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Introduction

1. At their 13th Ordinary Meeting (Catania, Italy, 11-14 November 2003), the Contracting Parties to the Barcelona Convention recommended the establishment of a working group, composed of legal and technical experts, to devise a platform for promoting the implementation of and compliance with the Convention.
2. The first two meetings of the Working Group, held respectively in November 2004 and April 2005, were convened to debate the main elements of a possible compliance procedure under the Convention. At their 14th Ordinary Meeting (Portoroz, Slovenia, 8-11 November 2005), the Contracting Parties decided to extend the mandate of the Working Group and its membership, to include all Contracting Parties. At its third meeting, held in December 2006, the Group reviewed the draft mechanism and proposed new elements.
3. The fourth meeting of the Working Group was held at the Armada Hotel, Istanbul, Turkey, on 23-25 May 2007, in order to review a draft text of a full compliance mechanism, which incorporated the results of the discussions at the third meeting, and to consider a draft decision concerning adoption of the compliance mechanism by the 15th Ordinary Meeting of the Contracting Parties in December 2007. The relevant texts are contained in document UNEP(DEPI)/MED WG.315/3. The Working Group was also asked to consider the composition of the Compliance Committee.

Participation

4. The meeting was attended by experts representing the following Contracting Parties to the Barcelona Convention: Albania, Croatia, Cyprus, European Community, France, Greece, Israel, Italy, Libyan Arab Jamahiriya, Morocco, Slovenia, Spain, Syrian Arab Republic, Tunisia and Turkey. The representative of Montenegro attended as an observer.
5. The MAP Coordinating Unit was represented by Ms Tatjana Hema, MEDU Programme Officer and Mr Gerhard Loibl, MAP Consultant.
6. The full list of participants is attached as **Annex I** to the present report.

Agenda item 1: Opening of the meeting

7. Ms Hema welcomed participants and thanked the Turkish Government for its generous hospitality. She recalled that the primary objective of the meeting was to finalize the text of the compliance mechanism for submission to the meeting of the MAP Focal Points and subsequently to the Contracting Parties at their 15th Ordinary Meeting in December 2007.

Agenda item 2: Election of officers, adoption of the provisional agenda and organization of work

8. Ms Hema said that, following informal consultations held before the meeting, the Secretariat proposed the election of the following officers:

Chairperson:	Mr Larbi Sbai	(Morocco)
Vice-Chairperson:	Ms Reem Abed-Rabboh	(Syrian Arab Republic)
Vice-Chairperson:	Mr Didier Guiffault	(France)
Vice-Chairperson :	Ms Ilaria Masone	(Italy)
Rapporteur:	Ms Martina Sorsa	(Croatia)

9. The meeting agreed to elect the officers proposed by the Secretariat and adopted the agenda proposed in document UNEP(DEPI)/MED WG. 315/1, which is attached as **Annex II** to the present report.

10. The Working Group agreed first to consider paragraphs 31, 32 and 32bis of the draft compliance mechanism, which had not yet had a first reading by the Group, and then to reconsider the entire draft, paragraph by paragraph. Following that, the Group would discuss the membership of the Committee and its working methods.

Agenda item 3: Review of the draft compliance mechanism under the Barcelona Convention and its Protocols

First reading of paragraphs 31, 32 and 32bis

11. Mr Gerhard Loibl, MAP Consultant, explained that paragraph 31 referred to 'due process', which was a general principle in compliance mechanisms. Paragraph 32 outlined the procedure for notification of the Committee's findings to the Party concerned and submission of the comments of that Party to the Committee before a final decision was reached. Paragraph 32bis covered the issue of confidentiality.

12. In the discussion on paragraph 32, several representatives proposed that time limits be placed on notification by the Committee and on the submission of comments by the Party concerned. Once the Committee had formulated its draft findings, measures and recommendations, they should be transmitted to the Party concerned as soon as possible, and a two-week period was proposed. Several speakers commented that the time required by a Party to prepare its comments to the draft findings would vary, depending on the complexity of the issues; a maximum period of three months was suggested. The Group was informed that most other conventions did not impose time limits on their compliance committees. One representative pointed out that other paragraphs gave concerned Parties ample opportunity to interact with the Committee before it reached its decision. Another pointed out that the question of deadlines raised the issue of the Committee's own methods of work, which should be left open for discussion in due course. One participant suggested that paragraph 38, designating the MAP Coordinating Unit as the Secretariat of the Committee, should appear earlier in the draft, before the Secretariat's role in the procedure was first mentioned.

13. A suggestion that Parties should be obliged to comment on the Committee's draft findings prompted an exchange of views. It was pointed out that, as the Committee's decisions were to be transmitted to the Meetings of the Contracting Parties, a concerned Party would lose credibility if it had not responded to the Committee's findings. The situation should not be regarded as an adversarial one, since the Party concerned was being given the opportunity to comment. The paragraph was referred to an informal drafting group.

