

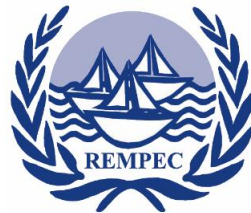
Draft Legal Analysis to assess the implications of the possible creation and operation of a regional “Blue Fund”, including in terms of governance and financing, in the Mediterranean region

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Sixth Meeting of the Mediterranean Network of Law Enforcement Officials relating to MARPOL within the framework of the Barcelona Convention (MENELAS) (Lija, Malta, 4-5 December 2024)



**Mediterranean
Action Plan
Barcelona
Convention**



**INTERNATIONAL
MARITIME
ORGANIZATION**



Introduction

Why?

- Background on the regional “Blue Fund”

What?

- Concept

How?

- Developments
- Objective



Objectives of the draft Legal Analysis

- **Evaluate the feasibility of establishing a regional “Blue Fund”.**
- **Explore governance and financial mechanisms for operation.**
- **Identify legal pathways to support the creation and implementation.**
- **Provide strategic recommendations.**



Key legal framework

Barcelona Convention and its seven Protocols

- Cooperation and joint initiatives.

2002 Prevention and Emergency Protocol

- Supports prevention and response to ship-source pollution.
- Provides a framework for collaboration among CPs.

MARPOL Convention

- Global framework regulating pollution from ships (Annexes I-VI).
- Transferring a portion of the financial resources collected through pecuniary sanctions from violations of MARPOL could financially support the regional “Blue Fund”.



Precedents and models

1. **The MedFund;**
2. **Mediterranean Trust Fund (MTF);**
3. **International Oil Pollution Compensation Funds (IOPC Funds);**
4. **Conservation Trust Funds (CTFs);**
5. **Global Environment Facility (GEF); and**
6. **Partnerships in Environmental Management for the Seas of East Asia (PEMSEA).**

Key takeaways from existing models

- Funding: Voluntary contributions (The MedFund), mandatory levies (IOPC Funds), hybrid models (e.g., PEMSEA) diversify funding sources.
- Legal basis: Formal mechanisms like MTF (via COP decisions) or IOPC Funds (via Assembly decisions) offer binding frameworks. Informal mechanisms like The MedFund and PEMSEA highlight flexibility but may lack general enforceability.
- Governance and relevance.



1. The MedFund

Funding: Voluntary contributions from international donors, NGOs, and CPs.

Governance: Multi-stakeholder steering committee (Board of Directors consists of States, IGOs and NGOs). Its governance is supported by advisory bodies: the investment committee and the grant award committee, as well as adhoc technical committees.

Legal basis: Not a formal treaty mechanism. Established in 2015 by France, Tunisia and Monaco with the support of the Prince Albert II of Monaco Foundation, this Fund embodies the commitment of several Mediterranean coastal States and international environmental organisations.

Relevance: Demonstrates how voluntary funding supports regional environmental initiatives without binding commitments.



2. Mediterranean Trust Fund (MTF)

Funding: Mandatory contributions from CPs based on financial capacity and agreed financial rules.

Governance: Administered by UNEP/MAP to implement UNEP/MAP projects and initiatives.

Legal basis: Established by COP decisions, particularly under Decision IG.21/15, pursuant to Articles 18 and 24 of the Barcelona Convention.

Relevance: A legally-binding regional mechanism under the Barcelona Convention.

An aerial photograph of a coastline with a large white semi-circle overlaying the image. The semi-circle is positioned on the left side, covering the land and extending into the blue sea. In the sea, there are two small boats, one of which is leaving a white wake. The sky is not visible, and the overall scene is a mix of natural and man-made elements.

3. International Oil Pollution Compensation Funds (IOPC Funds)

Funding: Mandatory contributions from the global oil shipping industry, tied to oil imports.

Governance: Claims-based system under the Convention.

Legal basis: Operates under binding IMO legal instruments such as the 1992 CLC and the Fund Convention.

Relevance: Highlights the effectiveness of mandatory, industry-specific levies for pollution response.



4. Conservation Trust Funds (CTFs)

Funding: Endowments and revolving funds sourced from international donors and governments.

Governance: Independent boards ensure alignment with biodiversity conservation goals.

Legal basis: Often created through national legislation or bilateral agreements (e.g., trust agreements).

Relevance: Although they offer a history of successfully channelling global and national funding to finance local initiatives, a CTF might not be the ideal model for governance and legal issues for the regional “Blue Fund” as it would not be administered by an Intergovernmental mechanism like REMPEC but would have a strong domestic/local reference rather than regional/international perspective.



5. Global Environment Facility (GEF)

Funding: Multilateral contributions from governments and international organisations.

Governance: Structured through a council of donor and recipient countries.

Legal basis: Operates under agreements tied to conventions like the UNFCCC and CBD.

Relevance: A global model for multilateral financing.



6. Partnerships in Environmental Management for the Seas of East Asia (PEMSEA)

Funding: Combines public-private partnerships and multilateral grants.

Governance: Regional collaboration led by governments, supported by private sector engagement.

