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**MEDITERRANEAN ACTION PLAN**

Third Meeting of the Working Group on Implementation  
and Compliance under the Barcelona Convention  
Loutraki, Greece, 5-6 December 2006

**REPORT  
OF THE THIRD MEETING OF THE WORKING GROUP ON  
IMPLEMENTATION AND COMPLIANCE UNDER  
THE BARCELONA CONVENTION**



## **Introduction**

1. At their 13<sup>th</sup> 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, entrusted with devising a platform for the purpose of promoting the implementation of and compliance with the Barcelona Convention.
2. The first and second meetings of the Working Group, held respectively in November 2004 and April 2005, debated the main elements for a possible compliance procedure under the Barcelona Convention.
3. The third meeting of the Working Group, the purpose of which was to review the draft mechanism and, in particular, its proposed new elements, with a view to its finalization and submission to the Meeting of MAP Focal Points in 2007, was held at the Club Hotel Loutraki, Loutraki (Greece), on 5 and 6 December 2006.
4. At the 14<sup>th</sup> Ordinary Meeting of the Contracting Parties (Portoroz, Slovenia, 8-11 November 2005), the Contracting Parties decided to extend the mandate of the working group on implementation and compliance and its membership to include all Contracting Parties with a view to developing a full compliance mechanism for adoption by the 15<sup>th</sup> Meeting of the Contracting Parties in 2007. The working group should develop the compliance mechanism on the basis of the principles, findings, recommendations and deliberations set out in document UNEP(DEC)/MED WG.270/7.

## **Participation**

5. The meeting was attended by experts representing the following Contracting Parties to the Barcelona Convention: Albania, Algeria, Bosnia and Herzegovina, Croatia, Cyprus, European Community, Egypt, France, Greece, Israel, Italy, Libyan Arab Jamahiriya, Malta, Monaco, Morocco, Spain, Syrian Arab Republic, Tunisia and Turkey. Montenegro attended as an observer.
6. The MAP Coordinating Unit was represented by Mr Paul Mifsud, MAP Coordinator, Ms Tatjana Hema, MEDU Programme Officer and Mr Gerhard Loibl, MAP Consultant. Mr Enrique Villamore, representing CP/RAC, also attended the meeting.
7. The full list of participants is attached as **Annex I** to the present report.

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

8. The MAP Coordinator welcomed participants. He recalled that the Working Group had previously comprised only technical and legal experts, but at the 14th Ordinary Meeting of Contracting Parties in Portoroz in 2005, the decision had been taken to expand membership of the Working Group to include all Contracting Parties. He reiterated that the Working Group had been mandated to prepare a draft text for a possible compliance mechanism for the Barcelona Convention that would be presented for consideration and possible adoption by the 15th Ordinary Meeting of Contracting Parties in 2007.
9. Given that the Barcelona Convention was one of the few international instruments not to have a compliance mechanism, he stressed how crucial the process was to the credibility of the Convention and of MAP. He said that certain important and often delicate issues were pending from the previous meetings and still had to be discussed. He hoped that every effort would be made to achieve consensus on those matters during the present meeting.

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

10. The MAP Coordinator said that, following informal consultations held before the meeting, the Secretariat proposed the election of the following officers:

Chair:	Mr Didier Guiffault	(France)
Vice-Chair:	Mr Ali Alkekli	(Libyan Arab Jamahiriya)
Vice-Chair:	Mr Larbi Sbai	(Morocco)
Rapporteur:	Mr Louis Vella	(Malta)

11. The meeting adopted the agenda proposed in document UNEP(DEPI)/MED WG.300/1, which is attached as **Annex II** to the present report.

12. The Secretariat explained that the Working Group had two main issues to examine: (i) the entire draft text on a possible compliance mechanism, including the additions and draft amendments made by the Secretariat since the previous meeting, and (ii) any next steps that were required.

13. The Working Group agreed first to examine the draft amendments to the text as formulated by the Secretariat on the basis of the discussions at the second meeting of the Working Group. It was noted that the modifications were in bold, underlined text to make them clearly identifiable. Time permitting, participants would then go on to consider the text as a whole, including the parts of the documents that remained unchanged from the previous meeting.

14. One participant drew attention to the expansion of the membership of the Working Group, which, in his view, was leading the Group into a significant new phase, in terms of procedure and substance.

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

15. At the invitation of the Chair, the MAP Consultant introduced document UNEP(DEPI)/MED WG.300/3, which contained the latest version of the draft text on a possible compliance mechanism including the draft additions and other changes made on the basis of the discussions at the second meeting of the Working Group. He explained that neither the structure of the text nor the paragraph numbers had been changed in order to facilitate discussions. Any new paragraphs or sections were denoted by the suffix "bis".

**Agenda item 4: Review of the proposed draft mechanism**

16. The Working Group agreed to set up an informal drafting group to work on any contentious issues that might arise and to submit proposed new wording for consideration by the Working Group later in the meeting.

*IIbis. Meetings of the Committee and IVbis. Committee Reports to the Meetings of the Contracting Parties (paragraph 37)*

17. The MAP Consultant gave a brief overview of the amendments to the section before the Chair opened the floor for comments.