14. In the discussion of paragraph 32bis concerning protection of the confidentiality of information, one participant expressed serious misgivings about the wording as it stood; it jeopardized the transparency of the process by implying that a concerned Party might not have access to the source of the complaint against it. Concerned Parties, too, should have the right to require confidentiality of the information submitted to the Committee. Others pointed out that it was a standard clause in the terms of reference of other compliance committees, that it was designed principally to protect industrial interests, and that there was no intention to conceal information from the Party concerned. Reference was made in that connection to paragraph 24, which provided that a copy of the submission should be sent to the Party whose compliance was at issue. Moreover, the paragraph referred only to

information received in confidence, and requests for confidentiality, for example in the case of trade secrets, were entirely legitimate.

15. The MAP Consultant confirmed that the paragraph was a standard safeguard clause used by similar bodies, and to his knowledge there had been no cases elsewhere of proceedings that had been deadlocked on account of confidentiality claims. It should be recalled that the Committee conducted its deliberations in public and would be unable to proceed in the face of such claims. It would not therefore be in a Party's interest to declare all the information confidential. It was agreed that the question of access to information by the Party concerned was indeed a legitimate concern, but should preferably be covered by another paragraph, such as paragraph 29 on information. In conclusion, noting that all those involved in the Committee's deliberations, including the Party concerned, should be covered by the confidentiality clause, the meeting referred the article to an informal drafting group for rewording.

Second reading of the draft compliance mechanism

16. The Chairperson invited the Working Group to consider the draft compliance mechanism in a second reading.

I. Objective

17. One representative proposed deletion of the reference in paragraph 7 to the specific needs of developing countries on the ground that to take those needs into account was not an objective and moreover could be construed to mean that developing countries were able to use that status as a pretext for justifying any pollution for which they were responsible. It would be more appropriate for such a reference to appear in paragraph 34, which dealt with measures. Other representatives disagreed; the point was that developing countries might require capacity-strengthening assistance in order to promote their compliance with the Convention. It was therefore pertinent to draw attention to that fact from the outset. Following an exchange of views and various drafting proposals, it was agreed to modify the reference in the light of the discussion.

II. Compliance Committee

18. A proposal was made to incorporate the reference in paragraph 13 to the election of members and their alternates into paragraph 9, which dealt specifically with that subject. A further proposal was made to remove any reference to the nomination of candidates from civil society. If agreed, the removal of that reference would have no bearing on the ability of Contracting Parties to consider such nominations. Several representatives disagreed with the proposal; the role of civil society was a delicate matter that had been the subject of protracted negotiation at a previous meeting in which a representative of civil society had participated, which was not the case at the present meeting. One representative stated for the record that he wished the reference to remain. Another representative wished to include wording that would also allow for the nomination of candidates from the academic world.

19. In the discussion on paragraph 10 concerning the term of office of members, it was agreed that the basic concepts were acceptable but that the paragraph needed rewording and reading in conjunction with paragraph 9 in order to make a clear distinction between the rule – a four-year term of office – and the exception – an initial two-year term for three of the members and their alternates when the Committee was established, in order to ensure continuity in its work. The wording of similar clauses in the terms of reference of other compliance committees might serve as a basis for redrafting. On that understanding and, following informal consultations, new wording was proposed.

20. In response to a request for clarification of the arrangement designed to ensure continuity in the work of the Committee, it was explained that, at end of the initial two-year term for three members and their alternates, all terms of office for all members and alternates thereafter would be for four years. The arrangement therefore precluded a future situation in which all members would be replaced at the same time.

21. The new wording proposed on that same basis also included a paragraph stating that members should not serve for more than two consecutive terms, the implications of which were discussed. The aim of that wording was to ensure a minimum safeguard against the acquisition of permanent or near-permanent status by any member of the Committee. As such, it provided for the re-election of a member twice consecutively, after which he or she would be required to wait four years before having any further opportunity of re-election. The proposed new wording would allow for the possibility whereby an expert could be re-elected to the Committee after an interval of four years or more in order to continue providing the benefit of his or her expertise.

22. Following queries on the requirement in paragraph 11 that members should be nationals of Parties to the Barcelona Convention, participants were assured that it was a standard precautionary provision in other compliance mechanisms for conventions of limited membership.

23. It was agreed, on the basis of similar provisions in the mechanisms of other instruments, to state in paragraph 12 that members of the Committee should serve in their individual capacity, and wording should be added to the effect that members should serve objectively and in the best interest of the Barcelona Convention and the protection of the Mediterranean Sea.

24. Addressing paragraph 14 relating to candidates for nomination, participants questioned the degree of detail spelled out, with some taking the view that more technical matters such as the provision of a curriculum vitae (CV) would be better placed in the Committee's Rules of Procedure. While it was agreed that no mention should be made of the "high moral character" of candidates or of the number of words of the CV, it was recalled that the Working Group at previous meetings had opted for a specific reference to the CV of candidates. One speaker suggested that a model CV could be provided to facilitate the selection process.

