



**United Nations
Environment
Programme**



UNEP(DEPI) /MED Compliance Committee.3/5
12 October 2009

ENGLISH



MEDITERRANEAN ACTION PLAN

Third meeting of the Compliance Committee

Athens, Greece, 23-24 October 2009

**DRAFT REPORT OF THE COMPLIANCE COMMITTEE
FOR THE 16TH MEETING OF THE CONTRACTING PARTIES**

I. Introduction

1. By decision IG 17/2, the 15th meeting of the Contracting Parties to the Barcelona Convention and its Protocols, held at Almeria in January 2008, adopted the Procedures and Mechanisms on Compliance with a view to promoting implementation and compliance with obligations under the Barcelona Convention and its Protocols. In the same decision, the Meeting of the Parties agreed to set up a Compliance Committee and decided on its composition. For the 2008-2009 biennium, it gave the Committee three major objectives: firstly, to submit draft rules of procedure for the Committee to the 16th Meeting of the Contracting Parties for adoption; secondly, to consider general compliance issues; and, lastly, to transmit a report on its activities to the Meeting of the Parties, including findings, conclusions and difficulties encountered and any recommendations for amending the Procedures and Mechanisms.

2. The Compliance Committee is composed of seven members and seven alternate members, elected by the Meeting of the Parties on the basis of balanced geographical distribution. They act in their individual capacities and objectively in the interests of the Convention and its Protocols.

3. The Committee has met three times since it was set up: on 3 and 4 July 2008, 26 and 27 March and 23 and 24 October 2009. The principal task assigned to the Committee is to facilitate implementation and compliance with obligations under the Barcelona Convention, taking into account the special situation of each of the Contracting Parties, in particular those which are developing countries. To that end, the Committee has to develop close and constructive cooperation among all the Contracting Parties and give them advice as well as the assistance needed to overcome the problems involved in applying the provisions of the Convention and its Protocols.

4. The Compliance Committee is empowered to act in three particular cases: a case of non-compliance may be referred to it by a Party which, despite its best efforts, considers that it is not in a position fully to meet its obligations under the Convention and its Protocols; it may also intervene if requested by a Party affected by the non-compliance of another Party; lastly, the Committee may intervene if requested by the Secretariat after it has identified potential problems encountered by a Contracting Party in complying with its obligations under the Convention and its Protocols. The Committee may also be called upon to rule on general issues of compliance and implementation of the Convention and its Protocols, or on any other question referred to it by the Meeting of the Parties.

II. General overview of the Committee's activities since it was established

5. Decision IG 17/2 of the 15th Meeting of the Contracting Parties requested the Compliance Committee to prepare a report on its activities for the 16th Meeting, containing its findings and conclusions. Over the past two years, the Committee has had to address the following issues:

Preparation of draft rules of procedure

6. Pursuant to the aforementioned decision IG 17/2, at its first meeting the Committee had before it draft rules of procedure prepared by the Secretariat on the basis of the rules of procedure for meetings and conferences of the Contracting Parties to the Barcelona Convention and its Protocols, the text of the Procedures and Mechanisms on Compliance approved by decision IG 17/2, and the compliance provisions and mechanisms in other similar instruments. The Committee continued its consideration of the draft rules of procedure at its second meeting, held in March 2009, when they were adopted. These draft

rules of procedure were submitted to the meeting of MAP Focal Points held in Athens in July 2009 for its consideration and were approved by the meeting. Only one point in the draft rules remains in square brackets and is put before the Meeting of the Parties for a decision; it concerns Article 23 of the draft rules, according to which Arabic could become the Committee's third working language. The Bureau, which considered this request at its meeting held in September 2008, referred the matter to the Meeting of the Parties for a final decision.

Adoption of the Compliance's Committee's work programme for the 2008-2009 biennium

7. At its first meeting, the Committee approved the 2008-2009 work programme proposed by the Secretariat. This provided for the preparation by the Secretariat of a draft leaflet on compliance procedures and mechanisms, the elaboration of a general analysis of the reports submitted by the Contracting Parties on the measures taken to implement the Barcelona Convention and its Protocols, as well as an examination of deficiencies in compliance reporting by Contracting Parties. The Secretariat was also requested to bring to the Committee's attention all issues referred for reasons of non-compliance pursuant to paragraph 23 of the Procedures and Mechanisms on Compliance and to examine any referrals to the Committee by Parties in accordance with paragraphs 18 and 19 of the aforementioned Procedures. At its second meeting, held in March 2009, the Committee received a report from the Secretariat on implementation of the work programme.