18. One speaker questioned the seven-member composition of the Compliance Committee, suggesting rather that the Committee might comprise all Contracting Parties and thus consist of 21 members. The quorum of five members proposed in square brackets in paragraph 19 would therefore need to be higher. In response to the point made by another speaker that no other international environmental agreement worked in such a way and that many instruments had a large number of parties, making full participation unworkable, she said that the regional nature of the Barcelona Convention, and therefore its finite number of Parties, made full participation possible and indeed desirable. In addition, she questioned the need for alternates given that there were many other international environmental agreements that did not employ such a procedure. It was understood that these issues will be addressed further at the next meeting.

19. The issue of conflict of interests was raised with regard to membership of the Committee and the quorum proposed in paragraph 19. If one of the members were to be nominated by the Party concerned by the compliance case being reviewed by the Committee, or indeed by the Party making the submission, it would be inappropriate for that member to be involved in examining the case. Such a situation, or the instance of a standing member being incapacitated or leaving the position prematurely, could result in the inability of the Committee to achieve a quorum. It was therefore proposed that two “vice-members” should be designated as potential stand-ins.

20. The MAP Consultant, commenting on the possibility for the Committee to undertake some of its activities through electronic communication, as provided for in paragraph 21, explained that the rationale behind the paragraph was to enable the Committee, should it deem necessary, to communicate by e-mail in addition to holding meetings, on such matters as forthcoming reports or decisions that it considered could be taken by electronic means, and also to conduct preliminary exchanges of views to assist the Secretariat in preparing documents. The Chair added that such practice was commonly used by the compliance committees of other conventions, an example being the Aarhus Convention.

21. The MAP Consultant clarified that, according to United Nations rules of procedure, a three-quarters majority of the full seven Committee members would be six. In the event that a quorum of five members were meeting, the majority would be four. For such a small number of participants, the qualified majority would therefore be very close to consensus. The Chair emphasized the usefulness of a majority-approval mechanism, as a consensus-only approach could lead to an impasse.

22. In the ensuing discussion, participants agreed that all the major decisions, and certainly all the final decisions, should be taken at Committee meetings, but noted that electronic means of communication were a practical logistic tool now in widespread use, especially for intersessional work. Several participants expressed support for the paragraph on those grounds, with some even querying the need for such a provision at all, since it went without saying that such means would be used for reasons of efficiency. Others expressed misgivings about how such means would be used in practice, how it would be ensured that all members took part and who would coordinate the communications, and suggested that the meaning of the words “some of its activities” should be clearly specified. One participant felt that such activities should be confined to preparatory work for Committee meetings and in general expressed concern about the consistency of paragraph 21 with paragraphs 18, 19 and 20. Another raised the question of confidentiality, although it was pointed out that that matter was covered by paragraph 33.

23. The MAP Consultant pointed out that paragraph 21 was to be read in conjunction with paragraph 18, which made it clear that the main work on the Committee was to be conducted in meetings. The wording of paragraph 21 was a standard formulation in compliance committee texts and had no doubt been introduced at a time when it had been deemed necessary to keep abreast of new communication technologies.

24. The question of whether such activities would include decision-making gave rise to some debate. Some speakers felt that matters of lesser importance could, at the Committee's discretion, be resolved by e-mail, and that the Committee should be trusted to make informed decisions about which matters could be dealt with electronically. Others argued that that prompted the question of who determined which were major or minor decisions and that, in general, decision-making should be left to meetings, where consensus – an all-important principle in decision-making – could be more readily achieved. A suggestion to merge paragraph 21 with paragraph 20 for reasons of consensus-building was rejected after a brief discussion, it being considered that the purpose of using electronic communication went beyond consensus-building, even if that might be one of its results. In response to a question about the recipients of such e-mails, it was made clear that they were the members of the Committee who, it should be recalled, were designated in their personal capacity.

25. Following a suggestion to remove the paragraph from the text and include it in the Committee's rules of procedure, specifying therein what the practical applications would be, the question arose of whether the Committee would have specific Rules of Procedure or whether existing rules should apply to it *mutatis mutandis*. The MAP Consultant explained that it remained to be determined whether certain issues of particular relevance to the Committee warranted specific rules of procedure.

26. The Chair, noting that there was no consensus on the wording of the paragraph, suggested, after informal consultations, that paragraph 21 should be deleted from the text of the draft mechanism on the understanding that, once the Committee had been established, it would, at its own discretion, decide whether or not to use electronic means of communication and for what purposes. The meeting agreed to that suggestion.

27. Under the same section on meetings of the Committee, a question was raised about the ambiguous wording of paragraph 18, which suggested that the Committee might not meet at all in any given year, rather than more than once if it so decided. After an exchange of views, from which it emerged that the intention was that it might wish to meet more than once a year and that there was widespread support for the idea that any additional meetings should be held back-to-back with major meetings of other Convention bodies for reasons of economy, several reformulations were proposed. After further informal consultations, the meeting agreed to a new consensus text, reading: "The Committee shall meet at least once a year. The Committee may decide to hold additional meetings, in conjunction with those of other Convention bodies".

28. A proposal was made to introduce a new paragraph, paragraph 18 bis, to read: "The meetings of the Committee shall be open to Parties and observers unless the Committee or the Party whose compliance is in question decides otherwise". Participants acknowledged that the proposal reflected a legitimate concern for transparency and the involvement of civil society while allowing for circumstances in which the Committee or a Party whose compliance was under consideration might deem it preferable for a meeting to be held *in camera*. There was a need to strike a balance between the principle of transparency and a derogation from that principle.

