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Rome, Italy, 21-22 May 2019

Agenda Item 5: Specific Issues

Comments received by the Host Countries of the Regional Activity Centers on the proposed Minimum Common Provisions for Host Country Agreements

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UNEP/MAP
Athens, 2019

Comments received by France

Minimum Common Provisions of Host Country Agreements of Regional Activity Centres

1. The proposed minimum common provisions are meant to be used as appropriate, as building blocks for the HCAs to be signed between UNEP and the representative of the Host Country Government for INFO/RAC, PAP/RAC, Plan Bleu/RAC, SCP/RAC and SPA/RAC. As such, they have been devised to offer a flexible framework for the privileges, immunities and further guarantees necessary for the smooth functioning of the RACs to be agreed with the Host Country Governments as appropriate, bearing in mind the legal status of the relevant RAC and its regional mandate in delivering the Programme of Work of UNEP/MAP.
2. Minimum common provisions refer as appropriate, to the points below:
 - (a) Identification of the Parties entering into the HCA: HCA to be signed between UNEP and the representative of the Host Country Government.
 - (b) Purpose for entering into the HCA: To set forth the terms and conditions under which RACs will perform their regional role pursuant to the Barcelona Convention and its Protocols and related decisions of the Meeting of the Contracting Parties to the Barcelona Convention and its Protocols.
 - (c) Legal status of RACs: To be clearly defined for each RAC. Legal nature across RACs (e.g. international, national, public, non-profit oriented) may vary from RAC to RAC depending on its constitutive legal instrument. The legal personality of RACs has to be established, keeping in mind that RACs should have the necessary functional autonomy in performing their regional role. In this context, and to the extent permissible under national laws, RACs should be accorded their own independent legal personality
 - (d) Regional Role of RACs: To be defined as per COP 16 Decision IG.19/5 on Mandate of the Components of MAPs. Two separate elements are to be included: firstly, reference to the overall mandate to assist Mediterranean countries to fulfil their commitments under the Barcelona Convention and its Protocols and implement the decisions of the Meeting of the Contracting Parties; secondly, short description of the objective and mission statement for each RAC.
 - (e) Financial Resources:
 - (i) Description of the source of funding to be provided, by referring to both principal and additional sources of funding. This includes but it is not limited to: (1) contributions provided by the Host Country Government (in kind, cash or services), (2) funds transferred to RACs from the Mediterranean Trust Fund (MTF) through Project Cooperation Agreements (PCAs) signed between UNEP and RACs in accordance with the relevant COP decisions, (3) voluntary contributions from Contracting Parties to the Barcelona Convention, (4) funds from donors such as non-Parties, international and national organizations, programs, funds, institutes and other bodies, ~~and (5) other funds received by RACs;~~
 - (ii) Separate management and accounting of the funds provided to the RACs through the MTF to be operationalized by the requirement to the RACs of having a separate account for those resources in a bank of the host country Government in the currency in which they are to be remitted;
 - (iii) Reporting (i.e. progress and financial reports) and audit requirements to be specified for all RACs in line with the PCAs signed between UNEP and RACs. This is key for the purposes of transparency and accountability;
 - (iv) Role of RACs and UNEP/MAP-Coordinating Unit in seeking resources for RACs from sources other than the MTF to be included and put in the framework of COP 20 Decision IG.23/5 on the Updated Resource Mobilization Strategy.
 - (f) Contribution of the Host Country Government: To spell out the responsibility of the Host Country Government in providing free-of-charge adequate premises for the RAC, adequate and timely maintenance of the premises, and financial and in-kind contributions to the

Commented [1]: As the sentence begins with "this includes but it is not limited to", it's not necessary to add this item (5).

operational costs of the RAC. Operational costs to be defined as personnel costs (i.e. posts of the RAC financed by the Host Country Government), premises and services (e.g. furnished office space, office equipment, phone, electricity and water services), and in cash contribution for operation costs.

