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Draft Decision IG 15/2

Annex I : Compliance mechanism under the Barcelona Convention and its Protocols

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 13th 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 14th 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 14th 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 15th 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.

7. At its third meeting, the Working Group (on 5 and 6 December 2006 at Loutraki, Greece) considered a 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. The draft text submitted to the fourth meeting is the result of the discussions at the third meeting. The draft text proposes a full compliance mechanism - as has been requested by the 14th Meeting of the Contracting Parties – for consideration by the fourth meeting of the Working Group. The text which had been considered and added at the third meeting is in bold and underlined. The text which had already been submitted to the 14th meeting of the Contracting Parties is in normal script. Those parts of the text which have been only considered very briefly or not at all by the third meeting are in square brackets. For easy reference, the numbering of the paragraphs was kept the same as in the report of the last meeting of the Working Group.

8. This document further contains a draft decision concerning the adoption of the compliance mechanism by the 15th meeting of the Contracting Parties. Its preambular paragraphs refer to the mandate given to the Working Group by the 13th and 14th meeting of the Contracting Parties, the legal provisions of the Barcelona Convention as a basis for the establishment of the compliance mechanism by the Contracting Parties and a reference to the work of the Working Group on Implementation and Compliance. In its operative part the draft decision first deals with the approval and adoption of the compliance mechanism. It then requests the compliance committee to consider in the next biennium 2008-2009 general compliance issues and requests the compliance committee to submit a report to the next meeting of the Contracting Parties. An operative paragraph in square brackets “decides that the rules of procedure shall apply *mutatis mutandis*”. It would be the task to the Compliance committee to find out during its work whether additional rules of procedure are necessary for its effective and efficient operation and report to the meeting of the Contracting Parties.

9. Furthermore, the composition of the compliance committee should be considered by the Working Group. A possibility to determine the composition of the committee in the decision to be adopted by the 15th meeting of the Contracting Parties could be to include a new paragraph in this draft decision that would propose the composition of the Compliance Committee on the basis of the principle of equitable geographical distribution.

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Mechanism relating to compliance under the Barcelona Convention and its Protocols

The Meeting of the Contracting parties,

Recalling its decisions adopted at its 13th meeting held in Catania, Italy, and its 14th meeting held in Portoroz, Slovenia, on the need to develop a mechanism to promote implementation and compliance with the Barcelona Convention for the Protection of the Marine Environment and the Coastal region of the Mediterranean as amended in Barcelona in 1996, herein after referred to as the Barcelona Convention, and its Protocols,

Recalling also Articles 18 and 27 of the Barcelona Convention as amended in 1996,

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

Recalling the mandate adopted in decision I.A.1.5 by the 14th Meeting of the Contracting Parties held in Portoroz, Slovenia, in 2005,

Decides to approve and adopt the mechanism relating to compliance under the Barcelona Convention and its Protocols, as contained in the Annex to this Decision,

[*Decides* that the rules of procedure of the Barcelona Convention shall apply *mutatis mutandis*],

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

Requests the Compliance Committee to submit a report on its activities in accordance with paragraph 33 [which should include additional draft rules for the operation of the Compliance Committee] for adoption by the 16th Meeting of the Contracting parties.

ANNEX I

COMPLIANCE MECHANISM UNDER THE BARCELONA CONVENTION AND ITS PROTOCOLS

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I. Objective

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.