25. Several participants considered that paragraphs 14 and 15 should be read together since they both concerned nomination and election of members of the Committee. Indeed, it was suggested that the sequence of a number of paragraphs under section II might need to be changed to distinguish clearly between the profile and functions of members and nomination and election procedures. One suggestion was to provide for a single paragraph on election mechanisms that would clearly specify the procedures step by step and also clarify the necessary balance to be struck between the various criteria for election. It must be clear what was meant by "equitable geographical representation" on the one hand, and what relative weight was to be accorded to "specific, technical, socio-economic or legal" expertise, on the other.

26. A discussion ensued on the relative advantages and drawbacks of spelling out the composition of the Committee in terms of geographical representativity and expertise. The majority view was that past practice of equitable geographical distribution and quotas, both within the MAP system – the election of the Bureau being a case in point – and in the United Nations as a whole, had always proved workable and satisfactory, and that there was therefore no need to go into further formal detail. Due process would of course be respected. Contracting Parties, in their wisdom, could be expected to preselect acceptable candidates following consultations. The same would apply to the fields of expertise of the candidates

nominated. Some flexibility should therefore be left in the wording. One speaker suggested that, following practice in other forums, an internal document might be produced reflecting the consensus on geographical representation and the requisite balance of expertise.

27. Following a further exchange of views and informal consultations, several drafting amendments were made to the text. No additional detail would be added to the original text but it was understood that, among the criteria for selection, the principles of equitable geographical representation and rotation were preponderant.

28. It was proposed that the paragraph dealing with the election of the Committee's officers should form part of the Rules of Procedure of the Committee. Guidance in that regard could be obtained from the Rules of Procedure of the Meeting of the Contracting Parties.

18bis Meetings of the Committee

29. One representative proposed language that more strongly emphasized the possibility of holding Committee meetings in conjunction with those of other Convention bodies. Others considered that such language was too constraining and that flexibility was more conducive to the smooth operation of the Committee. In any event, it was for the Committee, as a sovereign body, to decide when to hold its meetings.

30. In the discussion on paragraph 18bis, one representative questioned the principle whereby the meetings of the Committee were open to observers. It was pointed out, however, that the concept of closed meetings was contrary to the spirit of the Barcelona Convention. Open meetings ensured the transparency of the Committee's deliberations.

31. In order that Contracting Parties wishing to attend the meetings as observers could do so, it was suggested that the Secretariat should inform all Parties of the dates and venues of the meetings and whether they were to be open or closed. If, for economic reasons, a Party found it difficult to attend a meeting as an observer, the Secretariat proposed to assist it, for instance by ensuring the participation of a staff member of that country's embassy in the country where the meeting was being held.

32. One representative stated for the record that institutionalizing the attendance of Contracting Parties at the Compliance Committee's meetings would change the nature of the Committee, which was meant to be a small collegial group of experts with a common understanding of the relevant issues. If the procedure outlined in paragraph 18bis led to imbalanced representation of interested Parties, the possibility of formally inviting Parties to attend the Meetings could be considered. He proposed that a report stating which Parties had attended the Committee's meetings be presented at the meetings of the Contracting Parties, in order to detect any imbalance in representation. He recalled that paragraph 36 of the draft foresaw a review of the procedures and mechanisms of the Compliance Committee, at which time practical application of provisions such as that described in paragraph 18bis would be considered.

33. With regard to paragraph 19 referring to the required quorum, a number of proposals were made to clarify the wording. In response to a suggestion that a phrase be added to the effect that alternates were allowed to attend the meetings of the Committee, it was pointed out that in other compliance committees it was tacitly agreed that alternates attend all meetings. Following informal consultations, new wording derived from the Rules of Procedure of the Compliance Committee of the Kyoto Protocol was proposed with the aim of explicitly stating the circumstances in which alternates would serve as members. As those circumstances applied generally and not only in cases where a quorum was required, it was also proposed that the wording should constitute a separate paragraph.

34. Concerning cases where voting came into play, participants discussed whether the majority required for the adoption of findings and measures should be specified as a fraction or as a number of members present and voting. A preference was stated for retaining the fraction of three-fourths as the requirement for a majority, which was in line with the practice followed in United Nations rules of procedure of rounding up odd figures. Concerning cases where no consensus on findings and measures had been reached, it was reiterated that, as agreed at the previous meeting of the Working Group, the views of all Committee members in such cases would be reflected in the Committee's report on its activities.