- (g) Property, Funds and Assets of the RACs: There is room for negotiation with Host Country Governments, for property, funds and assets transferred to RACs by UNEP/MAP in carrying out its regional role, to enjoy the privileges and immunities equivalent to those provided for in Article II of the Convention on the Privileges and Immunities of the United Nations, 13 February 1946 (General Convention).¹ Of particular importance in the negotiation would be to define the privileges and immunities regime, including the exemption regime from taxation, applicable to RACs premises and the funds transferred to the RACs from the MTF and other sources of funding allocated for the delivery of the PoW of UNEP/MAP.
- (h) Personnel of RACs:
 - (i) Categories of personnel of RACs to be specified making clear that the category of UN Officials does not apply to personnel of RACs. There is a need to clearly spell out the personnel falling under the term personnel of RACs to include the Director and staff as a single category different from experts, such as consultants;
 - (ii) There is the possibility for consideration with Host Country Governments, for personnel of RACs (i.e. Director and staff) to enjoy the privileges and immunities equivalent to those provided for in Articles V and VI of the General Convention.
- (j) Meetings and Conferences:
 - (i) Meetings and Conferences convened by UNEP: To indicate that the privileges and immunities provided for in Article IV, Article V and Article VI of the General Convention apply.
 - (ii) Meetings and Conferences convened by RACs: There is room for negotiation with Host Country Governments, for representatives of the Contracting Parties to the Barcelona Convention participating in those meetings to enjoy the privileges and immunities equivalent to those provided for in Article IV of the General Convention².
- (k) Director: To address the appointment, functions, duties and responsibilities of the Director. The following elements to be included: appointment of the Director falls on the Host Country Government, in consultation with UNEP/MAP Coordinating Unit; the Director has the role of administering the RAC with the aim to ensuring that the RAC performs its regional role; the Director has to report on the implementation of the activities of the RAC in carrying on its regional role to the UNEP/MAP Coordinating Unit and the Meeting of the Contracting Parties to the Barcelona Convention and its Protocols. There is the possibility for consideration with Host Country Governments, for the Director to enjoy the privileges and immunities equivalent to those provided for in Article V of the General Convention.
- (l) Steering Committee: To establish a Steering Committee with the specific objective of following-up on the implementation of the HCA. The Steering Committee to be composed by

¹ This approach is taken in the Framework Agreements signed between the Secretariat of the Basel Convention and the host country Governments for its Regional and Coordinating Centers holding the legal status of national institutions (<http://www.basel.int/Partners/RegionalCentres/TheCentres/tabid/5275/Default.aspx>). The provision reads as follows: "Article XV Property, Funds and Assets of the Centre 1. The property, funds and assets of the Centre held and administered on behalf of UNEP, and those held and administered on behalf of the Parties to the Basel Convention, wherever located and by whomsoever held, shall enjoy the privileges and immunities, exemptions and facilities equivalent to those provided for in Article II of the General Convention. 2. Property, funds and assets transferred to the Centre pursuant to the Project Document signed between the Centre and UNEP or between the Centre and the Secretariat, in the performance by the Centre of its regional role shall enjoy the privileges and immunities, exemptions and facilities equivalent to those provided for in Article II of the General Convention".

² This approach is taken in the Framework Agreements signed between the Secretariat of the Basel Convention and the host country Governments for its Regional and Coordinating Centers holding the legal status of national institutions. The provision reads as follows: "Article XIV Privileges and Immunities. 1. The representatives of the Parties to the Basel Convention participating in meetings and other activities organized by the Centre in the territory of [host country Government] shall enjoy the privileges and immunities equivalent to those provided for in Article IV of the General Convention."

the Director of the RAC, one representative of the host Government and one representative of the UNEP/MAP Coordinating Unit.

(m) Final standard clauses on settlement of disputes and on entry into force, duration and amendment of the HCA.

Additional comments provided on Tuesday, April 16, 2019 6:57 PM

(...) Côté Ministère de l'Europe et des Affaires étrangères, après analyse juridique, il s'avère que si la législation française ne permet pas, (...), de signer un accord de siège pour une association, elle ne permet pas non plus, à ce stade, de lui attribuer de privilèges et immunités.

