Facility; bilateral funds including the Tropical Forest Conservation Act of the U.S. Government and ever greater commitments from the German and French Governments; the Global Conservation Fund; private foundations that now contribute to around one-fifth of CTFs worldwide; and international NGOs.

By pooling resources from various stakeholders, CTFs ensure a continuous flow of financial resources to conservation efforts, even in the absence of immediate government funding. This might be an interesting model to note for the establishment of the regional Blue Fund to ensure financial sustainability. Nonetheless, although they offer a compelling history of successfully channelling global and national funding to finance local initiatives, CTF may not be the ideal model for governance and

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<sup>19</sup> CPs such as Albania, Algeria, Croatia, Cyprus, France, Greece, Israel, Italy, Malta, Monaco, Montenegro, Morocco, Slovenia, Spain, Syria, Tunisia and Türkiye are States Parties.

<sup>20</sup> CPs such as Croatia, France, Greece, Italy, Montenegro, Morocco, Slovenia, Spain and Türkiye are States Parties.

legal issues for the regional Blue Fund as it is not administered by an Intergovernmental mechanism like REMPEC but has a strong domestic/local reference rather than regional/international perspective.

### **2.1.5 Global Environment Facility**

The Global Environment Facility (GEF) is a multilateral family of funds dedicated to confronting biodiversity loss, climate change, and pollution, and supporting land and ocean health. Its financing enables developing countries to address complex challenges and work towards international environmental goals. The partnership includes governments as well as civil society, Indigenous Peoples, women, and youth, with a focus on integration and inclusivity. The family of funds includes the Global Environment Facility Trust Fund, Global Biodiversity Framework Fund (GBFF), Least Developed Countries Fund (LDCF), Special Climate Change Fund (SCCF), Nagoya Protocol Implementation Fund (NPIF), and Capacity-building Initiative for Transparency Trust Fund (CBIT).

The GEF's governing structure is organized around an Assembly, Council, Secretariat, a number of implementing agencies, a Scientific and Technical Advisory Panel, and the Independent Evaluation Office. Its structure, which includes a multi-stakeholder governance model involving both public and private sectors is notable.

### **2.1.6 Partnerships in Environmental Management for the Seas of East Asia:**

The Partnerships in Environmental Management for the Seas of East Asia (PEMSEA) started as a regional marine pollution management initiative, initially set up as a project under the IMO and funded by the Global Environment Facility (GEF) in 1993. Its original objective was to address land- and sea-based pollution and to build capacity in coastal and marine management across East Asia. Over time, PEMSEA evolved from this regional pollution project into a self-sustaining regional coordinating mechanism for the sustainable development of coastal and marine areas in the East Asian Seas region. This transformation from a project-based structure to an independent, functional regional entity is a significant aspect of its success story.

PEMSEA now has 11 Country Partners (CPs) and 21 Non-Country Partners (NCPs), and it implements the Sustainable Development Strategy for the Seas of East Asia (SDS-SEA). The governance of PEMSEA involves a partnership model where both public and private sectors are engaged in addressing pollution prevention and sustainable marine development. The PEMSEA Resource Facility (PRF), led by an Executive Director, oversees coordination between the various services offered, with voluntary contributions from the region's partners and from external donors helping to fund its Secretariat and Technical Services.

PEMSEA's evolution demonstrates how a regional pollution prevention project can evolve into a sustainable operating mechanism. Therefore, PEMSEA appears to offer valuable insights into the potential for a self-sustaining regional Blue Fund. Moreover, by transitioning from a donor-driven project to a mechanism that pools regional and international contributions, PEMSEA shows the value of multi-stakeholder cooperation and adaptive governance models.

The PEMSEA model offers pros and cons for the Mediterranean region. On the one hand, PEMSEA's success highlights the benefits of cooperative governance and financial self-sufficiency, which can potentially reduce reliance on external donors. On the other hand, each region has its own distinct characteristics and requirements. The Mediterranean may face unique challenges, such as navigating diverse legal frameworks across the CPs. These differences might complicate efforts to implement a similar governance and funding structure.

### 2.1.7 International Association of Marine Aids to Navigation and Lighthouse Authorities:

The International Association of Marine Aids to Navigation and Lighthouse Authorities (IALA) was originally established as a non-governmental, non-profit international technical association under French law in 1957. Its initial role was to serve as a technical forum to harmonize standards and promote best practices for marine aids to navigation. Over the decades, IALA evolved into a globally recognized entity, providing a platform for a wide range of stakeholders in the maritime sector.

By 2010s, IALA recognized the need for stronger legal authority and a governance structure aligned with international obligations. This led to the adoption of a formal legal instrument i.e. the Convention on the International Organization for Marine Aids to Navigation in January 2021. Following more than a decade of preparatory work and four diplomatic conferences, IALA, officially changed its status from an NGO to an IGO in August 2024, when the Convention came into effect. As per its founding instrument, IALA now has a distinct international legal personality and enjoys certain privileges and immunities.