29. The question of participation in Committee meetings prompted a number of further questions and comments. Clarifications were sought notably about: the justification for opening up participation in the Committee meetings when a carefully selected, representative

seven-member Committee was in place; the role and rights of the different categories of participants; the definition of “observers”; and the position of the new paragraph in the draft text. A proposal was made to amend the new paragraph 18 bis to make clear the position of other Parties and observers in Compliance Committee meetings.

30. Responding to comments, the MAP Consultant said that the new paragraph should be read in conjunction with the part of section 2, “Proceedings”, concerning the rights accorded to the Party whose compliance was in question, which had been extensively discussed at previous meetings. It should be borne in mind that the purpose of a compliance mechanism was to bring a Party in a situation of non-compliance into compliance with the Convention, and to that end the mechanism should be facilitative and non-confrontational, so that the Party in question could make its views known. That was what was meant by “due process”, and what explained that the Party concerned, as well as the Committee, could decide to hold a meeting *in camera*. The proposal under discussion introduced a new dimension by opening meetings at which compliance was being discussed to other interested parties, who would attend as observers, for information. Practice in the compliance committees of other conventions showed that such transparency assisted the proceedings, and that the possibility for a Party concerned to make its views known in a non-confrontational atmosphere was generally conducive to a cooperative spirit and a positive outcome.

31. Participants agreed that, subject to the stated derogation, meetings should, as a general rule, be open to all interested parties, who would attend as observers, but that there was a need for terms such as “Party concerned” and “observer” to be clearly defined. The Secretariat pointed out that Article 20 of the Convention contained a definition of “observers”, but that the Contracting Parties were free to decide to accord observer status in particular circumstances, such as in the deliberations of the Compliance Committee. That comment was endorsed by a participant who cited a precedent created by the First Conference of the Parties to the Stockholm Convention (terms of reference of the POP Review Committee), which might serve as a useful model for addressing the situation of other Parties wishing to attend the Committee’s meetings as observers. In conclusion, the meeting agreed to the proposed new paragraph as thus amended.

32. During the discussion of paragraph 20, it was suggested that a phrase be added to the effect that the report of any meeting of the Committee at which consensus was not reached would reflect the views of all Committee members. It was pointed out, however, that paragraph 37 (under section IVbis: Committee reports to the Meetings of the Contracting Parties) already contained such a provision. It was therefore suggested that paragraphs 20 and 37 be combined, or that both paragraphs refer to the need to reflect the views of Committee members that differed from the decision taken by the majority.

33. A discussion ensued as to: whether the procedure of recording divergent views described in paragraph 37 referred to all views expressed throughout the work of the Committee, or just those expressed during adoption of the report; whether the Committee could take “decisions”, given its advisory and consultative role, or whether the text should refer only to findings, outcomes and measures; and whether the report of the meeting constituted a “decision”.

34. The MAP Consultant pointed out that paragraph 20 dealt with a framework for the decision-making procedure whereas paragraph 37 referred to reporting the outcome of that process. In his view, the paragraphs could either appear separately or be merged. He recalled that the decisions or recommendations made by the Committee would be reproduced as an annex to the report of that meeting and presented for adoption along with the report. It was therefore possible to conceive of a situation where a meeting report would be adopted by consensus, with the exception of a particular section of an annex that might

be adopted by majority only. It would therefore require accompanying text to explain the divergence of views among members.

35. To make paragraph 37 more logical, it was suggested that more explicit mention be made of the reporting procedure to distinguish it from the decision-making procedure: the Committee was under an obligation to produce a report of each meeting, which would then be adopted by the Committee, where possible by consensus, before being submitted for consideration by the Meeting of the Contracting Parties.

36. The Working Group decided to remove the square brackets in paragraph 20, which remained from the Group's previous meeting, with the exception of those around the last sentence, which referred to the definition of "members present and voting". The Group introduced square brackets around the term "decision" given its controversial nature. The text was then referred to the drafting group for further refinement.

37. When examining the revised version of paragraph 20 proposed by the drafting group, the Working Group returned to the definition of "members present and voting". One speaker recalled that, in the specific case of the rules of procedure of the meeting of the Parties of the Barcelona Convention, abstentions counted among the votes cast. Debate ensued as to whether members of the Committee should be given the option of abstaining, or on whether abstentions should count. Two speakers expressed the view that when Party representatives cast votes in international forums there was inevitably a political element, and abstentions were a means of making a political statement. All members of the Committee would, however, be acting in a personal capacity, as a legal or technical expert, and in the interests of the Mediterranean region as a whole. There could be no justification for them taking a political stance, and an abstention would be tantamount to them not fulfilling their responsibilities as Committee members. Another speaker pointed out that an abstention cast in the Committee of seven would have much more of an impact on the result of the vote than in a larger group, such as all Contracting Parties.

38. The debate on the term "decision" also resurfaced during review of the revised text. Several participants considered that the Committee could indeed make certain decisions, as long as they fell within its mandate; others felt that only the Meeting of the Contracting Parties was competent to take decisions. Given that the term was not used anywhere else in the text, and was such a contentious issue, the Working Group agreed to remove the term from the draft text. Furthermore, in the interests of consistency in the use of terminology in different paragraphs in the text, the Group agreed also to use only the phrase "findings and measures" throughout the text, qualifying that those measures were referred to in paragraphs 38 and 39. Any mention of other terms would be removed.

