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15th Meeting of the Compliance Committee of the Barcelona Convention and its Protocols

Athens, Greece, 25-26 June 2019

Agenda item 7: Functioning of the Compliance Committee: Procedures and Mechanisms on Compliance and Rules of Procedure of the Compliance Committee

List of Issues for Legal Interpretation Concerning the Procedures and Mechanisms on Compliance and Rules of Procedure of the Compliance Committee

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UNEP/MAP
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Note by the Secretariat

1. At the 14th Meeting of the Compliance Committee (Athens, Greece, 27-29 June 2018) and the 86th Meeting of the Bureau (Teleconference, 11 July 2018) a number of issues for legal interpretation were raised concerning the Procedures and Mechanisms on Compliance and the Rules of Procedure of the Compliance Committee for the consideration of the 15th Meeting of the Compliance Committee (Athens, Greece, 25-26 June 2019).
2. The 14th Meeting of the Compliance Committee concluded as follows (UNEP/MED CC.15/4, §52):
 - (a) The Compliance Committee agreed to seek clarification from Contracting Parties on whether Alternate Members can be elected as Officers and on the timing of the election of Officers;
 - (b) any other matters of the Procedures and Mechanisms requiring interpretation by the Contracting Parties will be discussed at the 15th Meeting of the Compliance Committee, and
 - (c) the Compliance Committee recommends holding a meeting for the purpose of the election of its Officers immediately following the COP, where its membership is endorsed. Depending on resources availability, the meeting may be held via electronic means.
3. The 86th Meeting of the Bureau concluded as below (UNEP/MED BUR.86/2, §10, 12 and 13):
 - (a) The members of the Bureau feel that the provisions of paragraph 7 of the “*Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols*” might be considered as referring only to Members of the Compliance Committee, applying a strict interpretation of this disposition;
(...)
 - (b) Considering also the need to comply with the number of seven as voting members of the Compliance Committee, there is a need to urgently address and solve existing issues that are critical for the functioning of the Compliance Committee;
 - (c) The Bureau took note of the conclusions of the 14th Meeting of the Compliance Committee and wished to bring to the attention of the Compliance Committee the following issues for discussion at the 15th Meeting of the Compliance Committee: (a) the scope of application of paragraph 7 of the “*Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols*”; and (b) the implications of electing an Alternate Member as Chair of the Compliance Committee;
 - (d) The Bureau also asked the Compliance Committee to prepare, with the support of the Secretariat, a list of procedural issues, also based on the results of its 15th Meeting, that require clarification and interpretation by the Contracting Parties and to present it, together with the Compliance Committee recommendations, to COP 21 for consideration.
4. The issues so raised and possible legal interpretation as provided by UNEP Principal Legal Officer are presented in this document in table form. The Compliance Committee is expected to consider and develop as it deems appropriate the list of issues and advise on further steps to take.

LEGAL ISSUES CONCERNING THE PROCEDURES AND MECHANISMS ON COMPLIANCE AND RULES OF PROCEDURE OF THE COMPLIANCE COMMITTEE AND POSSIBLE LEGAL INTERPRETATION

Issues	Applicable Rules	Possible Interpretation
<p>Question 1: Can alternate members of the Compliance Committee be elected as Committee officers under the Barcelona Convention and its Protocols?</p>	<p><i>“Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols.”</i> (Decision IG. 17/2, as amended by Decisions IG. 20/1 and 21/1)</p> <p>Rule 3. <i>“The Committee shall consist of seven members elected by the Meeting of the Contracting Parties from a list of candidates nominated by the Contracting Parties. For each member of the Committee, the Meeting of the Contracting Parties shall also elect an alternate member from the above-mentioned list.”</i></p> <p>Rule 10. <i>“The Committee shall elect its officers - a Chairperson and two Vice-Chairpersons - on the basis of equitable geographic representation and rotation.”</i></p> <p>Rule 14. <i>“In the absence of a member from a meeting, the respective alternate shall serve as the member.”</i></p> <p>Rule 15. <i>“For each meeting, a quorum of seven members is required.”</i></p>	<ul style="list-style-type: none"> • It is clear from the applicable rules that the Committee consists of seven members only. Within the practice of the United Nations, alternate members are intended to serve as representatives when the originally designated representative is absent. • Rule 14 of the Committee’s rules provides that, <i>“In the absence of a member from a meeting, the respective alternate shall serve as the member.”</i> Thus, an alternate only serves when the member is absent. • Rule 15 provides that <i>“For each meeting, a quorum of seven members is required.”</i> Thus, all full members are required to be present. Alternates should play no role if the full member is present. Alternates can only be counted as one of the seven if their member is absent. • Within the practice of the United Nations, Officers, i.e. the Chair and Vice Chair are elected from the membership of the body, i.e. the seven members. • Should the Chair and Co-Chairs be elected from alternates, then strictly speaking they would only be able to perform their functions when their full member is not present. • Should the Chair and Vice Chairs perform their functions while their full members are present, this leads to a mixing of functions of members and alternates and could de facto increase the membership of the body, at least in terms of participation. • Consequently, it would be advisable if the Chair and Co-Chairs as representatives of the members be elected from amongst its membership. If this is not possible, the Chair and Co-Chairs could only perform functions as alternates when their members are not present.