IALA's successful transformation from an informal to a formal structure, although driven by different objectives, provides a valuable precedent. The transition from an NGO to an IGO highlights the importance of formal legal status in enhancing an entity's authority and ensuring its long-term sustainability. However, while this precedent illustrates the potential benefits of such a transformation, remarkably, it also underlines the complexities of such a process. These include securing widespread political support, undertaking a decade of preparatory work and several international conferences, and going through lengthy ratification process that spanned approximately 3.5 years.

## 2.2 Best Practices and Lessons Learned

The international precedents mentioned above shed light on the following best practices followed and lessons learned that may be used in considering the establishment of a regional Blue Fund:

- (a) **Polluter-Pays Principle**: The IOPC Funds' model highlights the success and effectiveness of relying firstly on the polluter-pays principle for generating sustainable contributions to the fund.
- (b) **Regional Cooperation**: The MTF emphasizes the importance of regional cooperation and the engagement of all CPs in the region to ensure financial and operational sustainability.
- (c) **Multi-Stakeholder Governance**: A model like PEMSEA shows the importance of involving public and private stakeholders while ensuring robust governance mechanisms to avoid conflicts of interest.
- (d) **Transparent Allocation of Resources**: Funds such as the IOPC model have clear frameworks for resource allocation, which ensures that the contributions are used efficiently for agreed-upon priorities like capacity-building and pollution responses.
- (e) **Evolution and Transition**: The evolution of PEMSEA and transformation of IALA demonstrate that the sustainability, authority and legal basis of an entity can be enhanced gradually.

### 3. SUMMARY OF COMPLETED QUESTIONNAIRES

A questionnaire was disseminated to the CPs through the designated MENELAS representatives and REMPEC focal points as part of the REMPEC's ongoing efforts to assess the legal and institutional frameworks in place across the Mediterranean region regarding MARPOL violations and the possible creation of a regional Blue Fund.

The questionnaire covers a broad range of topics, including national legal frameworks for addressing marine pollution, the imposition and management of pecuniary sanctions related to MARPOL infringements, and the willingness of CPs to contribute financially or in-kind to a regional Blue Fund aimed at improving ship pollution control and capacity-building efforts in the Mediterranean.

The questionnaire was completed and returned by 7 CPs out of 22. Hereunder follows a brief description of the replies received.

#### 3.1 Willingness to participate in a regional "Blue Fund"

Notably, only four CPs<sup>21</sup> have thus far expressed potential interest in participating in the regional Blue Fund, out of which one CP noted that its willingness is subject to the approval by higher authorities.<sup>22</sup> Similarly, another CP noted that interagency coordination is needed to see whether they could participate in the regional Blue Fund.<sup>23</sup>

#### 3.2 Willing to contribute financially

The questionnaire also aimed to find out whether CPs are willing to consider transferring a portion of the financial resources collected through pecuniary sanctions from violations of MARPOL to contribute to a regional Blue Fund. Only two CPs have indicated their willingness to contribute to the regional Blue Fund. Furthermore, those CPs under reference noted that they might consider contributing for the violations related to all MARPOL Annexes I-VI discharges.<sup>24</sup>

One CP indicated its preference to provide non-financial support to the Fund in a cover email indicating that questionnaire is yet to be completed.<sup>25</sup> On the other hand, two CPs expressly noted that they do not consider contributing financially or in-kind to the regional Blue Fund as it requires approval from the highest authorities.<sup>26</sup>

#### 3.3 Legal challenges and concerns expressed regarding the regional Blue Fund

One CP noted its concern as the suggested mechanism must also be in tandem with the relevant EU legislation for the EU Member States.<sup>27</sup> Another CP aptly noted its concern that a decision needs to be taken by the Government regarding the establishment of the Fund which also requires regulatory action at the domestic level.<sup>28</sup> Moreover, one CP noted that in order for the regional Blue Fund to be introduced, an international legal instrument would be required,<sup>29</sup> whilst another CP noted its concerns as it is still yet to be a Party to MARPOL and its complex administrative setup, jurisdiction and procedures at the national level.<sup>30</sup>

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<sup>21</sup> Malta, Libya, Slovenia, Tunisia.

<sup>22</sup> Malta.

<sup>23</sup> Greece.

<sup>24</sup> Malta and Slovenia.

<sup>25</sup> Egypt.

<sup>26</sup> Libya and Tunisia.

<sup>27</sup> Malta.

<sup>28</sup> Slovenia.

<sup>29</sup> Cyprus.

<sup>30</sup> Bosnia and Herzegovina.

Several CPs<sup>31</sup> indicated that national legislation would need to be adjusted to allow for the diversion of financial resources collected through pecuniary sanctions pertinent to MARPOL violations to a regional Blue Fund. These are currently directed to national funds or treasuries in the respective CPs.

One CP noted that according to EU Directive 2005/35/EC, the EU Member States are required to come up with the necessary measures to ensure that ship-source pollution infringements are punishable by effective penalties.

Regarding the governance and administration of the regional Blue Fund, most CPs expressed a preference for a governance structure managed by REMPEC.

Many respondents expressed concerns about involving the private sector in governance, as this could lead to conflicts of interest, or it would lead to a risk that the private sector would try to influence the Fund in their favour.