III. Role of the Compliance Committee

35. Views were exchanged concerning the role of the Committee in considering general compliance issues. One view expressed was that Parties submitted reports to the Secretariat but were under no obligation pursuant to Article 26 of the Barcelona Convention to submit reports to Meetings of the Contracting Parties. It was pointed out, however, that Article 27 of the Barcelona Convention stipulated that compliance with the Convention and Protocols was to be assessed on the basis of the periodic reports referred to in Article 26 and any other report submitted by the Contracting Parties. The role of the Committee in considering general compliance issues was, in fact, limited, in that it could do so only at the request of the Contracting Parties. That stipulation was intended to preclude the possibility whereby the Committee made a general recommendation concerning recurrent non-compliance problems. Article 26 had been specifically mentioned in the wording as a compromise to take into account the wishes of one representative at the previous meeting of the Working Group and it was in the spirit of the meeting not to re-open previously agreed wording.

36. Some representatives favoured removal of the wording that authorized the Committee to consider any other issues as requested by the Meeting of the Contracting Parties; the role of the Committee should be confined to considering issues of compliance, for which adequate provision had already been made, notably in connection with the ability of the Committee to consider general issues. Others contended that Meetings of the Contracting Parties were sovereign and could, at their discretion, request the Committee to consider issues that were not necessarily related to compliance. Article 18, paragraph 2 (vi), of the Barcelona Convention, for instance, clearly authorized the Meetings of the Contracting Parties to consider and undertake any additional action that might be required for the achievement of the purposes of the Convention and its Protocols. Such action, however, required a very high majority vote, so any unreasonable action was therefore unlikely. Informal consultations were held with a view to proposing alternative wording that would be acceptable to all participants.

IV. Procedure

1. Submissions by Parties

37. In response to a question about the two different deadlines set for resolving a situation of non-compliance in paragraph 22(b), it was explained that there were well-established precedents for such a provision in other compliance mechanisms. Experience showed that in many cases the shorter deadline was sufficient, but some flexibility had been introduced to allow for special circumstances.

38. It was noted with reference to paragraph 26 that the Secretariat should inform the Parties referred to in paragraph 22, not merely the Party concerned, of the Committee's findings as to the admissibility of a submission. In paragraph 27, it was confirmed that a Party concerned had the right to participate in the Committee's work but not at the adoption stage.

2. Referrals by the Secretariat

39. In the discussion of the relevant paragraph, one speaker, quoting the role of the Secretariat in serving the Committee as stipulated in section VII, questioned the legitimacy of referrals by the Secretariat. The Secretariat should be no more than a neutral intermediary and should not be authorized to take any initiative for submissions, except in response to a request by a Party.

40. In response, several speakers recalled the delicate compromise that had been reached at the Working Group's third meeting, after lengthy discussion, during which similar concerns had been expressed. It had been agreed that it had been agreed that the sub-heading "Submissions" would refer only to submissions brought by the Parties, while "Referrals" related to information transmitted to the Committee by the Secretariat; and that safeguards had been introduced to make it clear, *inter alia*, that Secretariat referrals must be based on the periodic reports referred to in Article 26 of the Convention. Indeed, Article 26 provided a sound legal basis for transmittal of information by the Secretariat, as did Article 17 on institutional arrangements. It was pointed out that if only self-triggered or Party-to-Party trigger submissions were allowed, implementation of Article 27 would be extremely difficult, since it stipulated that compliance should be assessed on the basis of the periodic reports. Moreover, the decision to establish a compliance mechanism had been taken by the 14th Meeting of the Contracting Parties, and the Compliance Committee deriving from that decision must be given the means to implement Article 27.

41. In response to a comment that, in addition to individual Parties, the Meeting of the Contracting Parties could initiate submissions, it was argued that that would scarcely be feasible without the intermediary assistance of the Secretariat in sifting the information provided through the reporting system.

42. Several speakers stressed the role of the Secretariat as essentially a facilitator and partner in the process. Some expressed reservations, however, about the latter part of the paragraph, which appeared to give the Secretariat an unduly coercive role, particularly in imposing deadlines, and raised the question of what would be done if a concerned Party could not or would not comply. Explanations were given about what was meant by a matter not having been "resolved" – the point was that the Party concerned was not expected to resolve the problems overnight, but to demonstrate its willingness to seek solutions. It was suggested that that part of the paragraph might be reworded accordingly, or even deleted. The purpose of the paragraph was not to place any country in difficulty but to provide a flexible mechanism for preventive action to resolve situations of non-compliance, to the extent possible, through consultation and mutual assistance.

43. One view was that the paragraph should reflect the fact that if a Contracting Party was non-compliant, for whatever reason, a solution should initially be sought in discussions between the Party concerned and the Secretariat. If, within three months, the Party concerned had made no attempt to resolve the situation, the Party itself should contact the Committee, as stated in paragraph 22 (a). If it had not done so within six months, the Secretariat would refer the case to the Committee. It was agreed that any revised version should reflect the principle that priority would be given to submissions by Parties and that only where such submissions were lacking would the Secretariat intervene.

44. The Working Group subsequently considered a revised version of the paragraph and further discussed the more contentious issues that had been raised earlier. In particular, it agreed that the text should refer to overcoming difficulties rather than resolving a matter, which was considered too prescriptive. In the discussion, emphasis was again placed on good will rather than sanctions. Several drafting changes were made.