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<p>Question 2: Are the officers of the Compliance Committee elected twice in a consecutive manner but for a shorter duration than 2 years (based on the COP cycle every two years) eligible for re-election?</p>	<p><i>“Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols.”</i> (Decision IG. 17/2, as amended by Decisions IG. 20/1 and 21/1)</p> <p>Rule 6. <i>“Members and alternate members shall not serve on the Committee for more than two consecutive terms.”</i></p>	<p>Rule 6 of the Procedures and Mechanisms on Compliance applies irrespective of the length of the term. Secondly, what counts is whether an office holder was elected to a second consecutive term and assumes that office. If that is the case, should the office holder serve a shorter term or relinquish that office, he/she would still be barred from serving another term.</p>
<p>Question 3: Does Rule 7 of the Procedures and Mechanisms on Compliance exclusively apply to the members of the Compliance Committee?</p>	<ul style="list-style-type: none"> • <i>“Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols.”</i> (Decision IG.17/2, as amended by Decisions IG.20/1 and 21/1). <p>Rule 7. <i>“The members of the Committee shall be nationals of the Parties to the Barcelona Convention. The Committee shall not include more than one national of the same State”.</i></p> <ul style="list-style-type: none"> • <i>“Rules of Procedure of the Compliance Committee”</i> (Decision IG. 21/1). <p>Rule 11 (3). <i>“During the absence of a member from all or part of a meeting, his or her alternate shall serve as a member”.</i></p>	<ul style="list-style-type: none"> • Rule 7 provides that <i>“The members of the Committee shall be nationals of the Parties to the Barcelona Convention. The Committee shall not include more than one national of the same state”.</i> • According to Rule 11 (3) <i>“During the absence of a member from all or part of a meeting, his or her alternate shall serve as a member”.</i> • Alternate members, at some point in the absence of a committee member, acts as a member. Thus, Rule 7 applies to both members of the Compliance Committee and their alternate members.
<p>Question 4: Can an Alternate Member of the Compliance Committee hold the same nationality as one of the Members of the Compliance Committee?</p>	<ul style="list-style-type: none"> • <i>“Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols.”</i> (Decision IG.17/2, as amended by Decisions IG. 20/1 and 21/1). <p>Rule 7. <i>“The members of the Committee shall be nationals of the Parties to the Barcelona Convention. The Committee shall not include more than one national of the same State”.</i></p>	<ul style="list-style-type: none"> • Rule 7 is very specific that the Committee shall not include more than one national of the same state. This applies to the alternate members too. • Under rule 11 (3), at some point the alternate member may act as a member to the committee. In our view, the alternate should be of the same nationality as the member he/she is replacing. If not, this could create problems with respect to equitable geographical representation on the Committee and also the possibility of having more than two nationals of the same