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<sup>31</sup> Cyprus, Greece, Libya, Malta, Slovenia and Tunisia.

#### 4. OVERVIEW OF NATIONAL LEGAL FRAMEWORKS

The national legal frameworks for prosecuting MARPOL violations and managing related pecuniary sanctions vary across the CPs. CPs typically have both administrative and penal sanctions for MARPOL violations.<sup>32</sup>

CPs have varied levels of enforcement, with administrative sanctions being the most commonly applied sanction for MARPOL infringements, particularly for illegal discharge of oil under MARPOL Annex I. Notably, a few CPs reported no enforced sanctions as they are still awaiting the adoption of national laws or ratification of MARPOL. While the harmonisation of legal frameworks, including possibly setting a common minimum level of pecuniary sanctions for MARPOL violations across CPs, would enhance the operation of a regional Blue Fund, it may not be a strict prerequisite especially at initial phases. As a matter of fact, interested CPs could proceed with the establishment of the Fund, and others also may benefit from it even if their legal frameworks are not fully harmonised yet. In fact, the regional Blue Fund itself can assist non-members with capacity-building activities to ensure harmonisation as well. Indeed, harmonisation remains a valuable goal but is not necessarily a “*sine qua non*” condition for the establishment of the regional Blue Fund. On the other hand, CPs with more structured enforcement mechanisms demonstrate potential models for integrating pecuniary sanctions regarding MARPOL violations into a regional Blue Fund.

It may be noteworthy that in the context of the regional Blue Fund, pecuniary sanctions imposed by administrative authorities are relevant, rather than judicial fines.

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<sup>32</sup> For instance, Cyprus, Egypt, Greece, Malta, Slovenia, and Türkiye.



## **5. LEGAL FRAMEWORK AND INSTITUTIONAL ARRANGEMENTS FOR THE REGIONAL BLUE FUND**

While the establishment of a regional Blue Fund under REMPEC could ideally benefit from a formal legal mechanism, this may not be an absolute prerequisite. For instance, CTFs have been successfully created in various regions through cooperation and political will without the need for formal regional legal frameworks. In this context, the primary catalyst for the regional Blue Fund would be the political will and commitment of the CPs. Once political support is secured, practical modalities, including financial contributions from MARPOL-related administrative sanctions, can be designed and implemented. A clear legal basis can be achieved through amendment, or adoption of a new protocol under the Barcelona Convention.

While the creation of a regional Blue Fund under REMPEC through formal legal mechanisms, such as an amendment to the Barcelona Convention or to the 2002 Prevention and Emergency Protocol or the adoption of a new Protocol under the Barcelona Convention, would certainly provide legal certainty, this may however be a cumbersome option. Indeed, the formal approach (amending existing framework or adopting a new protocol) might cause several challenges for the CPs regarding their adoption, ratification, and entry into force.

A less cumbersome fourth option is the adoption of a COP Decision. In general, the binding nature of COP decisions ultimately depends on the authority granted to the COP in the treaty text. Nonetheless, COPs can exercise substantive powers if these powers are explicitly delegated by the CPs and provided for in the treaty.

COP is the supreme decision-making body of the Barcelona Convention and its Protocols. The twenty-two CPs meet every two years to review the implementation of the Convention and its Protocols and take decisions. Article 18 of the Barcelona Convention empowers the COP to adopt decisions, including those related to establishing programs and undertake any additional action that may be necessary for the achievement of the purposes of the Convention and its protocols. Decisions adopted by the CPs at a COP are regarded as binding within the framework of the Barcelona Convention as such decisions derive its power from the convention itself. However, although they are enforceable as part of the implementation of the Convention and Protocols, they might not have the same legal weight as formal amendments or adoption of a new Protocol, which require formal ratification at the national level.

The COP has previously used this authority to establish mechanisms and programs like the MTF and the Ecosystem Approach (EcAp) aimed at achieving the Convention's objectives. For instance, in accordance with Article 24 (2) of the Convention by virtue of Procedure 3 of the Decision IG.21/15, the CPs have established the MTF to ensure the effective coordination and funding of the MAP activities. Moreover, in 2008, CPs decided and committed through their COP 15 Decision IG.17/6 to progressively apply the Ecosystem Approach to the management of human activities that may affect the Mediterranean marine and coastal environment for the promotion of sustainable development.

Therefore, while these options are worthwhile and would ensure the success of establishing a robust legal framework, their feasibility must be carefully considered.

In addition to the abovementioned formal approach, there may be alternative options that may offer more flexible paths. For example, models like The MedFund and PEMSEA appear to demonstrate that a regional trust fund can be established without requiring strict formal regulatory action at international plane. However, it should be noted that these organizations demonstrate NGO and non-profit association characteristics. Nonetheless, they collaborate closely with various stakeholders including governments of their members, IGOs, other NGOs, and private sectors.

A SWOT analysis of each option—formal legal approach versus informal mechanisms—could help identify the most suitable approach for the formation of a regional Blue Fund under REMPEC.

