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13th Meeting of the Compliance Committee of the Barcelona Convention and its Protocols

Athens, Greece, 26-27 September 2017

Agenda item 5: Admissibility Criteria and Procedure under Paragraph 23.bis of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols

Draft Guidance on Admissibility Criteria and Procedure under Paragraph 23.bis of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols

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Note by the Secretariat

Background

1. At its 12th Meeting (Athens, Greece, 24-25 January 2017), the Compliance Committee discussed its power of initiative, as provided for in Paragraph 23.bis of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols (Decision IG. 17/2 as amended). Paragraph 23.bis reads:

“The Committee may examine, on the basis of the biennial activity reports or in the light of any other relevant information, any difficulties encountered by a Contracting Party in the implementation of the Convention and its Protocols. The Committee may ask the Party concerned to provide all additional information. The Party concerned shall have a period of two months to respond.

Paragraphs 24 to 30 and 32 to 34 shall apply, *mutatis mutandis*, in the case of referral to the Committee on its own initiative”.

2. The discussion addressed a number of questions ranging from the interpretation of the terms “biennial activity reports” and “any other relevant information” in Paragraph 23.bis to the establishment of admissibility criteria under Paragraph 23.bis.

3. On the basis of discussion, the Compliance Committee agreed on the following conclusions and recommendations (UNEP(DEPI)/MED CC.12/10, §26):

“a. in Paragraph 23.bis of the Procedures and Mechanisms on Compliance as amended, the formula “biennial activity reports” should be construed as referring to the national implementation reports of the Barcelona Convention and its Protocols submitted by Contracting Parties on a biennial basis according to Article 26 of the Barcelona Convention;

b. in Paragraph 23.bis of the Procedures and Mechanisms on Compliance as amended, the formula “any other relevant information” should be interpreted literally;

c. the Secretariat, in coordination with Orr Karassin, to prepare a document on admissibility criteria addressing the source of information (e.g. credible, identifiable, transparent) and the quality of information (e.g. verifiable, relevant, measurable, objective). In doing so, account should be taken *inter alia* of the source of information, whether countries or other sources”.

Follow-up

4. Building-on the document submitted at the 12th Meeting of the Compliance Committee: “Determination of the criteria for the admissibility of relevant sources of information (paragraph 23.bis of Section V, Decision IG.17/2)”(UNEP(DEPI)/MED CC.12/8), the Secretariat, in coordination with Orr Karassin, has prepared the annexed draft Guidance on Admissibility Criteria and Procedure under Paragraph 23.bis of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols.

Action requested

5. The Compliance Committee is invited to examine the annexed draft Guidance on Admissibility Criteria and Procedure under Paragraph 23.bis of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols and prepare the relevant recommendations to COP 20.

Draft Guidance on Admissibility Criteria and Procedure under Paragraph 23.bis of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols

Introduction

1. By Decision IG.21/1, COP amended the Procedures and Mechanisms on Compliance by including a new Paragraph 23.bis under which:

“The Committee may examine, on the basis of the biennial activity reports or in the light of any other relevant information, any difficulties encountered by a Contracting Party in the implementation of the Convention and its Protocols. The Committee may ask the Party concerned to provide all additional information. The Party concerned shall have a period of two months to respond.

Paragraphs 24 to 30 and 32 to 34 shall apply, *mutatis mutandis*, in the case of referral to the Committee on its own initiative”.

2. The present draft Guidance aims to: (i) clarify what is intended by “on the basis of the biennial activity reports”, and (ii) facilitate the processing of communications to the Compliance Committee of “any other relevant information”, in accordance with Paragraph 23.bis of the Procedures and Mechanisms on Compliance by developing:

- (a) criteria for the Compliance Committee to determine the admissibility of the communications addressed to it; and
- (b) a procedure for processing the communications addressed to the Compliance Committee.

Biennial Activity Reports

3. The scope of the mandate of the Compliance Committee in assessing specific and general compliance issues is defined in Article 17 of the Procedures and Mechanisms on Compliance. Paragraph 17 of the Procedures and Mechanisms on Compliance reads:

“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”.

4. The role of the Secretariat under the Procedures and Mechanisms on Compliance is established under Paragraph 23, which reads.

“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”.