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	<ul style="list-style-type: none"> • “Rules of Procedure of the Compliance Committee” (Decision IG.21/1). Rule 11 (3). “During the absence of a member from all or part of a meeting, his or her alternate shall serve as a member”. 	<p>Contracting party as members of the Committee. In any event, an alternate member of the Compliance Committee would not be able to hold the same nationality as one of the members of the Committee.</p>
<p>Question 5: Can a meeting for the sole purpose of electing the Chair and Vice-Chairs of the Compliance Committee for the biennium 2020-2021 be convened immediately after COP 21 (2-5 December 2019) but before the annual meeting of the Compliance Committee (June 2020)? If so, does it require an ordinary or an extraordinary meeting?</p>	<ul style="list-style-type: none"> • “Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols.” (Decision IG.17/2, as amended by Decisions IG.20/1 and 21/1). Rule 4. “A full term of office commences at the end of the Ordinary Meeting of the contracting parties and runs until the end of the second Ordinary Meeting of the Contracting Parties thereafter”. • “Rules of Procedure of the Compliance Committee” (Decision IG.21/1). Rule 6. “The committee shall elect a chairperson and two Vice-Chairpersons for a term of two years. No officers shall serve for more than two consecutive terms”. • Rule 4 (1). “The committee shall normally meet twice per biennium preferably once a year. It may recommend the Secretariat to hold additional meetings subject to workload requirements arising from submissions by concerned Contracting Parties and referrals by the Secretariat and subject to availability of funds.” • Rules of Procedure for Meetings and Conferences of the Contracting Parties to the Convention for the Protection of the 	<ul style="list-style-type: none"> • Under Rule 6 – it is for the Committee to elect its own Officers. Officers would have to be elected at a formal meeting of the Committee. • Holding a meeting for the sole reason of electing the Chair and two Vice-Chairs of the Compliance Committee for the biennium 2020-2021 but before the annual meeting of the Compliance Committee (June 2020), as recommended by the Compliance Committee, does not fall within the scope of Rule 4(1) of the Rules of Procedure of the Compliance Committee. • Under Rule 4 (1) of the Rules of Procedure, additional meetings are subject to the following: (i) the workload so dictates, either because there is a submission by a Party or (ii) a referral by the Secretariat, subject to the availability of funds. The election of officers is not foreseen. • The procedure for the election of Chair and Vice-Chairs of the Compliance Committee is set out in Rule 20 of the Rules of Procedure for Meetings and Conferences, which applies mutatis mutandis (Rule 2 of the Rules of Procedure of the Compliance Committee). • In light of Rule 20, the Chair and Vice-Chairs of the Compliance Committee should be elected at the first sitting of each ordinary meeting of the Compliance Committee. • While not provided for in the Rules, the current Chair and two Vice-Chairs of the Compliance Committee would have to remain, until their successors are elected at an ordinary meeting of the Compliance Committee. • Having an extraordinary meeting for the election of Chair and Vice-Chairs of the Compliance Committee does not seem to be an alternative, as Rule 20 of the Rules of Procedure for Meetings and Conferences requires an ordinary meeting.

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	<p>Mediterranean Sea against Pollution and its related Protocols.</p> <p>Rule 20 (1). <i>“At the commencement of the first sitting of each ordinary meeting or conference, a President, four Vice-Presidents and a Rapporteur are to be elected from among the representatives of the Contracting Parties”.</i></p>	<p>Rule 20 reads: <i>“At the commencement of the first sitting of each ordinary meeting or conference, a President, four Vice-Presidents and a Rapporteur are to be elected from among the representatives of the Contracting Parties”</i> (emphasis added).</p>
<p>Question 6: Is there any mismatch between Rule 6 of the Procedures and Mechanisms on Compliance and Rule 6 of the Rules of Procedure of the Compliance Committee?</p>	<ul style="list-style-type: none"> • <i>“Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols.”</i> (Decision IG.17/2, as amended by Decisions IG.20/1 and 21/1). <p>Rule 6. <i>“Members and alternate members shall not serve on the Committee for more than two consecutive terms”.</i></p> <ul style="list-style-type: none"> • <i>“Rules of Procedure of the Compliance Committee”</i> (Decision IG.21/1) <p>Rule 6. <i>“The committee shall elect a Chairperson and two Vice-Chairpersons for a term of two years. No officers shall serve for more than two consecutive terms”.</i></p>	<ul style="list-style-type: none"> • Rule 6 of the Rules of Procedures states that: <i>“The Committee shall elect a Chairperson and two Vice-Chairpersons for a term of two years. No officers shall serve for more than two consecutive terms”.</i> • Rule 6 of the Procedures and Mechanisms provides that, <i>“Members and alternate members shall not serve on the Committee for more than two consecutive terms.”</i> • This rule applies irrespective of the length of the term served. • Thus arguably – if an Officer were to resign for example after one year, he/she would still be considered as having served a term. • No mismatch between Rule 6 of the Procedures and Mechanisms on Compliance and Rule 6 of the Rules of Procedure of the Compliance Committee.