39. With the aforementioned changes to the terminology and removal of the possibility of abstention for members present and voting, the Working Group adopted the revised paragraph 20.

40. The Working Group then considered revised paragraph 37. Although it had been amended to make more explicit mention of the reporting process, including adoption and dissemination of the report, confusion remained as to the procedure being outlined. One participant recalled that paragraph 37 referred to the adoption of the Committee's reports only – not to the procedure for agreeing upon findings and measures. He concluded from other participants' reactions that the text as it stood was not clear enough and he proposed alternative wording.

41. During discussion of the procedure and timeframe for submitting Committee reports to the Meeting of the Contracting Parties, the discrepancy in timing between the biennial Meetings of the Contracting Parties and the annual meetings of the Committee posed a problem to certain participants. The proposal in the draft text was that reports of the



Committee be submitted to the Meeting of the Contracting Parties at least three months in advance of the body's next meeting. One participant, however, suggested that the reports be sent to the Meeting of the Contracting Parties as soon as they had been adopted. Another pointed out that Committee reports should be submitted to the Meeting of the Contracting Parties through the Secretariat. The posting of the reports of the Committee on the official MAP website should also be done via the Secretariat.

42. Another participant suggested that Committee reports should comprise a component that outlined the Committee's prospects for future work and for improving its procedures and methods. Other speakers agreed that the Committee should indeed have a plan for future work but that the report of a specific meeting was not the place to elaborate on such matters. Furthermore, it was not necessary to include a specific provision for that kind of deliberation in the text of the compliance mechanism.

43. One participant raised the question of an interim procedure for considering and adopting findings regarding urgent cases of non-compliance that arose between the biennial Meetings of the Contracting Parties. She suggested that the Bureau be involved. Other speakers recalled that only the Meeting of the Contracting Parties had the mandate to take decisions and the Bureau had no place in the process. Another participant drew attention to the competencies of the Committee outlined in paragraph 38, expressing the view that the Committee had certain powers to act as long as it remained within its mandate, which included "facilitating assistance to the Party concerned". In their understanding, the Committee did not require a decision from the Meeting of the Contracting Parties for every activity and could continue its work between meetings of that body.

44. It was also recalled that the possibility of members using electronic means of communication between Committee meetings had been broached in paragraph 21 but that it had not found favour with all members of the Working Group. Attention was drawn to Article 9 of the Barcelona Convention which included a provision for dealing with environmental emergencies. Another speaker indicated that paragraph 18 permitted the Committee to meet more than once a year to examine pressing issues. That discussion prompted the comment that paragraph 18 should be amended to ensure that it would be not compulsory for additional Committee meetings to be held back-to-back with meetings of other Convention bodies if there was an urgent matter to address.

45. On the basis of the discussions and oral amendments, the Working Group agreed to a revised version of paragraph 37.

### III. Role of the Committee

46. The MAP Consultant gave a brief overview of the amended section. The Chair then opened the floor for comments.

47. In response to proposals for specific amendments intended to make the paragraph more comprehensive, several participants reiterated that the purpose of Part III was to state, in general terms, the role of the Committee, not to list its specific activities. The mandate of the Committee was twofold: (i) to examine specific situations of non-compliance by individual Parties and (ii) to look into general compliance issues, if so requested by the Meeting of Contracting Parties. The procedures it would employ should come later in the text, in Part IV.

48. It was generally acknowledged that an explanation of the role of the Committee was required in the text but that the present formulation was inadequate. The drafting group was entrusted with revision of the text to enhance its clarity.

49. Examining the revised version, the Working Group discussed the matter of Parties in *potential* non-compliance, a concept that had been introduced by the drafting group.

Participants debated whether Parties or the Secretariat were in a position to predict whether another Party was likely to fall into non-compliance. The Group concluded that only the Party concerned was competent to make a submission about its own potential non-compliance and the difficulties it was facing. Reference to “potential non-compliance” should be made only in phrases that dealt with submissions by the Party concerned by the non-compliance issue.

50. Discussion of the possible overlap between paragraph 22 and paragraph 40 revealed that participants had differing understandings of the latter provision. One thought that it simply repeated the idea expressed in paragraph 22; another considered it a subtle way of referring to the procedure to follow when all other avenues to resolve the repeated non-compliance of a Party had been exhausted.

51. The source material to be used when reviewing general compliance issues was the subject of much debate. The Working Group thought it necessary to reiterate in the text the requirement to restrict information sources to those stipulated in Article 27 of the Barcelona Convention.

52. The drafting group had introduced a sub-paragraph that dealt solely with possible non-compliance with reporting requirements as that had been a major concern in other multilateral environmental agreements. The Working Group, however, preferred to combine that sub-paragraph with the previous one on general compliance issues.

#### IV: Procedure

##### **1. Submissions**

53. The MAP Consultant gave a brief overview of the three options for paragraph 23 proposed in the document. The Chair then opened the floor for comments.