5. Within the scope of Paragraph 23, the Secretariat works in close collaboration with Contracting Parties when, on the basis of the reports submitted under Article 26 of the Barcelona Convention and any other reports submitted by them, the Secretariat becomes aware that Contracting Parties are facing difficulties in complying with the Barcelona Convention and its Protocols.

6. Under Article 26 of the Barcelona Convention, the Contracting Parties shall transmit to the Organization reports on:
- (a) the legal, administrative and other measures taken by them for the implementation of this Convention, the Protocols and of the recommendations adopted by their meetings;
 - (b) the effectiveness of the measures referred to in subparagraph (a) and problems encountered in the implementation of the instruments as mentioned above”.
7. As already mentioned, by Decision IG.21/1, COP amended the Procedures and Mechanisms on Compliance by including a new Paragraph 23.bis.
8. The role of the Compliance Committee under Paragraph 23.bis is an opportunity to enhance the complementarity and synergy between the Secretariat and the Compliance Committee in facilitating and promoting compliance of the Barcelona Convention and its Protocols. In this context, the Secretariat will continue to prepare the synthesis analysis of the reports referred to in Article 26 of the Barcelona Convention, and invite the Compliance Committee to examine it at its meetings.

Admissibility Criteria and Procedure

9. *Source of communications.* The term “any other relevant information” in Paragraph 23.bis of the Procedures and Mechanisms on Compliance is intended to be comprehensive in its coverage so as to include all sources of information.
10. Concerning public and observers, any member of the public and observers, as defined in Rule 3.12¹ and Rule 3.14² of the Rules of Procedure of the Compliance Committee (Decision IG. 19/1 as amended) respectively, may submit a communication to the Compliance Committee in the context of Paragraph 23.bis of the Procedures and Mechanisms on Compliance.
11. *Form of the communication.* Communications addressed to the Compliance Committee should be in writing or in electronic form through the Secretariat (see paragraph 10 below) and as concise and concrete as possible. The communication should not be more than twelve pages in total.
12. The following minimum requirements should be included in any communication addressed to the Compliance Committee
- (a) Basic information, name and contact details, on the identity of the communicant submitting the communication, whether this is a natural or legal person. If the communicant is a registered organization, the communication should be signed by a person legally authorized to sign for the organization and be accompanied by the registration certificate and governing documents of the organization and a brief statement of the purpose of the communication. The Compliance Committee will not consider anonymous submissions;
 - (b) clear identification of the Party or Parties concerned

¹ Rule 3.12 of the Rules of Procedure of the Compliance Committee defines the term “The Public” as: “one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organizations or groups”.

² Rule 3.14 of the Rules of Procedure of the Compliance Committee defines the term “Observers” as: “the organizations referred to in article 20 of the Convention and those included in the list of MAP partners as approved by the Meeting of the Contracting Parties”.

Article 20.1 “Observers” of the Barcelona Convention reads: “ The Contracting Parties may decide to admit as observers at their meetings and conferences:

- (a) any State which is not a Contracting Party to the Convention;
- (b) any international governmental organization or any non-governmental organization the activities of which are related to the Convention”.

See COP19 Decision IG. 22/18 “Cooperation and Partners” for the List of new MAP Partners.

- (c) a one to two-page summary with the main facts of the case and the provisions of the Barcelona Convention and its Protocols allegedly contravened;
- (d) a document of ten pages maximum presenting the facts of the alleged non-compliance, and clearly stating how in the view of the communicant the facts presented constitute a case of non-compliance with the Barcelona Convention and its Protocols;
- (e) the specific provisions of the Barcelona Convention and its Protocols allegedly contravened, making the link between the facts presented and the provisions of the Convention and its Protocols;
- (f) indication of whether steps have been taken to use the remedies available at national and/or international level to obtain redress in the case which is subject of the communication (e.g. administrative or judicial procedures). If so, specification should be given of which steps were taken, when they were taken and what were the results. If no steps have been taken, it should be explained why not. Communicants are strongly advised to use first available domestic means of redress. It is at the discretion of the Compliance Committee to decide not to examine the substance of the communication submitted to it if in its view the domestic administrative or judicial procedures have not been sufficiently explored;
- (g) communications should be submitted in any of the working languages of the Compliance Committee.

13. Translation into one other working language of the Compliance Committee will be provided by Secretariat up to a maximum of twelve pages as described above.