Legal basis: Started as an IMO-GEF initiative, later formalised into a regional partnership agreement.

Relevance: Combines flexibility with broad stakeholder involvement, transitioning from informal to formal governance.

An aerial photograph of a coastline with a white curved overlay on the left side. The ocean is a deep blue, and a small boat is visible in the distance. The land is a light brown color, possibly a cliff or rocky shore.

Survey findings

Willingness to participate in a regional “Blue Fund”

- 7 CPs responded.

Willingness to contribute

- In principle support for the regional “Blue Fund”.
- Financial contributions.

Legal challenges and concerns

- Legal and practical concerns,
- Need for alignment with EU legislation.
- Challenges in diverting national funds.
- Preferences.



Establishment of a regional “Blue Fund”

Option 1. Formal mechanism

- Option 1a: Amendments to the Barcelona Convention;
or
- Option 1b: Amendments to the 2002 Prevention and
Emergency Protocol; or
- Option 1c: Adoption of a new Protocol to the Barcelona
Convention; or
- Option 1d: Adoption of a COP Decision.

Option 2. Informal mechanism

- Establish a voluntary trust fund.
- Inspired by existing models.

Option 3. Hybrid approach

- Formal mechanism offers legal certainty but is time-consuming.
- Informal mechanism may be faster and flexible but lacks strong legal certainty.
- Hybrid approach combines elements of both.



Option 1a - Amendments to the Barcelona Convention

Legal framework:

- Article 22 of the Barcelona Convention provides the procedure for amendments to the Convention.

Advantages:

- Legally-binding (clear legal obligations).
- Clear governance (CPs' obligations are formalised and enforceable).
- Integration (aligns the regional "Blue Fund" into the Barcelona Convention).

Challenges:

- Lengthy process (negotiation, adoption, and ratification can take years).
- Reaching consensus among CPs may be difficult (particularly on financial commitments).
- Compliance (CPs must amend national laws to reflect the treaty amendment).



Option 1b - Amendments to 2002 Prevention and Emergency Protocol

Legal framework:

- Article 22 of the Barcelona Convention (procedure for amendments to its Protocols).
- Article 19 of the 2022 Prevention and Emergency Protocol (links its implementation to the rules of the Barcelona Convention).

Advantages:

- Integrates regional “Blue Fund” into existing structures under the Protocol.
- Formalises CPs’ obligations (financial and operational contributions).
- Provides a focused mechanism under REMPEC’s mandate.

Challenges:

- Lengthy process (negotiations, adoption, and ratification can take years).
- Compliance (CPs must amend national laws to reflect the treaty amendment).
- Reaching consensus among CPs may be difficult (particularly on financial commitments).
- Requires careful alignment with REMPEC’s ongoing responsibilities.



Option 1c - Adoption of a new Protocol to the Barcelona Convention

Legal framework:

- Article 21 of the Barcelona Convention enables CPs to adopt new Protocols.

Advantages:

- Tailored and solid legal framework.
- Enables comprehensive and specific provisions for the governance and operations of the regional “Blue Fund”.
- Legally-binding instrument (clear legal obligations).
- Integrates the regional “Blue Fund” with the objectives and principles of the Barcelona Convention.

Challenges:

- Lengthy process (negotiations, adoption, and ratification can take years).
- CPs may face financial/administrative burdens in aligning national frameworks with the new Protocol.



Option 1d - Adoption of a COP Decision

Legal framework:

- Based on Rule 43 of the Rules of Procedure of the Barcelona Convention, COP decisions can be made by a two thirds majority of the CPs voting.
- Article 24 of the Barcelona Convention.

Advantages:

- Simplicity (may avoid procedural delays and legal hurdles).
- Implementation can begin promptly, subject to administrative readiness.
- Flexibility (can be revised over time based on evolving needs).
- Precedent (builds on established practices such as the MTF).

Challenges:

- Might lack the long-term stability of a Protocol or treaty amendment (CPs may see it as less robust).
- COP decisions may not impose binding obligations beyond the Convention's existing framework.
- CPs may be less inclined to accept significant financial/operational responsibilities through a COP decision alone.



2. Informal mechanism

Legal Framework:

- Governed by a Memorandum of Understanding (MoU) or domestic law of a host country.
- Based on voluntary contributions.
- Governance could be managed by a dedicated administrative body hosted by a CP.

Advantages:

- Can be operationalised rapidly without lengthy ratification processes.
- Easily adaptable to evolving regional needs.
- Provides an opportunity to transition into a more formalised framework over time.
- Successful examples (The MedFund and PEMSEA).

Challenges:

- Relies on voluntary contributions, which may fluctuate over time.
- May lack enforceability for contributions or operational obligations.



3. Hybrid approach (1)

Advantages:

- Flexibility.
- Avoids procedural delays during the initial phase.
- Starts with interested CPs (can expand and evolve over time).
- Initial informal setup minimises the need for immediate consensus.
- Can offer diverse stakeholder engagement.