Nous ne pouvons donc malheureusement accepter ce texte, sauf dans le cas où en seraient retirée toute mention de privilèges et immunités. (...)

Courtesy translation:

(...) From the side of the Ministry of Europe and Foreign Affairs, after legal analysis, it proves that if the French legislation does not allow, (...), to sign a host country agreement for an association, it does not allow it neither at this stage to be granted privileges and immunities.

Therefore, we cannot accept this text, except in the event of any mention of privileges and immunities being withdrawn. (...)

Comments received by Italy

Minimum Common Provisions of Host Country Agreements of Regional Activity Centres

1. The proposed minimum common provisions are meant to be used as building blocks for the HCAs to be signed between UNEP and the representative of the Host Country Government for INFO/RAC, PAP/RAC, Plan Bleu/RAC, SCP/RAC and SPA/RAC. As such, they have been devised to offer a flexible framework for the privileges, immunities and further guarantees necessary for the smooth functioning of the RACs to be agreed with the Host Country Governments as appropriate, bearing in mind the legal status of the relevant RAC and its regional mandate in delivering the Programme of Work of UNEP/MAP.
2. Minimum common provisions refer to the points below:
 - (a) Identification of the Parties entering into the HCA: HCA to be signed between UNEP and the representative of the Host Country Government.
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 - (c) Legal status of RACs: To be clearly defined for each RAC. Legal nature across RACs (e.g. international, national, public, non-profit oriented) may vary from RAC to RAC depending on its constitutive legal instrument. The legal personality of RACs has to be established, keeping in mind that RACs should have the necessary functional autonomy in performing their regional role. *In this context, and to the extent permissible under national laws, RACs should be accorded their own independent legal personality.*
 - (d) Regional Role of RACs: To be defined as per COP 16 Decision IG.19/5 on Mandate of the Components of MAPs. Two separate elements are to be included: firstly, reference to the overall mandate to assist Mediterranean countries to fulfil their commitments under the Barcelona Convention and its Protocols and implement the decisions of the Meeting of the Contracting Parties; secondly, short description of the objective and mission statement for each RAC.
 - (e) Financial Resources:
 - (i) Description of the source of funding to be provided, by referring to both principal and additional sources of funding. This includes but it is not limited to: (1) contributions provided by the Host Country Government (in kind, cash or services), (2) *equal core share of financial support from the Mediterranean Trust Fund (MTF) to ensure the implementation of their mandate* (3) funds transferred to RACs from the Mediterranean Trust Fund (MTF) through Project Cooperation Agreements (PCAs) signed between UNEP and RACs in accordance with the relevant COP decisions, (34) voluntary contributions from Contracting Parties to the Barcelona Convention, (54) funds from donors such as non-Parties, international and national organizations, programs, funds, institutes and other bodies, and (56) other funds received by RACs;
 - (ii) Separate management and accounting of the funds provided to the RACs through the MTF to be operationalized by the requirement to the RACs of having a separate account for those resources in a bank of the host country Government in the currency in which they are to be remitted;
 - (iii) Reporting (i.e. progress and financial reports) and audit requirements to be specified for all RACs in line with the PCAs signed between UNEP and RACs. This is key for the purposes of transparency and accountability;
 - (iv) Role of RACs and UNEP/MAP-Coordinating Unit in seeking resources for RACs from sources other than the MTF to be included and put in the framework of COP 20 Decision IG.23/5 on the Updated Resource Mobilization Strategy.