45. One representative proposed additional wording to paragraph 29 to ensure that the Party concerned had access to the information used by the Committee in its deliberations.

46. With respect to paragraph 30, several representatives argued that the Party concerned should also have the opportunity to take part in the preparation and adoption of the Committee's findings, measures and recommendations, in the interests of transparency and to reflect the facilitative nature of the procedure. The presence of the Party concerned would allow it to ensure that the solutions being proposed were applicable and feasible at national level. It was further suggested that a Party that had made a submission in respect of another's Party's non-compliance should also be given the opportunity to participate in the preparation and adoption of the Committee's advice, in order to ensure that the solution being proposed was satisfactory.

47. Other speakers said that the presence of the Party concerned during elaboration of decisions would place undue pressure on the Committee and might be deleterious. They considered that the openness of the procedure was adequately addressed in paragraphs 27, 28 and 29. The precedent that had been used in drafting paragraph 30 ensured that such committees could elaborate their recommendations with no outside influence. A compromise solution was proposed, whereby, in highly complex cases, the Committee could invite the Party concerned to participate in the preparation of its findings, measures and recommendations. Adoption would remain the purview of the Committee.

IVbis, Committee reports to the Meetings of the Contracting Parties

48. It was agreed that the language should be harmonized, where relevant, with the remainder of the draft for the sake of consistency.

V. Measures

49. One representative expressed the view that references to taking into account the capacity of Parties should be deleted; the constant repetition of such references might convey the message that not all Parties were under obligation to contribute to preserving the natural resource which they all shared. A differing view was that such a reference was crucial in the context of measures, as the nature of measures to be applied to a Party was dependent on its capacity; it was pointless to apply measures if the Party concerned lacked the necessary capacity. Alternative wording that might resolve the concerns raised was therefore proposed, in addition to wording to provide for capacity-building. It was pointed out that assistance would cover capacity-building. In a subsequent discussion, the authority of the Committee to facilitate assistance was questioned. To meet concerns expressed, it was proposed that wording should be inserted to make it clear that the role of the Committee was not to provide assistance but to facilitate it, where appropriate.

50. At a later session, revised wording was presented to the Working Group for consideration in the form of a new paragraph dealing solely with the two "hard" measures about which particular concerns had been raised, namely the issuance of a caution and the adoption of a statement of non-compliance. The aim of separating them from the "soft" measures was to make it explicitly clear that they were simply an option to be applied only where appropriate and as a last resort in the event of a repeated situation of non-compliance by a Party. After an exchange of views, it was proposed to add the words "serious and ongoing" after "repeated". The Working Group then unanimously agreed that the new version of the paragraph, as discussed, should stand. One representative said that he wished that unanimous agreement to be placed on record.

51. Participants discussed the list of measures designed to bring full compliance with the Convention and its Protocols. One representative said that the list comprised a mixture of

“soft” and “hard” measures that did not sit well together. Moreover, he believed that it served no useful purpose to list the “hard” measures, which should therefore be deleted. It was pointed out, however, that the Meeting of the Parties was authorized under Article 27 of the Barcelona Convention to recommend any necessary steps to bring about full compliance and that those steps might constitute a series of escalating measures. Various wording was therefore proposed in order to fine-tune the list. Another proposal was to add a further item that cited Article 18, paragraph 2 (vi), of the Barcelona Convention, thereby following the lead of the compliance mechanisms developed for the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants in citing articles of those Conventions as a reminder of their content. Wording was also proposed in order to make a distinction between measures taken by the Committee and by the Meeting of the Contracting Parties.

VI. Review of the procedures and mechanisms

52. New wording was proposed.

Vlbis. Relationship with Article 28 of the Convention (Settlement of Disputes)

53. No comments were made.

New VIter.

54. A new paragraph on information-sharing with other relevant multilateral environmental agreements was proposed in the interests of consistency with other compliance mechanisms.

VII. Secretariat

55. In response to a suggestion to place paragraph 38 at the beginning of the draft, the MAP Consultant said that to do so would have the effect of limiting the role of the Secretariat, which was intended to serve the Committee on a permanent basis. He recommended that the paragraph should remain at the end of the draft, in accordance with the established practice in other compliance mechanisms.

Agenda item 4: Next steps

56. Ms Hema said that in order for the Compliance Committee to become operational as soon as possible, its members should be elected by the Contracting Parties at their next Ordinary Meeting in December 2007. In the case of other multilateral environmental conventions, members of the compliance committees had been elected at the same meeting as that at which their procedures and mechanisms were approved. As it was the role of the MAP Focal Points to prepare material for discussion by the Contracting Parties, they could draw up a limited list of candidates at their next meeting in October 2007, to be brought forward to the Meeting of the Contracting Parties seven weeks later.