54. It was pointed out that the options as they stood did not clearly distinguish between the entity making the submission and the source of the information submitted. It was pointed out that Article 27 of the Barcelona Convention stipulated that compliance with the Convention and Protocols was to be assessed on the basis of periodical reports referred to in Article 26, and any other report submitted by the Contracting Parties. As the text of the draft compliance mechanism should not deviate from that stipulation, much of the text presented in the three options would not be permissible. One participant, representing a regional economic organization, proposed, however, that the Secretariat be able to make referrals on the basis of other sources, as outlined in the second and third options for paragraph 23.

55. It was generally acknowledged that a Party might wish make a submission about its own case in order to obtain assistance in returning to compliance or averting non-compliance. It was also clear to the Working Group that one Party might want to make a submission about another Party if it were affected by the non-compliance of that Party. Nevertheless, the Group decided to omit the need for a Party to prove that it was directly affected by the non-compliance of another Party as it would present an excessive workload and there was no way of objectively ascertaining the validity of the claim. Furthermore, non-compliance with Barcelona Convention and its Protocols could affect all Parties, because of the characteristics of the Mediterranean as a common sea.

56. The legitimacy of submissions made by the Secretariat - a function performed by the MAP Coordinating Unit - was called into question as it was believed that the Secretariat should have a facilitating, not accusatory, role. However, given the nature of the Secretariat and its routine analysis of vast amounts of information provided by the Contracting Parties, it was likely to come across information in the course of carrying out its functions that might indicate that a Party was in non-compliance. It was therefore suggested that the text be amended so that the sub-heading “Submissions” referred only to those brought to the

Committee's attention by Parties and that a separate sub-heading entitled "Referrals" be added to deal with information passed on to the Committee by the Secretariat.

57. It was proposed that explicit reference be made to the need for submissions made by Parties to be supported by corroborating information. In the course of the discussion, it was noted that the reliability of the Secretariat sources was not called into question as the reports used as the basis for any referral would have come directly from the Parties.

58. The Working Group then discussed the role of the Secretariat in the process of referrals and submissions. It was suggested that the Secretariat be viewed as a neutral intermediary and thus all submissions by Parties, be they regarding their own case or that of another Party, should be made via the Secretariat.

59. The Secretariat recalled that Article 17, paragraph (vi), of the Barcelona Convention outlined secretariat functions. The Secretariat was mandated to transmit to the Contracting Parties notifications, reports and other information provided by the Contracting Parties in accordance with articles 3, 9 and 26, and to regularly report to the Contracting Parties on the implementation of the Convention and of the Protocols. The Secretariat therefore was in an ideal position to bring possible discrepancies before the Committee, although it would be up to the Committee to decide whether it was to pursue the matter. It understood that no judgment would be made by the Secretariat as it was not a political body. Recognition of that fact should pre-empt any conflict between the Secretariat and the Party alleged to be in non-compliance.

60. One speaker suggested that the identity of the Party making a submission about the possible non-compliance of another Party should be kept confidential by the Secretariat to avoid damaging relationships between countries. Others, however, considered that untenable. The purpose of a compliance mechanism was to help Parties comply. It aimed to avoid disputes and proceed in a non-confrontational way. Any leaks would lead to accusations and conflict and would be against the spirit of the mechanism.

61. The MAP Consultant referred to the compliance procedure in the Aarhus Convention which integrated a six-week consultation period to allow for attempted resolution of the problem before the compliance mechanism was set in motion. Another speaker spoke of a similar element in the draft compliance mechanism being prepared for the Stockholm Convention. It was suggested that a preliminary consultation period be introduced in the draft mechanism for the Barcelona Convention which would mean that Party-to-Party submissions and referrals by the Secretariat could be made only if resolution had not occurred within a defined timeframe.

62. The redrafting of the text on the basis of the Working Group's discussions was entrusted to the drafting group with the suggestion that inspiration also be drawn from the procedures adopted or under discussion in other multilateral environmental agreements.

63. Examining a revised version of paragraph 23, the Working Group also discussed whether the Party in non-compliance should have to explain what it had done to try to meet its obligations and why it was unable to do so. Several participants warned against burdening the Party with too demanding a procedure as that might deter submissions by Parties regarding their own case. One participant suggested inserting some of the paragraphs from the "Proceedings" section of Part IV into the "Submissions" section in order to satisfy some of the concerns identified regarding the process for making submissions.

64. The extent to which the timeframe for consultation and resolution could be flexible was debated. Furthermore, one participant was concerned about the notion of what constituted resolution of the problem, considering that, within that period, a show of political will to address the matter should suffice to avoid submission or referral to the Committee.

65. On the basis of the comments made, the drafting group updated the draft text of the "Submissions" section of Part IV, which was accepted by the Working Group with minor editorial changes.

## **2. Proceedings**

66. With regard to paragraph 28, the meeting agreed to the drafting group's proposal to add the words "including any assessment of the reasons why the Party may be unable to fulfil its commitments" after "further information". In response to a query, the MAP Consultant explained that paragraph 29 concerned a request for the provision of information on the Committee's initiative whereas the preceding paragraph concerned the provision of information on the Party's own initiative.

67. The Chair invited the meeting to consider the remaining paragraphs in bold type under section IV.2, "Proceedings", namely paragraphs 33 to 36.