Commented [ITA1]: The previous sentence is sufficient and leaves flexibility

Commented [ITA2]: As indicated in the report of the 87th Bureau meeting (Athens, Nov.2018)

(f) **Contribution of the Host Country Government:** To spell out the responsibility of the Host Country Government in providing free of charge adequate premises for the RAC, adequate and timely maintenance of the premises, and financial and in-kind contributions to the operational costs of the RAC. ~~These Operational costs to be defined include, for instance,~~ personnel costs (i.e. posts of the RAC financed by the Host Country Government), premises and services (e.g. furnished office space, office equipment, phone, electricity and water services), ~~and in cash contribution for operation costs.~~

Commented [ITA3]: Unclear

(g) **Property, Funds and Assets of the RACs:** ~~As appropriate, and taking into consideration the legal nature of the concerned RAC and its regional mandate,~~ there is room for negotiation with Host Country Governments, for property, funds and assets transferred to RACs by UNEP/MAP in carrying out its regional role, to enjoy the privileges and immunities equivalent to those provided for in Article II of the Convention on the Privileges and Immunities of the United Nations, 13 February 1946 (General Convention).¹ Of particular importance in the negotiation would be to define the privileges and immunities regime, including the exemption regime from taxation, applicable to RACs premises and the funds transferred to the RACs from the MTF and other sources of funding allocated for the delivery of the PoW of UNEP/MAP.

Commented [ITA4]: The application of the mentioned articles of the General Convention seems to be difficult in most RACs, since they are not UN bodies.

(h) **Personnel of RACs:**

(i) Categories of personnel of RACs to be specified making clear that the category of UN Officials does not apply to personnel of RACs. There is a need to clearly spell out the personnel falling under the term personnel of RACs to include the Director and staff as a single category different from experts, such as consultants;

~~(ii) As appropriate, and taking into consideration the legal nature of the concerned RAC and its regional mandate,~~ There is the possibility for consideration with Host Country Governments, for personnel of RACs (i.e. Director and staff) to enjoy the privileges and immunities equivalent to those provided for in Articles V and VI of the General Convention.

~~(iii) Identification of standard procedures and criteria for the recruitment of personnel of RACs, including consultants (to be included as an Annex to the HCA)~~

Commented [ITA5]: The application of mentioned articles of the General Convention seems to be difficult in most RACs, since they are not UN bodies. Furthermore it is not coherent with the previous para (h, i), where it is stated that the category of UN Officials does not apply to personnel of RACs.

(j) **Meetings and Conferences:**

(i) **Meetings and Conferences convened by UNEP:** To indicate that the privileges and immunities provided for in Article IV, Article V and Article VI of the General Convention apply.

(ii) **Meetings and Conferences convened by RACs:** ~~As appropriate, and taking into consideration the legal nature of the concerned RAC and its regional mandate,~~ there is room for negotiation with Host Country Governments, for representatives of the Contracting Parties to the Barcelona Convention participating in those meetings to enjoy the privileges and immunities equivalent to those provided for in Article IV of the General Convention².

Commented [ITA6]: Article IV refers to “Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by UNEP. Therefore, considering that RACs are not organs of the UN and have an independent legal personality, the application of Article IV to meetings and conferences they convey seems very difficult.

¹ This approach is taken in the Framework Agreements signed between the Secretariat of the Basel Convention and the host country Governments for its Regional and Coordinating Centers holding the legal status of national institutions (<http://www.basel.int/Partners/RegionalCentres/TheCentres/tabid/5275/Default.aspx>). The provision reads as follows: “Article XV Property, Funds and Assets of the Centre 1. The property, funds and assets of the Centre held and administered on behalf of UNEP, and those held and administered on behalf of the Parties to the Basel Convention, wherever located and by whomsoever held, shall enjoy the privileges and immunities, exemptions and facilities equivalent to those provided for in Article II of the General Convention. 2. Property, funds and assets transferred to the Centre pursuant to the Project Document signed between the Centre and UNEP or between the Centre and the Secretariat, in the performance by the Centre of its regional role shall enjoy the privileges and immunities, exemptions and facilities equivalent to those provided for in Article II of the General Convention”.

² This approach is taken in the Framework Agreements signed between the Secretariat of the Basel Convention and the host country Governments for its Regional and Coordinating Centers holding the legal status of national institutions. The provision reads as follows: “Article XIV Privileges and Immunities. 1. The representatives of the Parties to the Basel Convention participating in meetings and other activities organized by the Centre in the territory of [host country Government] shall enjoy the privileges and immunities equivalent to those provided for in Article IV of the General Convention.”