### SWOT Analysis of Formal Legal Mechanism

Strengths	Opportunities
<ul style="list-style-type: none"> <li>➤ <b>Legal Certainty:</b> Establishing the regional Blue Fund via a formal legal mechanism would provide clear and legally binding rules for all joining CPs.</li> <li>➤ <b>Consistency in Enforcement:</b> Amending the Barcelona Convention or the 2002 Prevention and Emergency Protocol or introducing a new Protocol could harmonise enforcement mechanisms.</li> <li>➤ <b>Enhanced Regional Cooperation:</b> A formal legal basis would necessitate close cooperation among CPs with clear commitments.</li> </ul>	<ul style="list-style-type: none"> <li>➤ <b>Permanent Framework:</b> A legally binding framework would provide a long-term solution, ensuring that contributions are stable and sustainable.</li> <li>➤ <b>Enhanced Stakeholder Confidence:</b> Formal legal mechanisms may encourage stakeholders to contribute to the regional Blue Fund, knowing that there is a strong governance structure in place.</li> <li>➤ <b>Guidance:</b> The legal framework can provide guidance to the CPs as regards formalities, procedures and structures.</li> </ul>
Weaknesses	Threats
<ul style="list-style-type: none"> <li>➤ <b>Lengthy Process:</b> The procedures for adoption, ratification, and entry into force of an amendment or new Protocol may be lengthy, often requiring years of negotiations, legislative action, and formal approvals by CPs.</li> <li>➤ <b>Complexity:</b> This would require negotiations between CPs extending to their relevant authorities. Hence, achieving consensus among all CPs might be difficult, as each State has different legal frameworks and political priorities. This complexity could delay the establishment of the regional Blue Fund.</li> <li>➤ <b>Lack of Flexibility:</b> Once legally established, changing the legal framework may be difficult unless an inherent flexibility is ensured. This can make the Fund less adaptable to evolving needs.</li> </ul>	<ul style="list-style-type: none"> <li>➤ <b>Political Will:</b> Gaining political support from all CPs might be challenging, especially if national priorities differ or if there is reluctance to divert financial resources collected to a regional Blue Fund.</li> <li>➤ <b>Delays:</b> The time required to finalize legal frameworks could delay the actual establishment of the regional Blue Fund or inclusion of new members.</li> <li>➤ <b>National Sovereignty Concerns of CPs:</b> Some CPs may resist any perceived loss of sovereignty in relation to environmental enforcement and financial contributions</li> </ul>

### SWOT Analysis of Informal Mechanism

Strengths	Opportunities
<ul style="list-style-type: none"> <li>➤ <b>Speed and Flexibility:</b> Establishing the regional Blue Fund based on a voluntary or trust fund model like The MedFund or PEMSEA could be done relatively quickly without the need for lengthy legal processes.</li> <li>➤ <b>Adaptability:</b> The governance structure could be more flexible, adapting to the specific needs of the region or incorporating new stakeholders (non-State entities i.e. NGOs) as needed.</li> <li>➤ <b>Precedent of Success:</b> Models like PEMSEA and The MedFund demonstrate that regional funds can operate based on voluntary contributions and multi-stakeholder cooperation, without the dire need for formal treaties or protocols.</li> </ul>	<ul style="list-style-type: none"> <li>➤ <b>Gradual Development:</b> A voluntary fund can start small and grow over time, allowing steady expansion as more CPs and stakeholders see its value.</li> <li>➤ <b>Private Sector Engagement:</b> An informal mechanism may allow for easier collaboration with the private sector, as seen with PEMSEA, which has successfully engaged industry stakeholders.</li> <li>➤ <b>Regional Flexibility:</b> CPs with varying levels of enforcement and regulatory frameworks could still participate, offering their contributions.</li> <li>➤ <b>Diversified Financial Sources:</b> With the inclusion of non-State actors, the regional Blue Fund can diversify its financial support rather than just leaning on CPs financial contributions.</li> </ul>
Weaknesses	Threats
<ul style="list-style-type: none"> <li>➤ <b>Lack of Legal Certainty:</b> Without a formal legal basis, contributions to the regional Blue Fund may be voluntary and informal, leading to unpredictability in funding, participation and sustainability.</li> <li>➤ <b>Weaker Enforcement Mechanisms:</b> The absence of binding legal obligations might reduce the effectiveness of the regional Blue Fund in ensuring consistent contributions or enforcement across CPs.</li> <li>➤ <b>Limited Regional Cohesion:</b> Some CPs may choose not to participate in a regional Blue Fund which does not have clear legal structure and formal basis. Moreover, this would not contribute to general harmonisation goals as regards MARPOL violations.</li> </ul>	<ul style="list-style-type: none"> <li>➤ <b>Sustainability of Funding:</b> Without legally mandated contributions, the regional Blue Fund may face financial instability, with fluctuating contributions.</li> <li>➤ <b>Potential Conflicts:</b> Balancing the interests of multiple stakeholders, especially if private sector involvement is encouraged, could create conflicts of interest.</li> <li>➤ <b>Limited Authority:</b> Without an explicit formal legal basis, the regional Blue Fund might enjoy restricted authority.</li> </ul>

*Both formal and informal mechanisms present viable routes for establishing a regional Blue Fund. Evidently, formal mechanism pathway may provide long-term legal certainty but face procedural delays and political challenges. On the other hand, informal mechanism might offer flexibility and faster implementation but may lack stability, sustainability and enforcement authority. In conclusion, should CPs wish to balance both options, perhaps a hybrid approach that begins with an informal model, while exploring the feasibility of a more formal structure in the future, could be another viable alternative.*

The governance structure of the regional Blue Fund could be managed by REMPEC, as suggested by several CPs, aligning with REMPEC's existing mandate under the Prevention and Emergency Protocol of the Barcelona Convention. However, other governance options may also be considered by the CPs.