68. Following comments about the lack of clarity in the wording of paragraph 33 on confidentiality and its inconsistency with paragraph 36 on public availability of information, the MAP Consultant explained that the paragraph had been inserted merely as a reminder and that it remained for the Working Group to debate the complex issue of confidentiality of information and to determine whether confidentiality rules should be included in the text of the compliance mechanism or left to the practice and future deliberations of the Compliance Committee. As had been explained at the first meeting of the Working Group, the idea was not to ensure the confidentiality of all information but to earmark specific cases in which confidentiality might be sought by a Party, for example to protect its interests in the event of reporting on industrial pollution. It should be noted that the compliance mechanisms of other environmental conventions, such as the Aarhus Convention and the Convention on Climate Change, contained extensive confidentiality provisions.

69. The issue of confidentiality prompted a number of comments. Among the arguments against the inclusion of confidentiality provisions were incompatibility with the principle of transparency and the requirement that information should be available to Parties and to the public; national legislation or other legal instruments that might preclude such confidentiality; access to information by a Party whose compliance was in question; and the possible protection afforded to a source of pollution. Moreover, the provisions of the other conventions mentioned were not necessarily relevant to the Barcelona Convention. It was argued, on the other hand, that such confidentiality might in some cases be conducive to a more constructive dialogue with a Party whose compliance was at issue; indeed it was suggested that the words "which shall also be made available to the Party concerned" should be added at the end of paragraph 30 to meet the concerns of those who feared that such a Party might be denied access to information brought against it.

70. Following a discussion on whether the paragraph should be deleted or possibly held in reserve for the Committee's future rules of procedure, the meeting was generally supportive to its deletion, although the question of confidentiality should be placed on the agenda of the next meeting. Eventually, the meeting agreed that, in view of the importance of the issue, the paragraph should be left in square brackets for re-examination at the Working Group's fourth meeting.

71. After a brief discussion on paragraph 34, the Working Group agreed that its content was self-evident and that it should be deleted.

72. The Working Group likewise agreed to delete paragraph 36, which provided that the Secretariat should make findings, measures and recommendations available to other Parties and to the public, since that was now covered by the new paragraph 37(c). The point was made that it was not for the Secretariat to make such information available to the public; the

Committee's report and recommendations would be made available to the public once they had been finalized and after notification of the draft to the Party concerned.

73. In the discussion on paragraph 35 concerning notification of the Committee's findings to the Party concerned, one participant expressed the view that its content was already covered by paragraph 32 on due process and that it was a procedural matter that could be included in the Committee's rules of procedure. Others, while noting that some editorial changes were needed, stressed the importance of the paragraph as a logical continuation of paragraph 32. The Working Group agreed to keep the paragraph in square brackets for further examination at its next meeting. The need for legal experts to be present at that meeting was emphasized. At the conclusion of the discussion, two participants stated that they would have further comments on paragraphs of the draft text that had not been discussed at the present meeting.

74. The draft mechanism, which reflects the text of discussed paragraphs as agreed by the Third meeting of the Working Group is attached as **Annex III** to this report. During the course of discussions, the meeting also decided to move a number of paragraphs from their original place. The Annex III reflects the new numbering of the paragraphs of the new draft mechanism, as agreed by the meeting.

**Agenda item 5:**        **Next steps**

75. The Secretariat, noting that another meeting of the Working Group would be required to complete its business, said that, according to the Rules of Procedure, that meeting, to be held on dates yet to be determined, would commence with items left pending from the current meeting. In addition to the draft text of the compliance mechanism as amended at the third meeting (annexed to this report), the Secretariat proposed to prepare the text of a draft decision, and possibly recommendations, to be submitted to the MAP Focal Points at their meeting in October 2007 and to the Contracting Parties at their meeting in November 2007. Working Group members would shortly be receiving the report of the current meeting for approval and comments.

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

76. Following the customary exchange of courtesies, the Chair declared the meeting closed on Wednesday, 6 December 2006, at 6.55 p.m.



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**ANNEX II**  
**PROVISIONAL AGENDA**

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



## **ANNEX III**

### **DRAFT PAPER ON A POSSIBLE COMPLIANCE MECHANISM UNDER THE BARCELONA CONVENTION AND ITS PROTOCOLS**

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Draft text for a compliance mechanism

- I. Objective (of the compliance mechanism)
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## Introduction

1. Since 1976 the Mediterranean region possesses a legal system (the Barcelona Convention and its Protocols) for the protection of the sea and its coastal zones. An update of the text of the Convention was adopted by the Contracting Parties in 1996, followed by the update of the text of other Protocols and development of new Protocols.

2. Article 27 of the revised Convention provides for:

*The meetings of the Contracting Parties shall, on the basis of periodical reports referred to in Article 26 and any other report submitted by the Contracting Parties, assess the compliance with the Convention and the Protocols as well as the measures and recommendations. They shall recommend, when appropriate, the necessary steps to bring about full compliance with the Convention and the Protocols and promote the implementation of the decisions and recommendations.*

3. The Contracting Parties in 1996 committed themselves to set up a reporting system under the Barcelona Convention and its Protocols. In Catania, at their 13<sup>th</sup> meeting (2003), the Contracting Parties decided to start implementing Article 26 of the revised Convention by promoting the preparation and submission of the national reports on the implementation of the Barcelona Convention and its Protocols.