Challenges:

- Effective management and clarity of roles amongst stakeholders.
- Transitioning may involve administrative barriers, which could slow the transition.
- Voluntary contributions during the initial phase may be inconsistent.
- The informal phase may lack the binding authority to enforce contributions.



3. Hybrid approach (2)

Transition to a formal mechanism:

- Amendments to the Barcelona Convention, or amendments to the 2002 Prevention and Emergency Protocol, or adoption of a new Protocol to the Barcelona Convention, or COP Decision.

Precedent:

- Although its objectives differ, the International Association of Marine Aids to Navigation and Lighthouse Authorities (IALA) can be an interesting precedent for consideration, which was established as an association under French law. After more than 10 years of work and 4 diplomatic conferences, the IALA officially changed its status from an NGO to an IGO based on a Convention in 2024. It is now named the International Organization for Marine Aids to Navigation.

An aerial photograph of a coastline with a white curved overlay on the left side of the slide. The ocean is a deep blue, and a small boat is visible in the water. The land is a light brown color, possibly a cliff or rocky shore.

Financial and operational models

Potential funding sources

- Pecuniary sanctions from MARPOL violations.
- Voluntary contributions from CPs, IGOs, NGOs, and the private sector.

An aerial photograph of a coastline with a white semi-circle overlaying the image. The semi-circle is on the left side, and the rest of the image shows a deep blue sea with a few small boats. The top left corner shows a rocky cliffside.

Legal and practical challenges

Legal challenge

- Amendment or adopting a treaty instrument may be lengthy.

Legal harmonisation

- Some CPs have yet to establish comprehensive legislation.
- Divergent domestic frameworks.

Jurisdictional and sovereignty concerns

- Reluctance to transfer funds to a regional entity.

Financial sustainability

- Ensuring consistent contributions.

Governance

- Balancing multi-stakeholder involvement while avoiding potential conflicts.



Recommendations: governance and coordination

Further discussions / potential administrative body

- Continue dialogue among CPs to refine the objectives, priorities, and governance structure of the regional “Blue Fund”.
- Enable a collaborative process to aim at consensus.
- Inquire if any CP is willing to host a new administrative body or if CPs prefer proposing REMPEC to manage the regional “Blue Fund”.

Dedicated Working Group / parallel assessment

- Establish a Working Group (WG) to work on the potential legal, financial, and operational design of the regional “Blue Fund” for CPs consideration. Should the informal mechanism or hybrid approach be preferred, a parallel assessment can be conducted by the WG for transition.

Flexible mechanism

Exchange views on a phased approach, beginning with informal mechanism or hybrid approach.



Recommendations: funding and financial mechanisms

Diverse funding sources

- Explore financing mechanisms (voluntary - mandatory)
- MARPOL monetary sanctions.
- Voluntary donations (CPs, IGOs, NGOs, and private sector)

National legislation amendments

- Alignment of domestic legislation of CPs with the goals of the regional “Blue Fund” to facilitate contributions and enforcement.

Harmonised enforcement

- Enhance coordination for regional enforcement of MARPOL.



Recommendations: implementation and capacity- building

Initial focus

- Prioritise high-impact initiatives, such as pollution prevention and emergency response, to demonstrate early success.

Fund allocation priorities

- Define clear allocation criteria based on the goals of the regional “Blue Fund”:
 - Pollution prevention.
 - Emergency response.
 - Regional capacity-building.

NGO and private sector engagement

- Discuss the active involvement of NGOs and private stakeholders to expand the reach of the regional “Blue Fund”.

Capacity-building

- Provide CPs with tailored training and technical assistance to strengthen their institutional capabilities.
- Focus on supporting weaker CPs in meeting obligations under the regional “Blue Fund”.



Next Steps

Sixth Meeting of MENELAS (Malta, 4-5 December 2024)

- discuss the draft Legal Analysis, including proposed conclusions and recommendations.

Sixteenth Meeting of the Focal Points of REMPEC (Malta, 13-15 May 2025)

- Consider outcome of Sixth Meeting of MENELAS (Malta, 4-5 December 2024).

Depending on the outcome of relevant discussions at the Sixteenth Meeting of the Focal Points of REMPEC (Malta, 13-15 May 2025):

Possibly, through a Working Group:

- Convene regularly to discuss and make progress; and
- Develop an implementation roadmap, with timeline.



Conclusions

Strategic importance:

- Strengthening the enforcement of MARPOL in the Mediterranean.

Legal and operational feasibility:

- Legally feasible through various mechanisms.

Formal mechanisms:

- Amendment to Barcelona Convention/Adoption of new Protocol.
- Legal certainty and binding commitments but lengthy processes.

Informal mechanism or hybrid approach:

- The regional “Blue Fund” could be created under the laws of a single CP (host country).
- Such approaches offer greater speed but may lack uniformity, certainty, and consistent enforcement.
- They allow for phased participation, starting with fewer CPs and expanding over time.

Way forward:

- A formal legal framework offers long-term stability but requires significant CPs’ commitment.
- Flexible, informal approaches could serve as an effective starting point, balancing immediate action with the potential for future formalisation.



Questions and discussion