One possible alternative is establishing an independent Secretariat that operates separately from REMPEC, potentially hosted in one of the aspiring member CPs. The governance structure could follow a model similar to the IOPC Funds, where a governing body of stakeholders from contributing States would oversee the fund, and an executive/steering committee would include representatives from CPs participating in the regional Blue Fund. Most of the CPs<sup>33</sup> who completed the questionnaire opted for UN-administered entity (e.g. REMPEC) as a governance structure for the regional Blue Fund. The governance structure for the regional Blue Fund could include different levels of participation, allowing for more flexible engagement by CPs. CPs that join the regional Blue Fund could have full voting and decision-making rights in shaping the Fund's priorities and financial decisions. On the other hand, CPs that do not join the regional Blue Fund could be granted "observer" status, allowing them to attend meetings and participate in discussions but without the right to vote. This structure is similar to existing models such as IOPC Funds which relies on a governing body formed by contributing members, while allowing non-members to remain involved as observers.

Contributions could be monetary or in-kind, with a portion or all of the pecuniary sanctions derived from MARPOL violations directed at the regional Blue Fund. This might require amendments to national laws. The regional Blue Fund could also accept voluntary contributions from CPs. In either governance model, contributions must match the additional staff capacity required for managing the fund either in REMPEC or another Secretariat in a different host State. The regional Blue Fund would principally rely on contributions derived from administrative pecuniary sanctions levied under MARPOL violations and possibly voluntary contributions from CPs. However, there might be financial contributions from other sources such as intergovernmental organizations, NGOs and private sector as seen in the example of other models, particularly as in The MedFund example.

Evidently, REMPEC's current mandate does not include directly managing funds sourced from the regional Blue Fund. As a matter of fact, REMPEC primarily uses funds that are transferred from UNEP/MAP or the IMO, which originate from a variety of funding sources, such as the MTF or IMO's Integrated Technical Cooperation Programme (ITCP). Given this present structure, it may be more accurate to consider REMPEC as a potential administrator of a regional Blue Fund, rather than its direct manager. Financial contributions directed to the regional Blue Fund may primarily be allocated to activities related to preventing and addressing illicit ship pollution discharges in the Mediterranean under MARPOL. While emergency preparedness and response measures may also be relevant, they may not be directly related to incidents of illicit discharges. Given the feedback from CPs in the questionnaire, it would be prudent to steer further discussions during the MENELAS 2024 meeting regarding the specific scope of fund allocation under the regional Blue Fund.

However, the contributions must, at a minimum, cover not only the activities but also the additional staff capacity that may be required by REMPEC (or another administering body in a host State) to effectively manage the regional Blue Fund. Alternatively, other sources of funds, such as voluntary contributions or specific allocations from the MTF, could be considered to finance the necessary human capacity. This issue also depends on the method or location chosen to establish the regional Blue Fund. For instance, if a specific legal mechanism, such as an amendment to or adoption of a new protocol under the Barcelona Convention, is used, it may provide a legal basis for financing the administrative costs. Otherwise, if the regional Blue Fund is directly financed by contributions from MARPOL-related pecuniary sanctions or voluntary contributions, the CPs would need to agree on financing these human resources either through the regional Blue Fund itself or through support from the host CP, if the fund is established outside Malta and operated independently of REMPEC. Further discussion among CPs on this matter is recommended, particularly to assess the feasibility and acceptability to CPs as well as to see if there are willing CPs to host the regional Blue Fund.

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<sup>33</sup> Bosnia and Herzegovina, Cyprus, Libya, Malta, Slovenia and Tunisia.

*Further discussion on this matter is recommended to assess the feasibility and to see if there are willing States to host the regional Blue Fund.*

## 6. LEGAL FEASIBILITY AND POTENTIAL CHALLENGES

There are obviously certain challenges, as differences in how administrative sanctions are handled across CPs, that may complicate the harmonisation of contributions eventually. Moreover, some CPs may be reluctant or unable to divert national funds to a regional entity unless clear benefits and returns on contributions are demonstrated and legal modifications are made.

Moreover, some CPs have yet to establish comprehensive marine pollution legislation, limiting their ability to prosecute MARPOL violations effectively. Similarly, a few CPs are still working on national laws to regulate maritime pollution, therefore no pecuniary sanctions were issued/reported. This appears to indicate that not all CPs are fully equipped to contribute financially to the Fund due to gaps in their legal frameworks. For CPs lacking enforcement mechanisms, especially if the aforementioned formal approach is embraced, REMPEC and/or regional Blue Fund could initially provide technical assistance and capacity-building initiatives to help these CPs adopt necessary legislative measures and enforcement mechanisms. Obviously, this would not be a matter of urgency, should the informal mechanism of establishing the regional Blue Fund is preferable.