(k) Director: To address the appointment, functions, duties and responsibilities of the Director. The following elements to be included: appointment of the Director falls on the Host Country Government, in consultation with UNEP/MAP Coordinating Unit; the Director has the role of administering the RAC with the aim to ensuring that the RAC performs its regional role; the Director has to report on the implementation of the activities of the RAC in carrying on its regional role to the UNEP/MAP Coordinating Unit and the Meeting of the Contracting Parties to the Barcelona Convention and its Protocols. As appropriate, and taking into consideration the legal nature of the concerned RAC and its regional mandate. There is the possibility for consideration with Host Country Governments, for the Director to enjoy the privileges and immunities equivalent to those provided for in Article V of the General Convention.

(l) Projects and partnerships: identification of standard procedures and criteria for the participation of RACs in projects and partnerships that are not included in the Programme of Work of UNEP/MAP and in relevant Decisions (to be included as an Annex to the HCA)

~~(m)~~ Memoranda of Understanding: identification of standard procedures and criteria for the signature of Memoranda of Understanding by RACs (to be included as an Annex to the HCA)

~~(n)~~ Steering Committee: To establish a Steering Committee with the specific objective of following-up on the implementation of the HCA. The Steering Committee to be composed by the Director of the RAC, one representative of the host Government and one representative of the UNEP/MAP Coordinating Unit.

~~(o)~~ Final standard clauses on settlement of disputes and on entry into force, duration and amendment of the HCA.

Commented [ITA7]: See previous comments

Comments received by Tunisia

Commentaires du Point Focal National du PAM/Convention de Barcelone sur le nouvel accord de siège du CAR/ASP

Dans la perspective de réviser le statut de Centre d'Activités Régionales pour les Aires Spécialement Protégées (CAR/ASP), abrité par la Tunisie par les disposition de l'accord de siège de 1993 et ses amendements, il est crucial que cette révision tienne compte du fait que le CAR/ASP est un des 6 autres Centres d'Activités Régionales (CARs) du Programme des Nations Unies pour l'Environnement/Convention de Barcelone/Plan d'Action pour la Méditerranée qui a pour mandat l'assistance des Parties Contractantes pour la mise en œuvre du Protocole relatif aux Aires Spécialement Protégées et à la Diversité Biologique (ASP/DB) en Méditerranée, en vue d'exécuter les dispositions du Protocole y compris les Plans d'Action au niveau régional ainsi que d'assumer d'autres responsabilités régionales dévolues conformément aux fonctions qui lui sont assignées à l'article 9, à l'article 11 para. 7 et à l'article 25 du Protocole et à la décision UNEP/IG.23/11 de la 2^{ème} conférence des parties tenue à Cannes en 1981.

En plus des contacts avec les gouvernements méditerranéens, le Centre entretient des relations et partenariats avec des Conventions et initiatives Globales et/ou régionales, ce qui lui confère une présence technique et force agissante en matière de Biodiversité marine non seulement au niveau régional méditerranéen mais aussi au niveau Mondial.

Par conséquent, le centre agit comme une organisation inter-gouvernementale auprès des gouvernements et des organisations gouvernementales partenaires et aussi comme une organisation pana-méditerranéenne.

Depuis l'accord de siège de 1993 qui demeure en vigueur, le CAR/ASP, est une entité locale créée par le Gouvernement Tunisien pour remplir des fonctions de CAR du PAM et étant juridiquement indépendant des Nations Unies. Ce qui peut contredire les orientations/propositions de la revue fonctionnelle menée en 2013 qui recommande une meilleure harmonisation et coordination des activités entre l'Unité de Coordination basée à Athènes et les autres centres régionaux en vue d'une meilleure visibilité et efficacité du système du PAM.

Dans cette optique et pour faciliter la tâche du CAR/ASP, la Tunisie met à sa disposition les moyens et les facilités nécessaires (locaux, contribution au budget de fonctionnement, personnel permanent, etc.) lui permettant d'exécuter sa mission dans des meilleures conditions possibles et de manière **permanente et stable**. Depuis 1996, année de construction du Centre International pour les Technologies de l'Environnement (CITET), le CAR-ASP occupe un pavillon dans le CITET. En 2002, le CAR-ASP a pu louer un nouveau bureau(annexe) pour faciliter la mise en œuvre du projet MedMPA.