14. *Sending of communications:* Communications should be addressed to the Compliance Committee through the Secretariat, clearly indicating "Communication to the Compliance Committee under the Barcelona Convention and its Protocols under Paragraph 23.bis of the Procedures and Mechanisms on Compliance". Communications should be sent by email and by registered post to the UNEP/MAP Coordinating Unit. Communications should not be sent to the individual members of the Compliance Committee or to its Chairperson.

15. *Processing of communications:* Upon receipt of a communication addressed to the Compliance Committee pursuant to Paragraph 23bis of the Procedures and Mechanisms on Compliance, the Secretariat will send an acknowledgement of the receipt and transmit the communication to the Party concerned within two weeks from the receipt. The secretariat will add note to the communication forwarded clarifying that, at the present stage it has not been deemed admissible by the Compliance Committee and that the procedure to determine admissibility has not yet commenced.

16. The Secretariat will forward to the Compliance Committee within two weeks of receipt all communications received during the interim period between the regular meetings of the Compliance Committee.

17. Communications forwarded by the Secretariat before the next Compliance Committee will be considered at that meeting for the Committee to decide whether to enter into their preliminary admissibility at that meeting or at the next meeting of the Compliance Committee.

18. *Criteria of admissibility:* The Compliance Committee will consider the admissibility of communications addressed to it pursuant to Paragraph 23bis of the Procedures and Mechanisms on Compliance. To that end, if needed intersessionally, the Chair of the Compliance Committee in consultation with the Compliance Committee will appoint from among its officers a Rapporteur for each communication.

19. In line with Paragraph 21 of the Procedures and Mechanisms on Compliance, the Compliance Committee will not consider any communication that it determines to be:

- (a) anonymous;

(b) *de minimis*;

(c) manifestly ill founded.

20. The Compliance Committee also will take into account the availability of domestic remedies and whether they have been resorted to by the communicant.

21. *Determination of admissibility*: The Compliance Committee's procedure for determining admissibility during a meeting will follow this sequence: the Compliance Committee first will discuss the communication, after the Rapporteur provides a brief introduction of the communication and checks that all the minimum requirements listed in paragraph nine above are met, and then will deliberate on its admissibility in line with Paragraph 21 of the Procedures and Mechanisms on Compliance.

22. If the Compliance Committee determines that the communication is inadmissible, it will not pursue it further and will inform the Party concerned and the communicant accordingly, through the Secretariat.

23. If the Compliance Committee determines that the communication is admissible, it will notify the Party concerned and the communicant accordingly, through the Secretariat.

24. The Compliance Committee may after making a positive decision on admissibility present the questions, if any, that should be raised with the Party concerned, when forwarding the communication through the Secretariat. Such questions will be transmitted to the Party concerned by letter from the Secretariat, together with the communication and confirmation of preliminary admissibility.

25. The Compliance Committee may also at this stage address a number of questions to the communicant to clarify the facts and allegations of the communication through the Secretariat. Such questions will be transmitted to the communicant by letter from the Secretariat, together with the communication and confirmation of preliminary admissibility.

26. When the Party concerned receives the letter from the Secretariat, it should, as soon as possible and in any case no later than two months from the date of the Secretariat's letter, submit written explanations or statements on the matter. No response from the Party concerned within two months of the communication being forwarded to it entails confirmation of its admissibility.

27. If the Party concerned contests the admissibility of the communication, the Compliance Committee will consider this and the communicant will be given an opportunity to comment or provide additional information.

28. If the Compliance Committee confirms the admissibility of the communication, it will consider the substance of it. Otherwise, the Compliance Committee will reverse its preliminary decision. The Committee's finding that a communication is inadmissible is final. The Compliance Committee will inform the Party concerned and the communicant accordingly, through the Secretariat.

29. The Compliance Committee should start the formal discussion on a particular communication at the first meeting that takes place following either the receipt of a response to the communication from the Party concerned or within the deadline of two months if no response has been received by then.

30. When it is known that the Compliance Committee will discuss the substance of any communication at a particular meeting, the Secretariat will notify the Party concerned and the

communicant that the communication will be discussed following *mutatis mutandis* the proceedings established in paragraphs 24 to 30 of the Procedures and Mechanisms on Compliance³.

³ Article 23.bis *in fine* of the Procedures and Mechanisms on Compliance states that: “Paragraphs 24 to 30 [Proceedings] and 32 to 34 [Measures] shall apply *mutatis mutandis*, in the case of referral to the Committee on its own initiative”.