Preparation of the Compliance Committee's work programme for the 2010-2011 biennium

8. At its second meeting, the Compliance Committee agreed on the following work programme:

- To consider any referrals by Contracting Parties and/or the Secretariat;
- To define the minimum criteria or measures for identifying difficulties that may be encountered by Contracting Parties in meeting their obligations under the Barcelona Convention and its Protocols;
- To address general issues of non-compliance on the basis of the reports submitted by the Contracting Parties during the 2006-2007 and 2008-2009 bienniums;
- To publish a draft leaflet as a guide to compliance mechanisms, in Arabic, English and French;
- Lastly, to develop the criteria and procedures envisaged in the draft rules of procedure relating to the Compliance Committee's meetings and work.

This work programme for the Compliance Committee during the 2010-2011 biennium is put before the Meeting of the Parties for adoption.

Adoption of minimum measures for identifying difficulties encountered by Contracting Parties in meeting with their obligations

9. At its second meeting, the Committee discussed the distinction to be drawn between potential difficulties in implementing the Convention encountered by Contracting Parties and recorded cases of non-compliance. In order to define this dividing line, the Committee decided to draw up a list of minimum criteria or measures needed to ensure conformity with the legally-binding obligations under the Convention and its Protocols. For this purpose, the Committee decided to entrust an independent expert with the task of drafting a document,

which was considered by an informal working group composed of five members and alternate members of the Committee. The working group's conclusions, as well as all its working documents, were reviewed by the Compliance Committee at its third meeting.

Implementation of Article 26 of the Barcelona Convention

10. Pursuant to Article 26 of the Barcelona Convention, it is the responsibility of the Contracting Parties to transmit to the Secretariat the legal, administrative or other measures taken by them for the implementation of the Convention and its Protocols. At its first meeting, the Committee was informed of an audit of the national reports submitted for the 2002-2003 and 2003-2004 bienniums conducted by the Secretariat, which showed certain shortcomings as regards the reporting exercise incumbent upon the Contracting Parties. At the Committee's second meeting, the Secretariat stated that certain Contracting Parties had not met their reporting obligations for the 2006-2007 biennium and that the analysis of the reports for 2004-2005 highlighted significant differences in the format of the reports and the type, amount and presentation of data transmitted therein.

Adoption of the draft report of the Compliance Committee

11. Pursuant to paragraph 31 of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols, the Committee has to draw up a report on its activities to be transmitted to the Conference of the Parties for review and adoption. At its third meeting, the Committee considered the draft report on its activities prepared by its Chair for the 2008-2009 biennium. All the conclusions, measures and recommendations were adopted by consensus at the third meeting and this report is submitted to the Parties for approval.

III. Proposals to improve the work capacity of the Compliance Committee

12. Decision IG 17/2 calls on the Compliance Committee to inform the Parties of any problems encountered and any recommendations for amendment of the Procedures and Mechanisms. It is undoubtedly premature to envisage proposals for amendment of the Procedures and Mechanisms at the present stage as there is as yet no practical experience in implementing them. The Compliance Committee is a new departure in the institutional framework of the Barcelona system and is just getting into its stride; it needs to find its bearings. With the adoption of its rules of procedure by the Meeting of the Parties, it now has all the legal instruments needed to conduct proper operations. Until now, no case of non-compliance has been brought before the Committee by a Contracting Party or the Secretariat. It is too early to draw any conclusions at the present stage. On the other hand, it is clear that, when presenting its next report to the 17th Meeting of the Parties, the Committee could usefully report on its work on the basis of longer experience and, if necessary, could propose measures to remedy any shortcomings or lacunae that might hinder its proper functioning.

13. For the moment, the Compliance Committee, rather than recommending such measures at this stage of its legal development, prefers to recall some basic principles whose compliance governs the success of its work:

14. First of all, with regard to the organization of its meetings, the Committee underlines the need for the minimum statutory quorum, namely seven members and alternates, to be present at each of its meetings. It is important to ensure that the quorum is present if the Committee's work is not purely and simply to be blocked. In this connection, the Committee recalls that only those persons elected by the Meeting of the Contracting Parties as Committee members or alternates participate in its meetings as such and that any other participant in meetings such as observers cannot be taken into account for the quorum.

15. More specifically, as regards its methods of action, the Committee wishes to underline a certain number of important points that govern its intervention: first of all, it emphasizes the compliance mechanism's intrinsic nature as a facilitator; secondly, it draws attention to the respective roles of the Compliance Committee and of the Secretariat; and lastly, it underlines the decisive importance of the reporting obligation incumbent upon Contracting Parties.