Depuis 2014, le statut et la capacité juridique du CAR/ASP demeurent une question en débat avec les départements compétents en Tunisie afin de déterminer tous les arrangements qui en découlent notamment ceux concernant les dispositions de privilèges et immunités de personnel et des biens.

Il en résulte que le souci majeur serait, donc, de conférer au CAR/ASP le statut qui lui facilite l'accomplissement de sa mission régionale intergouvernementale dans le cadre de la Convention de Barcelone, et particulièrement le Protocole sur les Aires Spécialement Protégées et la Diversité Biologique. Par conséquent, toute modification de son statut devrait être faite dans l'objectif de lui conférer davantage de facilité et d'améliorer les conditions d'accomplissement de sa mission à savoir, facilité de comptes bancaires, efficacité de gestion, accessibilité et moyens de connexion et de communication avec l'extérieur, fluidité de déplacement à l'étranger compte tenu de ses obligations régionales envers toutes les Parties contractantes à la Convention de Barcelone (21 pays), etc.

Courtesy translation

With a view to revising the status of the Regional Activity Center for Specially Protected Areas (SPA/RAC), hosted by Tunisia by the provisions of the 1993 Host Country Agreement and its amendments, it is crucial that this revision account of the fact that SPA/RAC is one of the 6 other Regional Activity Centers (RACs) of the United Nations Environment Program/Barcelona Convention /Mediterranean Action Plan with the mandate of assisting Contracting Parties for the implementation of the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean (SPA/BD), with a view to implementing the provisions of the Protocol including the Regional Action Plans as well as assume other regional responsibilities devolved in accordance with the functions assigned to it in Article 9, Article 11 para. 7 and Article 25 of the Protocol and decision UNEP IG.23/11 of the 2nd Conference of the Parties held in Cannes in 1981.

In addition to contacts with the Mediterranean governments, the Center maintains relations and partnerships with Global and/or Regional Conventions and Initiatives, which gives it a technical presence and an active force in the field of Marine Biodiversity not only at the Mediterranean regional level but also at the global level.

Therefore, the center acts as an inter-governmental organization with governments and partner government organizations and also as a pan-Mediterranean organization.

Since the 1993 Host Country Agreement, which remains in force, SPA/RAC is a local entity created by the Government of Tunisia to fulfill the MAP's RAC functions and legally independent from the United Nations. This may contradict the orientations/proposals of the functional review conducted in 2013 which recommends a better harmonization and coordination of activities between the Athens-based Coordination Unit and the other regional centers in order to improve the visibility and effectiveness of the MAP system.

In this context and to facilitate the task of SPA/RAC, Tunisia provides the necessary means and facilities (premises, contribution to the operating budget, permanent staff, etc.) enabling it to carry out its mission in the better possible conditions and in a permanent and stable way. Since 1996, year of construction of the International Center for Environmental Technologies (CITET), SPA/RAC occupies a pavilion in CITET. In 2002, SPA/RAC was able to rent a new office (annex) to facilitate the implementation of the MedMPA project.

Since 2014, the status and legal capacity of SPA/RAC remains an issue under discussion with the relevant departments in Tunisia in order to determine all the resulting arrangements including those concerning the provisions of privileges and immunities of staff and property.

As a result, the main concern would be to give SPA/RAC the status which facilitates the fulfilment of its regional intergovernmental mission within the framework of the Barcelona Convention, and particularly the Protocol concerning Specially Protected Areas and Biological diversity in the Mediterranean. Therefore, any modification of its status should be made with the aim of making it easier and improving the conditions of accomplishment of its mission namely, bank account facility, management efficiency, accessibility and means of connection and communication with the outside world, fluidity of movement abroad given its regional obligations towards all Contracting Parties to the Barcelona Convention (21 countries), etc.