4. They also decided to establish a Working Group of Legal and Technical experts on Compliance (here in after called "Working Group") for preparing a document-platform related to a possible compliance mechanism under the Barcelona Convention. The Working Group held two meetings in Athens (first meeting on 8 and 9 November 2004 and second meeting on 11 and 12 April 2005) in order to review the legal basis for the establishment of a compliance mechanism and to elaborate a possible compliance mechanism under the Barcelona Convention and its Protocols. At its first meeting the Working Group discussed a document prepared by the Secretariat entitled "Setting up an implementation and compliance mechanism under the Barcelona Convention and its Protocols". The Working Group asked the Secretariat to revise this document based on the discussion at its first meeting and to submit a revised document to its second meeting. Furthermore it asked the Secretariat to prepare "a draft paper on the main elements for a possible compliance mechanism on the basis of its findings and conclusions", including "draft criteria to be applied by the CPs in proposing candidates for membership in the Compliance Committee". At its second meeting (held on 11 and 12 April 2005 in Athens) the Working Group of Legal and Technical experts on Compliance discussed the revised document on "setting up an implementation and compliance mechanism under the Barcelona Convention and its Protocols" as well as a "draft paper on the main elements for a possible compliance mechanism".

5. As a result of its work at the two meetings the Working Group on Implementation and Compliance under the Barcelona Convention presented a "draft paper on the main elements for a possible compliance mechanism" under the Barcelona Convention and its Protocols to the 14<sup>th</sup> Meeting of the Contracting Parties in 2005. The draft paper drew upon the experience of international and regional international agreements addressing environmental issues, which had established compliance mechanisms and procedures. Attention was focused on international agreements to which Parties to the Barcelona Convention and its Protocols are parties. In particular, the compliance mechanisms and procedures established under the Montreal Protocol on Substances that Deplete the Ozone Layer, the Basel Convention on Transboundary Movement of Hazardous Wastes and Their Disposal, the Cartagena Protocol on Biological Safety and the Kyoto Protocol to the United Nations Framework Convention on Climate Change served as sources for the elaboration of elements for a compliance mechanism under the Barcelona Convention and its Protocol.

Furthermore, implementation and compliance procedures established under the Berne Convention for the Conservation of European Wildlife and Natural Habitats, the Convention on Long-Range Transboundary Air Pollution, the Espoo Convention, the Aarhus Convention, the Protocol on Water and Health under the Convention on the Protection of Transboundary Water Courses and International Lakes and the OSPAR Convention were taken into consideration. Moreover, the experience gained by international organisations, such as IMO and WHO, in dealing with issues of implementation of and compliance with international agreements, was considered in the elaboration of the elements of a compliance mechanism under the Barcelona Convention and its Protocols.

6. The 14<sup>th</sup> Meeting of the Contracting Parties decided to extend the mandate of the Working Group on implementation and compliance and its membership to include all Contracting Parties with a view to developing a full compliance mechanism for adoption by the 15<sup>th</sup> Meeting of the Contracting Parties in 2007. It stated that the Working Group should develop the compliance mechanism on the basis of the principles, findings, recommendations and deliberations set out in document UNEP(DEC)MED WG.270/7.

### **Draft Text for a compliance mechanism**

*The following draft text for a possible compliance mechanism, based on the principles, findings, recommendations and deliberations set out in document UNEP(DEC)/MED WG.270/7, is submitted to the third meeting of the Working Group for further consideration. The draft text intends to propose to the meeting a full compliance mechanism as has been requested by the 14<sup>th</sup> Meeting of the Contracting Parties. In elaborating the draft text the structure of already established compliance mechanisms and procedures under other multilateral environmental agreements to which Contracting Parties are parties has been followed. The new text (added to the text already considered by the Working Group at its second meeting and transmitted to the 14<sup>th</sup> Meeting of the Contracting Parties in document UNEP(DEC)/MED WG.270/7) is set out in **bold** and is underlined.*

#### **I. Objective (of the compliance mechanism)**

7. The objective of the compliance mechanism is to facilitate and promote compliance with the commitments under the Barcelona Convention and its Protocols, taking into account also the specific needs of developing countries.

#### **II. Compliance Committee**

8. A compliance committee, hereafter referred to as “the Committee”, is hereby established.

9. The Committee shall consist of seven members elected by the meeting of the Contracting Parties. For each member of the Committee, the meeting of the Contracting Parties shall elect an alternate member. The members and the alternates are elected for a term of four years.

10. The Meeting of the Contracting Parties shall at its meeting establishing the compliance mechanism elect three members and three alternates to serve until the end of its next meeting and four members and four alternates for a full time of office. A full term of office commences at the end of the ordinary meeting of the Contracting Parties and runs until the second ordinary meeting of the Contracting Parties thereafter.

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

12. Members of the Committee and their alternates shall serve in their personal/individual capacities.

13. The members and their alternates shall be elected from among candidates nominated by the Contracting Parties. Contracting Parties shall consider the nomination of candidates who are members of the civil society.

14. Candidates nominated shall be persons of high moral character and shall have recognized competence relating to the matters dealt with by the Barcelona Convention and its Protocols as well as in relevant fields such as the scientific, technical, socio-economic or legal fields. Each nomination shall be accompanied by a curriculum vitae (CV) of the candidate not exceeding 600 words and may include supporting material.