Promoting the compliance mechanism's role as a facilitator

16. Paragraph 1 of the Procedures and Mechanisms on Compliance very clearly states that the Committee's objective is to facilitate and promote compliance with the obligations under the Barcelona Convention and its Protocols. This is its principal task. At its second meeting, the Committee emphasized that it had no jurisdictional function and that its role was not to pass judgement or issue orders but to adopt all measures and recommendations that could assist a Contracting Party to comply with its obligations, whether in the form of advice or, for example, helping the Party concerned to develop an action plan in order to fulfill its commitments, or simply making recommendations which the Committee could put before the Meeting of the Parties, the only body empowered to decide on any follow-up needed.

17. The Committee attaches great importance to ensuring that the special facilitating role of the compliance mechanism is fully understood by the Parties. It is, in fact, essential that the Compliance Committee's role should not be seen and experienced by the Contracting Parties as a punitive or coercive one, but on the contrary as one of giving advice and assistance, if the Committee is to work in a constructive climate of trust and in close cooperation with the Contracting Parties.

Clear distinction between the roles of the Compliance Committee and of the Secretariat

18. Clarifying the respective roles of the Compliance Committee and of the Secretariat is an important element in order to prevent any confusion regarding their roles, which would be prejudicial to the proper functioning of the Committee. This point was mentioned at the second meeting, when several members of the Committee underlined the fact that the working relations between the two bodies had to be clarified. The Committee highlighted the fact that there could be no confusion between its role of assistance and advice and the role of the Secretariat, whose main task is to ensure the organization and efficient conduct of the Committee's meetings pursuant to paragraph 38 of the Procedures and Mechanisms.

19. Nevertheless, the Committee also drew attention to the fact that both must work closely together and in good understanding, sharing the common objective of ensuring that the compliance mechanism operates as efficiently as possible. The Committee emphasizes in this regard that, in addition to the technical support it gives the Committee pursuant to paragraph 23 of the Procedures and Mechanisms, the Secretariat has the irreplaceable task of sounding a warning and identifying in advance any cases of non-compliance. One of the main specificities of the compliance mechanism under the Barcelona Convention compared to other mechanisms under other international conventions is precisely that the Secretariat is given a decisive role in identifying upstream any problems in implementing the Barcelona Convention and its Protocols that might be encountered by the Parties in fulfilling their obligations and in seeking ways of helping the Party concerned to overcome these problems.

20. At this initial stage of the procedure, the Secretariat is in a strategic position inasmuch as the aforementioned paragraph 23 gives it an "early warning" role in identifying potential cases of non-compliance it may perceive when examining the reports transmitted to it by the Contracting Parties. The Committee attaches the highest importance to the Secretariat playing this role to the full so that a rapid and appropriate solution can be found to any implementation problems in the context of bilateral discussions between the Secretariat and

the Party concerned, without any need to refer to the matter to the Committee for a ruling. The Committee unanimously considers that it alone has the authority to decide whether a non-compliance situation has occurred or might occur and that the role of the Secretariat should be confined to prior identification in order to highlight any problems encountered by a Contracting Party in fulfilling its obligations.

21. Accordingly, at its second meeting, the Committee decided that in the course of the prior identification by the Secretariat, if so required, it could provide guidance, without necessarily being systematically informed of each instance of potential concern. The Committee is keen to ensure that, under its control, the Secretariat makes relevant and justified use of the aforementioned paragraph 23 so that a consensus solution can be found with the Party concerned if there is an instance of non-compliance that calls for rapid negotiated solution.

Definition of the relevant criteria for identifying cases of non-compliance

22. On of the substantive issues addressed by the Committee in the course of its work concerns the problem of defining the dividing line between, on the one hand, the various problems Parties may encounter in fulfilling their obligations and, on the other, actual or potential situations of non-compliance that may lead the Secretariat to contact the Party concerned and bring the matter before the Committee as a last resort in order to submit a recognized case of non-compliance to it. The Committee considered that the most appropriate way of defining this dividing line would be to draw up a list of minimum criteria or measures to ensure conformity with the legally-binding obligations under the Convention and its Protocols.

Need for strict application of the reporting obligation

23. The Committee's examination of any cases of non-compliance by Parties with their obligations is mainly based on the Secretariat's analysis of the national reports submitted by the Contracting Parties pursuant to Article 26 of the Convention. The Committee would like to point out that, so far, the reporting obligation under the Convention and its Protocols has not carried the same weight for all the Contracting Parties as they are only obliged to report on those Protocols they have ratified and that have entered into force.

24. At its second meeting, the Committee noted that this reporting obligation was unfortunately little respected and, in general, was observed to differing degrees. The Secretariat indicated that only 15 Contracting Parties out of 22 had submitted reports for the 2006-2007 biennium. This is a matter for concern. It is not admissible that some Contracting Parties have not submitted any report on implementation of the Convention and its Protocols since the first biennium. The Committee strongly urges all Contracting Parties to comply with the reporting obligation so that the Committee can carry out its work to the full.