Several CPs indicated that they would require amendments to their national legislation to divert financial resources collected through pecuniary sanctions from MARPOL violations to the Fund. Indeed, this may be necessary for the CPs as it relates to diverting financial sources to an international mechanism. Upon establishing this legal basis, this would need to be transposed into domestic laws of the joining CPs, which would enable them to divert the financial resources derived from pecuniary sanctions on MARPOL violations and/or make voluntary contributions. However, ad hoc financial contributions from CPs might be easier as they would not conflict with the existing regulations on MARPOL of the CPs.

Ultimately, the structure of the regional Blue Fund depends on how it is established based on the decision of the interested CPs. If it were to follow a fully-fledged option similar to the MTF and managed by REMPEC, then similar financial rules and regulations would likely need to apply. In this scenario, formal approval processes involving all CPs may be required. However, this is not the only possible option. Should the CPs agree, the regional Blue Fund may operate with more flexibility, not requiring formal decisions by all CPs and it can only involve the joining CPs.

Against this backdrop, the Barcelona Convention, MARPOL, the 2002 Prevention and Emergency Protocol and Decision IG.21/15 may support the establishment of a regional Blue Fund under REMPEC. The Fund would operate under the principle of the polluter-pays principle and would be closely aligned with REMPEC's mandate of coordinating responses to ship-sourced pollution incidents in the Mediterranean region. The existing legal framework provides a starting point for the establishment of such a fund, making it both legally possible and aligned with international and regional obligations.

Although a basis for creating a regional Blue Fund exists within the framework of the Barcelona Convention and its Protocols, particularly the 2002 Prevention and Emergency Protocol, it may be necessary to consider the possibility of adopting a new protocol or amendment to enhance the legal basis for the regional Blue Fund. This is especially relevant given that diverting national financial resources, such as pecuniary sanctions from MARPOL violations, into a regional Blue Fund may encounter domestic legal obstacles, requiring legislative actions in some CPs. Such a new regulatory framework might facilitate the adoption of domestic legislation to enable the transfer of funds to the regional Blue Fund. However, it is also important to recognize that the requirement for such legislative reforms prior to ratifying a new protocol or amendment could become an impediment to its entry into force as it was noted in the above SWOT analysis.

In a nutshell, while the financial regulations and procedures established for the MTF under Decision IG.21/15, may serve as a model for the regional Blue Fund, significant differences need to be considered. The MTF requires decisions by the Conference of the Parties (COP), involving all CPs. However, the operation of a regional Blue Fund does not necessarily require such a formal and high-level decision-making process, depending on how the Fund is structured.

If the Blue Fund were to be established as a fully-fledged initiative under the framework of the MAP/Barcelona Convention, managed by an entity such as REMPEC, similar financial regulations and procedures to the MTF would be required to ensure that the envisaged mechanism operates efficiently. This would mean adopting a framework akin to the MTF, which includes mechanisms for both mandatory and voluntary contributions, the establishment of working capital reserves, and operational oversight based on UNEP regulations.

However, it is important to highlight that this is not the only potential option. CTFs such as The MedFund, have developed their own financial rules and regulations, often according to the domestic legal and administrative requirements of the host country. Similarly, the regional Blue Fund could opt for a more flexible model, not requiring the same stringent adherence to COP decisions, especially if it operates as a more limited initiative or under the domestic legal framework of one CP. In such cases, the Fund's financial structure could be tailored specifically to its operational context, as long as it remains aligned with the principles and goals of regional environmental cooperation.

This issue seems to be open for further discussion among the CPs, particularly regarding the structure, decision-making processes and beneficiaries of the regional Blue Fund, whether it should adopt a fully UN-administered model or pursue a different path.

*While a fully-fledged regional Blue Fund under the MAP/Barcelona Convention would need strict procedures, more flexible models, like The MedFund, could be considered as well, allowing for tailored rules based on the national framework of a host country. The structure and decision-making processes of the regional Blue Fund remain open for discussion among CPs, including whether it should follow an UN-administered model or a different path.*

## **7. LEGAL IMPLICATIONS OF STAKEHOLDER INTEGRATION**

If the regional Blue Fund is not managed under the REMPEC framework, involving interested CPs and other relevant stakeholders could be based on multilateral agreements – Memoranda of Understanding, which may or may not be legally binding, depending on the structure agreed upon by participants. While the agreement method could naturally offer stronger commitment, other models, such as those used by CTF like The MedFund, show that non-binding frameworks can also be effective in securing participation and contributions. In fact, this flexible, non-binding model might allow for broader participation for the regional Blue Fund and avoids some potential complexities.

Theoretically, cooperation with IGOs and NGOs could facilitate the development and enforcement of pollution control mechanisms across the Mediterranean, ensuring that the Fund's objectives align with broader environmental strategies. NGOs or private stakeholders already recognized as UNEP/MAP Partners could play a role in monitoring pollution incidents and supporting compliance with MARPOL. They can provide technical expertise, help with public awareness, and monitor compliance.