57. A number of representatives expressed concern that there was no formal mechanism for nominating candidates for membership on the Committee and asked the Secretariat to prepare an ‘approach paper’ outlining the practical steps that had to be taken in nominating candidates and the mechanism of the election process. The paper should also be made available to the Focal Points, to assist them in reviewing the list of potential candidates and in making a short list, which should contain more than seven nominations, for submission to the Contracting Parties. The ‘approach paper’ should not address issues of geographical

distribution of the membership, which should be resolved in informal discussions. A number of speakers recalled the usefulness of informal contacts at meetings of MAP Focal Points.

58. In response to an expression of concern that ministers might not be willing to nominate candidates before the procedures and mechanisms of the Committee had been adopted by the Contracting Parties, several speakers emphasized that the role of the present Working Group was not only to develop a mechanism but also to present a list of possible candidates. It was virtually certain that the decision on procedures and mechanisms on compliance would be adopted.

59. One representative stated for the record that the process should consist of informal discussions at the meeting of MAP Focal Points, followed by a formal letter from the Secretariat to the Contracting Parties asking for nominations of candidates and then circulation of the list of candidates to the Contracting Parties.

Agenda item 5: Adoption of recommendations

Draft decision IG 15/2

60. The Secretariat drew the meeting's attention to draft decision IG 15/2 on the mechanism relating to compliance under the Barcelona Convention and its Protocols contained in document UNEP(DEPI)/MED WG.315/3. Once approved, it would be annexed to the document on procedures and mechanisms and forwarded to the meeting of MAP Focal Points.

61. One representative proposed that the decision include a statement that the mandate of the present Working Group included drawing up the rules of procedure of the Compliance Committee. It was suggested that the paragraph covering the activities that the Committee was to undertake during its first biennium should be adjusted once the Group had reviewed the document on procedures and mechanisms.

62. During a later discussion of the draft decision, the Working Group agreed to incorporate a number of amendments. It then adopted the draft decision, as orally amended, for transmission to the next meeting of the MAP Focal Points. The final agreed draft decision is appended to **Annex III** of the present report.

Adoption of the draft procedures and mechanisms for compliance under the Barcelona Convention and its Protocols

63. The MEDU Programme Officer introduced document UNEP(DEPI)/MED WG.315/L.6/Corr., containing the draft procedures and mechanisms for compliance under the Barcelona Convention and its Protocols, which reflected the amendments and rafting changes agreed to by the Working Group in the light of its discussion of the text annexed to document UNEP(DEPI)/MED WG.315/3. She invited the Working Group to consider the draft. During the course of its consideration, the Working Group agreed to incorporate a number of further amendments. It then adopted the draft, as amended, for transmission to the next meeting of the MAP Focal Points. The final agreed text is attached as **Annex III** to the present report.

Agenda item 6: Any other business

64. The Working Group noted that the MAP Coordinating Unit would have to be strengthened to allow it to facilitate the work of the Compliance Committee. One

representative said that that should be taken into consideration in the draft budget to be presented to the Contracting Parties at their next Ordinary Meeting.

Agenda item 7: Closure of the meeting

65. Following the customary exchange of courtesies, the Chairperson declared the meeting closed on Friday, 25 May 2007, at 6:10 p.m.

ANNEX I

LIST OF PARTICIPANTS LISTE DES PARTICIPANTS

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ANNEX II

AGENDA

1. Opening of the meeting
2. Election of the Officers, adoption of the Provisional Agenda and organization of work
3. Review of the draft compliance mechanism under the Barcelona Convention and its protocols
4. Next steps
5. Adoption of recommendations
6. Any other business
7. Closure of the meeting

ANNEX III

Draft Decision IG 15/....

Procedures and mechanisms on compliance with the obligations under the Barcelona Convention and its Protocols

The Meeting of the Contracting parties,

Recalling Articles 18 and 27 of the Barcelona Convention for the Protection of the Marine Environment and the Coastal region of the Mediterranean as amended in Barcelona in 1995, herein after referred to as the Barcelona Convention,

Recalling also its decisions adopted at its 13th meeting held in Catania, Italy, and its 14th meeting held in Portoroz, Slovenia, on the need to develop a mechanism to promote implementation and compliance with the Barcelona Convention,

Noting with appreciation the work undertaken by the Working Group on Implementation and Compliance on the development of the mechanism relating to compliance during their four meetings held between 2004 and 2007,

Decides to approve and adopt the Procedures and mechanisms on compliance with the obligations under the Barcelona Convention and its Protocols, hereinafter referred to as Procedures and Mechanisms, as contained in the Annex to this Decision,

Requests the Compliance Committee to consider during the next biennium 2008-2009, *inter alia*, general compliance issues such as compliance problems with reporting requirements under the Barcelona Convention and its Protocols,

Requests the Compliance Committee to submit to the forthcoming Meeting of the Contracting Parties draft rules of procedure for the Committee for adoption.

Requests the Compliance Committee to submit, in accordance with paragraph 31 of the Procedures and mechanisms, a report on its activities to the 16th Meeting of the Contracting Parties.