15. In electing members and their alternates of the Committee, the Meeting of the Contracting Parties is to be guided by equitable geographic representation and by rotation in order to ensure participation by nominated individuals of all Contracting Parties as members

of the Committee within a reasonable period of time as well as balance among scientific, legal and technical expertise.

16. The Committee shall elect its officers – a Chairperson and two Vice-Chairpersons – based on equitable geographic representation and rotation.

17. Members of the Committee may be re-elected for one consecutive term.

#### **IIbis. Meetings of the Committee**

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

18bis. Unless the Committee or the Party whose compliance is in question decide otherwise, the meetings of the Committee shall 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 Parties for the purpose of their participation in the committee;
- (b) Observers, in accordance with Article 20 of the Convention and the Rules of Procedure for the meetings and conferences of the Parties.

19. For each meeting a quorum of at least [five] members is required. “Members” means the members or their respective alternates present at the meeting.

20. The Committee shall make every effort to reach agreement by consensus on its findings and measures referred to in paragraphs 38 and 39. If all efforts to reach consensus have been exhausted, the Committee shall as a last resort adopt its findings and measures referred to in paragraphs 38 and 39 by at least a three-fourth majority of the members present and voting. “Members present and voting” means members or their respective alternates present and casting an affirmative or a negative vote.

#### **III. Role of the Compliance Committee:**

21. The role of the Committee is 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;
- (c) any other issues as requested by the meeting of the Contracting Parties.

#### **IV. Procedure**

##### **1. Submissions by Parties**

22. 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;

- (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.**

23. Submissions 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.
24. The Secretariat shall, within two weeks of its receiving a submission, send a copy of that submission to the Party whose compliance is at issue.
25. The Committee may determine not to proceed with a submission that it considers is
- anonymous,
  - de minimis, or
  - manifestly ill founded.
26. The Secretariat shall inform the Party concerned about such findings under paragraph 25 taken by the Committee within two weeks of the date of the findings.

## 2. **Referrals by the Secretariat**

**27bis. The Committee shall consider referrals by the Secretariat of situations in which a Party may be facing difficulties in complying with its obligations under the Convention and its Protocols, on the basis of periodic reports referred to in Article 26 and any other report submitted by the Parties, and after the Secretariat has notified the Party concerned and the matter has not been resolved within three months at the latest, or such longer period as the circumstances of a particular case may require, but in no case later than six months.**

## 3. **Proceedings**

27. The Party concerned may present information on the issue in question, present responses and/or comments at every step of the proceedings. Upon the invitation of the Party concerned, the Committee may undertake on site appraisals.
28. The Committee may ask the Party concerned to provide further information, **including an assessment of the reasons why the Party** may be unable to fulfill its commitments, and may, with the consent of any Party concerned, gather information in the territory of that Party, including on site appraisals.
29. In its deliberations the Committee shall take into account all the available information concerning the issue in question.
30. The Party concerned is entitled to participate in the discussions of the Committee and present its observations. The Party concerned shall not take part in the preparation and adoption of any findings, any measures or any recommendation of the Committee.
31. [The Committee shall be guided by the principle of "due process" in order to ensure fairness and transparency.]

32. **[The Committee shall, through the Secretariat, notify the Party concerned of its draft findings, measures and recommendations in writing. The Party concerned shall be given an opportunity to comment in writing on any draft findings, measures and recommendations of the Committee.]**

32bis. **[The Committee, any Party or others involved in its deliberations shall protect the confidentiality of information received in confidence.]**

#### **IVbis. Committee Reports to the Meetings of the Contracting Parties**

33. The Committee shall prepare a report on its activities.
- a) **The report shall be adopted in accordance with paragraph 20. Where it is not possible to reach agreement by consensus on findings and measures, 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.**

#### **V. Measures**

34. 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 to comply, in particular developing countries, as well as factors such as the cause, type, degree and frequency of non-compliance:

- a) provide advice or facilitate assistance to the Party concerned, as appropriate;
- b) request or assist, as appropriate, the Party concerned to develop a compliance 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 on the efforts it is making to comply with its obligations under the Barcelona Convention and its Protocols;
- d) make recommendations to the Meeting of the Contracting Parties on cases of non-compliance, if it finds that these cases should be handled by the Meeting of the Contracting Parties.

35. The Meeting of the Contracting Parties may, upon consideration of **[the]** report and any recommendations of the committee, taking into account the capacity of the Party concerned, in particular developing countries, to comply, as well as factors such as the cause, type, degree and frequency of non-compliance, decide upon appropriate measures to bring full compliance with the Convention and its Protocols:

- a) provide advice and facilitate assistance to individual Parties;
- b) make recommendations to the Party concerned;
- c) request the Parties concerned to submit progress reports regarding the achievement of compliance with the Convention and its Protocols;
- d) issue declarations of non-compliance;
- e) issue a caution to the Party concerned;
- f) publish cases of non-compliance.

**VI. Review of the procedures and mechanisms**

36. The Meeting of the Contracting Parties shall review the effectiveness of these procedures and mechanisms, address repeated cases of non-compliance and take appropriate action.

**Vibis. Relationship with Article 28 of the Convention (Settlements of Disputes)**

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

**VII. 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.