The Decision IG.19/6, which formalizes the cooperation between UNEP/MAP and NGOs, also provides a pathway for civil society involvement in the regional Blue Fund. NGOs could participate as observers in the governance of the regional Blue Fund and help ensure that the Fund operates transparently and inclusively. This would also mitigate the concerns of the CPs who expressed their hesitation in the survey regarding the involvement of non-state actors in the questionnaire due to potential conflicts of interest.

By integrating these civil society participation frameworks into the regional Blue Fund, the private sector could contribute financially or provide technical assistance under strict governance rules. Besides, similar to IOPC Funds mechanisms, especially the relevant shipping sector using the Mediterranean for transport might be required to contribute based on a clearly defined mechanism.

Moreover, institutions like the IMO International Maritime Law Institute (IMLI) and the World Maritime University (WMU), which are IMO institutions training government officials in maritime legislation drafting-implementation-enforcement-audit issues of the IMO Member States to ensure effective implementation of the IMO Conventions, including MARPOL, can offer technical support and align the goals of the regional Blue Fund with broader international efforts on marine pollution control.



## 8. CONCLUSIONS

The creation of a regional Blue Fund under REMPEC offers an opportunity to enhance regional cooperation and capacity to combat marine pollution in the Mediterranean. Drawing on best practices from established models like the IOPC Funds and the MTF, the Fund could strengthen and harmonise enforcement of MARPOL violations while improving responses to pollution incidents. However, the ultimate success of the regional Blue Fund will depend on several factors, including political will among CPs, consistent legal frameworks, robust governance mechanisms, and effective regional cooperation. Addressing the legal challenges at both national and regional levels will be crucial for the establishment and sustainable operation of the regional Blue Fund.

The legal feasibility of creating a regional Blue Fund within the framework of the Barcelona Convention and its Protocols is evident. However, several options for its structure and governance are available, as highlighted in the above SWOT analysis. One option is to establish the regional Blue Fund under a formal legal mechanism such as an amendment to the Barcelona Convention or to the 2002 Prevention and Emergency Protocol or adopting a new protocol, which would provide a binding framework for the CPs. While this option offers legal certainty, it also comes with challenges related to the length of time required for adoption, ratification, and entry into force.

Alternatively, the Fund could be established under the laws of a single CP host State, using a more flexible, non-binding approach, similar to models like The MedFund. This option could provide greater speed and adaptability, without requiring formal regional amendments or protocols, but it may lack the legal certainty and consistent enforcement that a formal legal framework would provide. Furthermore, such an approach might involve fewer CPs initially, while allowing broader participation over time.

In light of the survey responses, it is evident that there are varying levels of interest among CPs, as well as disparities in enforcement mechanisms. Legal reforms to harmonize national frameworks can be encouraged, and contributions to the regional Blue Fund could take various forms, including financial contributions from MARPOL-related pecuniary sanctions or in-kind contributions, such as investments in pollution surveillance or environmental recovery programs. The regional Blue Fund could therefore operate in a flexible manner, with different levels of participation and contributions, depending on each CP's capacity and willingness.

The creation and operation of the regional Blue Fund is legally possible, but it will ultimately require commitment from the CPs. The questionnaire replies suggest that not all CPs are prepared to fully endorse the regional Blue Fund or commit to harmonizing their national legislation to divert financial resources to a regional mechanism at this stage. However, less formal options may provide a pathway forward, allowing for gradual participation and contributions based on national circumstances.

In conclusion, while the establishment of the regional Blue Fund under a formal legal framework would provide long-term stability, more flexible, informal approaches may offer a practical way to move forward in the short term. The best path will depend on further discussions among CPs, balancing the need for legal certainty with the need for flexibility and immediate action.

## 9. RECOMMENDATIONS

Based on the above analysis of the possible creation and operation of a regional Blue Fund in the Mediterranean region, the following recommendations are proposed to guide the CPs:

1. Further discussions among CPs are required regarding the various options for establishing the regional Blue Fund, in particular, its structure, membership, contributions, governance, and specific goals, during the Sixteenth Meeting of the Focal Points of REMPEC in 2025 to deliberate on the structure, governance, and operational model of the regional Blue Fund.
2. Establishing a dedicated Working Group comprising representatives from interested CPs to explore and to discuss legal, financial, and administrative aspects of the creation of the regional Blue Fund.
3. Initially focusing on MARPOL's mandatory Annexes and targeting Annexes I and II violations to ensure broader participation and immediate impact might be advisable. This would allow gradual inclusion of optional Annexes while exploring further adjustments.
4. Given the potential complexities and time required for formal treaty amendments or adoption of a new treaty instrument, establishment of the regional Blue Fund through flexible and less formal mechanisms among interested CPs can be considered.
5. While starting informally, assessment of the formal legal mechanisms can continue in parallel by the proposed Working Group to evaluate the long-term benefits of formalizing the regional Blue Fund through legal instruments to enhance legal certainty and commitment.
6. In line with the preferences expressed by several CPs in their replies to the questionnaire and during the 6th MENELAS meeting, REMPEC can be assigned as the administrative body for the regional Blue Fund, capitalizing on its existing experience, mandate and infrastructure. If this is not possible, a volunteering CP should be identified as a potential host State.
7. To ensure secure sustainable financing, an inclusive structure potentially open to the relevant stakeholders might be favourable. Similarly, enabling voluntary contributions from CPs, IGOs, NGOs, and the private sector can enhance financial stability and diversify funding options. This would also enable addressing the administrative costs for the management of the regional Blue Fund.
8. Relevant CPs can be encouraged to amend their national legislation where necessary to allow pecuniary sanctions from MARPOL violations to be redirected to the regional Blue Fund.
9. Recognizing the possibility that not all MARPOL infringements are effectively reported, formation of a standardized mandatory reporting mechanism can ensure comprehensive data collection and transparency among CPs.
10. Enforcement practices can be harmonised to facilitate addressing the MARPOL violations and streamline contributions to the regional Blue Fund.
11. Allocation of the regional Blue Fund primarily to activities related to preventing and addressing illicit ship pollution discharges under MARPOL, directly aligning with the Fund's objectives can be initially considered. While the primary focus can be on prevention, supporting emergency preparedness and response measures that complement pollution prevention efforts can also be considered.
12. While being mindful of potential conflicts of interest, ways to engage NGOs and the private sector in supporting the regional Blue Fund can be explored.

13. Capacity-building assistance by IMLI, subject to funding, can be provided to CPs needing to amend national legislation or develop enforcement mechanisms to participate effectively in the regional Blue Fund.

**LIST OF ABBREVIATIONS**

2002 Prevention and Emergency Protocol	Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea
Barcelona Convention	Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean
CBIT	Capacity-building Initiative for Transparency Trust Fund
COP	Conference of the Parties
CP(s)	Contracting Party(ies)
CTF	Conservation Trust Fund
EU	European Union
GBFF	Global Biodiversity Framework Fund
GEF	Global Environment Facility
IGO	Intergovernmental Organization
IMDG Code	International Maritime Dangerous Goods Code
IMO	International Maritime Organization
IOPC Funds	International Oil Pollution Compensation Funds
ITCP	Integrated Technical Cooperation Programme of IMO
LDCF	Least Developed Countries Fund
MAP	Mediterranean Action Plan
MENELAS	Mediterranean Network of Law Enforcement Officials relating to MARPOL within the framework of the Barcelona Convention
MARPOL	International Convention for the Prevention of Pollution from Ships
The MedFund	Trust Fund for Mediterranean Marine Protected Areas
MAP	Mediterranean Action Plan
MPA	Marine Protected Area
MTF	Mediterranean Trust Fund
NGO	Non-Governmental Organization
NO <sub>x</sub>	Nitrogen Oxides
NPIF	Nagoya Protocol Implementation Fund
PEMSEA	Partnerships in Environmental Management for the Seas of East Asia
REMPEC	Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea
SCCF	Special Climate Change Fund
SO <sub>x</sub>	Sulphur Oxides
SDS-SEA	Sustainable Development Strategy for the Seas of East Asia
UNEP	United Nations Environment Programme

## LIST OF REFERENCES

- **Barcelona Convention and its Protocols**

Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention), Available at: <https://www.unep.org/unepmap/who-we-are/barcelona-convention-and-protocols>

- **Directive 2005/35/EC of the European Parliament and of the Council**

European Parliament and Council Directive 2005/35/EC of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0035>

- **International Convention for the Prevention of Pollution from Ships (MARPOL 73/78)**

International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL)

- **REMPEC Documents**

- REMPEC/WG.41/11/2
- REMPEC/WG.41/16
- REMPEC/WG.42/4
- REMPEC/WG.48/INF.6
- REMPEC/WG.53/INF.4
- REMPEC/WG.56/8

- **Questionnaires**

- **United Nations Convention on the Law of the Sea (UNCLOS)**

United Nations Convention on the Law of the Sea, adopted on 10 December 1982, entered into force on 16 November 1994.

- **Websites**

- **CTF:** Conservation Trust Funds website: <https://conservation-capital.com/case-studies/conservation-trust-funds/>
  - **GEF:** The Global Environment Facility official website: <https://www.thegef.org/>
  - **IMO:** International Maritime Organization official website: [www.imo.org](http://www.imo.org).
  - **IOPC Funds:** International Oil Pollution Compensation Funds official website: [www.iopcfunds.org](http://www.iopcfunds.org)
  - **The MedFund:** Official website: [www.themedfund.org](http://www.themedfund.org)
  - **MTF:** Mediterranean Trust Fund website: <https://www.unep.org/unepmap/who-we-are/mediterranean-trust-fund>
  - **PEMSEA:** Partnerships in Environmental Management for the Seas of East Asia website: <https://www.pemsea.org/>
  - **REMPEC:** Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea official website: [www.rempec.org](http://www.rempec.org)
  - **UNEP/MAP:** Mediterranean Action Plan (MAP) website: <https://www.unep.org/unepmap/>
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