Procedures and mechanisms on compliance with the obligations under the Barcelona Convention and its Protocols

I. Objective

1. The objective of the compliance mechanism is to facilitate and promote compliance with the obligations under the Barcelona Convention and its Protocols, taking into account the specific situation of each Contracting Party, in particular those which are developing countries.

II. Compliance Committee

2. A compliance committee, hereinafter referred to as “the Committee”, is hereby established.

3. The Committee shall consist of seven members elected by the Meeting of the Contracting Parties from a list of candidates nominated by the Contracting Parties. For each member of the Committee, the Meeting of the Contracting Parties shall also elect an alternate member from the above-mentioned list.

4. A full term of office commences at the end of an Ordinary Meeting of the Contracting Parties and runs until the end of the second Ordinary Meeting of the Contracting Parties thereafter.

5. At the Meeting of the Contracting Parties at which the decision establishing the mechanism is adopted, the Meeting shall elect three members and their alternates for half a term and four members and their alternates for a full term. At each ordinary meeting thereafter, the Contracting Parties shall elect for a full term new members and alternates to replace those whose period of office is about to expire.

6. Members and alternates may serve for two consecutive terms only.

7. The members of the Committee shall be nationals of Parties to the Barcelona Convention. The Committee shall not include more than one national of the same State.

8. Nominated candidates shall be persons of recognized competence in the matters dealt with by the Barcelona Convention and its Protocols and in relevant scientific, technical, socio-economic, legal or other fields. Each nomination shall be accompanied by the curriculum vitae of the candidate. Contracting Parties may consider the nominations of candidates from civil society and academia.

9. In electing members of the Committee and their alternates, the Meeting of the Contracting Parties shall take into consideration equitable geographical representation, shall ensure rotation in order to secure the participation of nominated individuals from all Contracting Parties as members of the Committee within a reasonable period of time. To the extent possible, they shall also take into consideration a balance of scientific, legal and technical expertise.

10. The Committee shall elect its officers – a Chairperson and two Vice-Chairpersons – on the basis of equitable geographic representation and rotation.

11. Members of the Committee and their alternates shall serve in their individual capacities and shall act objectively in the interests of the Barcelona Convention and its Protocols for the protection of the Mediterranean Sea and its coastal area.

III. Meetings of the Committee

12. The Committee shall meet at least once a year. The Committee may decide to hold additional meetings, in particular in conjunction with those of other Convention bodies.

13. The Secretariat shall inform all Contracting Parties of the date and venue of the meetings of the Committee. Unless the Committee or the Party whose compliance is in question (hereinafter "the Party concerned") decides otherwise, the meetings of the Committee will be open to:

- (a) Parties to the Convention, which shall be treated as observers in accordance with the Rules of Procedure for meetings and conferences of the Contracting Parties for the purpose of their participation in the Committee; and
- (b) observers, in accordance with Article 20 of the Convention and the Rules of Procedure for the meetings and conferences of the Contracting Parties.

14. In the absence of a member from a meeting, the respective alternate shall serve as the member.

15. For each meeting, a quorum of five members is required.

16. The Committee shall make every effort to reach agreement by consensus on its findings, measures and recommendations. If all efforts to reach consensus have been exhausted, the Committee shall as a last resort adopt its findings, measures and recommendations by at least a three-fourths majority of the members present and voting. "Members present and voting" means members present and casting an affirmative or a negative vote.

IV. Role of the Compliance Committee

17. The role of the Committee shall be to consider:

- (a) specific situations of actual or potential non-compliance by individual Parties with the provisions of the Convention and its Protocols;
- (b) at the request of the Meeting of the Contracting Parties, general compliance issues, such as recurrent non-compliance problems, including in relation to reporting, taking into account the reports referred to in Article 26 of the Convention and any other report submitted by the Parties; and
- (c) any other issues as requested by the Meeting of the Contracting Parties.

V. Procedure

1. *Submissions by Parties*

18. The Committee shall consider submissions by:

- (a) a Party in respect of its own actual or potential situation of non-compliance, despite its best endeavours; and
- (b) a Party in respect of another Party's situation of non-compliance, after it has undertaken consultations through the Secretariat with the Party concerned and the matter has not been resolved within three months at the latest, or a longer period as the circumstances of a particular case may require, but not later than six months.

19. Submissions as referred to in paragraph 18 concerning the alleged non-compliance of a Party shall be addressed in writing to the Committee through the Secretariat, supported by substantiating information setting out the matter of concern and the relevant provisions of the Barcelona Convention and its Protocols.

20. The Secretariat shall, within two weeks of receiving a submission in accordance with paragraph 18 (b), send a copy of that submission to the Party concerned.

21. The Committee may decide not to proceed with a submission that it considers to be

- anonymous,
- de minimis or
- manifestly ill founded.

22. The Secretariat shall inform both the Party concerned and the Party indicated in paragraph 18(b) about the Committee's findings under paragraph 21 within two weeks of the date of the findings.

2. *Referrals by the Secretariat*

23. If the Secretariat becomes aware from the periodic reports referred to in Article 26 of the Convention and any other reports submitted by the Parties that a Party is facing difficulties in complying with its obligations under the Convention and its Protocols, the Secretariat shall notify the Party concerned and discuss with it ways of overcoming the difficulties. If the difficulties cannot be overcome within a maximum period of three months, the Party concerned shall make a submission on the matter to the Compliance Committee in accordance with paragraph 18 (a). In the absence of such a submission within six months of the date of the above mentioned notification, the Secretariat shall refer the matter to the Committee

3. *Proceedings*

24. The Party concerned may present information on the issue in question and present responses and/or comments at every stage of the proceedings. At the invitation of the Party concerned, the Committee may undertake on-site appraisals.

25. The Committee may:

- (a) ask the Party concerned to provide further information, including an assessment of the reasons why the Party may be unable to fulfill its obligations; and
- (b) with the consent of the Party concerned, gather information in the territory of that Party, including on-site appraisals.

26. In its deliberations, the Committee shall take into account all the available information concerning the issue in question, which shall also be made equally available to the Party concerned.

27. The Party concerned shall be entitled to participate in the discussions of the Committee and present its observations. The Committee may, if it considers it necessary in a particular case of non-compliance, ask the Party concerned to participate in the preparation of its findings, measures and recommendations.

28. The Committee shall be guided by the principle of "due process" in order to ensure fairness and transparency.

29. The Committee shall, through the Secretariat, notify the Party concerned of its draft findings, measures and recommendations in writing within two weeks from the date of their completion. The Party concerned may comment in writing on the draft findings, measures and recommendations of the Committee within a period of time determined by the Committee.

30. The Committee, any Party or others involved in its deliberations shall protect the confidentiality of information transmitted in confidence by the Party concerned.

VI. Committee reports to the Meetings of the Contracting Parties

31. The Committee shall prepare a report on its activities.
- (a) The report shall be adopted in accordance with paragraph 16. Where it is not possible to reach agreement on findings, measures and recommendations by consensus, the report shall reflect the views of all Committee members.
 - (b) As soon as it is adopted, the Committee shall submit the report through the Secretariat, including such recommendations on individual and general issues of non-compliance as it considers appropriate to the Parties for consideration at their next meeting.

VII. Measures

32. The Committee may take one or more of the following measures with a view to promoting compliance and addressing cases of non-compliance, taking into account the capacity of the Party concerned, in particular if it is a developing country, and also factors such as the cause, type, degree and frequency of non-compliance:

- (a) provide advice and, as appropriate, facilitate assistance;
- (b) request or assist, as appropriate, the Party concerned to develop an action plan to achieve compliance within a time frame to be agreed upon between the Committee and the Party concerned;
- (c) invite the Party concerned to submit progress reports to the Committee within the time frame referred to in subparagraph (b) above on the efforts it is making to comply with its obligations under the Barcelona Convention and its Protocols; and
- (d) make recommendations to the Meeting of the Contracting Parties on cases of non-compliance, if it finds that such cases should be handled by the Meeting of the Contracting Parties.

33. The Meeting of the Contracting Parties may decide, upon consideration of the report and any recommendations of the Committee, taking into account the capacity of the Party concerned, in particular if it is a developing country, and also factors such as the cause, type and degree of non-compliance, appropriate measures to bring about full compliance with the Convention and its Protocols, such as:

- (a) facilitate implementation of the advice from the Committee and facilitate assistance, including, where appropriate, capacity-building, to an individual Party;
- (b) make recommendations to the Party concerned;
- (c) request the Party concerned to submit progress reports on achievement of compliance with the obligations under the Convention and its Protocols; and
- (d) publish cases of non-compliance.

34. In the event of a serious, ongoing or repeated situation of non-compliance by a Party, the Meeting of the Contracting Parties, where appropriate, may:

- (a) issue a caution;
- (b) issue a statement of non-compliance regarding that Party; or
- (c) consider and undertake any additional action that may be required for achievement of the purposes of the Convention and the Protocols.

VIII. Review of procedures and mechanisms

35. The Meeting of the Contracting Parties shall regularly review the implementation and effectiveness of the compliance mechanism and take appropriate action.

IX. Relationship with Article 28 of the Convention (Settlement of Disputes)

36. These procedures and mechanisms shall operate without prejudice to the settlement of disputes provisions of Article 28 of the Convention.

X. Sharing of information with other relevant multilateral environmental agreements

37. Where relevant, the Committee may solicit specific information, upon request by the Meeting of the Contracting Parties, or directly, from compliance committees dealing with comparable matters, and shall report on its consultations to the Meeting of the Contracting Parties.

XI. Secretariat

38. The Coordinating Unit shall serve as the Secretariat of the Committee. It shall, inter alia, arrange and service the meetings of the Committee.