25. Another of the Committee's concerns is directly related to the broad disparities among the reports received, both as regards their format, but also their nature, the amount and presentation of the data. The Committee would like to see the information in the Parties' reports harmonized, particularly the technical sections, so as to enable the Committee to undertake a relevant evaluation with regard to obligations under the Barcelona Convention and its Protocols.

26. The Committee considers that serious and comprehensive fulfilment of its tasks is directly linked to compliance by the Contracting Parties of their obligation to submit their respective reports to the Secretariat. This is why it lays emphasis on the essential need for all Contracting Parties to comply with their reporting obligations within the time limits fixed. Compliance of this obligation laid down in Article 26 of the Convention significantly affects

the credibility and efficiency of the compliance mechanism established by Decision IG 17/2. The Committee wishes to recall that not only does examination of the reports constitute a decisive element in identification and evaluation of possible cases of non-compliance by the Secretariat, but that failure to comply with the reporting obligation itself would place the Party at fault in a situation of non-compliance.

27. As regards the actual implementation of this reporting obligation, particularly the submission of reports, the Committee unanimously urges the Contracting Parties to use the new standardized reporting format, now available on line. It encourages Parties that may encounter difficulties in preparing their reports to contact the Secretariat, which could provide them with the necessary technical help.

Examination of general non-compliance issues

28. Without waiting for a case of non-compliance by a Contracting Party to be referred to it during the next 2010-2011 biennium, the Committee suggests that paragraph 17(b) of the Procedures and Mechanisms be put into effect immediately. This paragraph allows the Committee, at the request of the Meeting of Contracting Parties, to consider general compliance issues, such as recurrent non-compliance problems, including those related to reporting, taking into account the reports referred to in Article 26 of the Convention and any other report submitted by the Parties. Following this general review of non-compliance issues, at the 17th Meeting of the Contracting Parties, the Committee could make recommendations and suggestions with a view to facilitating implementation and compliance with obligations under the Barcelona Convention and its Protocols. By embarking upon such an analytical approach and making proposals now, the Committee would provide guidance that would be of particular benefit to the Contracting Parties.

IV. Proposed draft decision

29. At its 16th Meeting, the Conference of the Parties could adopt the following draft decision:

The 16th Meeting of the Contracting Parties,

Recalling Articles 18 and 27 of the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, as amended at Barcelona in 1995, hereinafter “the Barcelona Convention”,

Also recalling decision IG 17/2 of the 15th Meeting of the Contracting Parties by which they adopted the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols, hereinafter “the Procedures and Mechanisms on Compliance”,

[*Having considered* the report on the activities of the Compliance Committee, submitted to the Meeting of the Contracting Parties by the Committee’s Chair, pursuant to section VI of decision IG 17/2, including the measures he proposed for the 2008-2009 biennium, in accordance with section VII of decision IG/17/2,]

Emphasizing that the Compliance Committee’s priority is to help the Contracting Parties concerned to implement its recommendations and those of Meetings of the Contracting Parties in order to assist them in complying with their obligations,

Recognizing in this connection that it is necessary to continue to ensure the stable, systematic and predictable implementation of the Procedures and Mechanisms on Compliance,

Expressing its gratitude to the Compliance Committee which, since its creation and in the course of three meetings, has implemented its work programme for the period covered by the report, with the support of the Secretariat,

Noting with satisfaction the Compliance Committee's work programme for the 2009-2010 biennium, as set out in Annex II to this decision,

Stressing that it is important for Contracting Parties to comply with their obligations regarding the submission in due time of reports on the measures taken to implement the Barcelona Convention and its Protocols during the period 2006-2009, as well as decisions by the Meeting of the Contracting Parties, and for this purpose to use the new standardized reporting format now available on line:

Adopts the Compliance Committee's rules of procedure, as set out in Annex I to this decision, in accordance with the provisions in the Procedures and Mechanisms on Compliance contained in the Annex to decision IG 17/2 of the 15th Meeting of the Contracting Parties;

Urges those Contracting Parties that have not yet done so to submit their reports on implementation of the Barcelona Convention and its Protocols as soon as possible;

Calls on Contracting Parties to provide their full support for the Compliance Committee's work programme for the 2009-2010 biennium;

Encourages Contracting Parties to bring before the Compliance Committee for its consideration any problems of interpretation concerning implementation of the provisions of the Barcelona Convention and its Protocols;

Requests the Compliance Committee, pursuant to paragraph 31 of the Procedures and Mechanisms on Compliance, to submit a report on its activities to the 17th Meeting of the Contracting Parties, including any findings, conclusions or difficulties encountered and any recommendations for amendment of the rules of procedure, in accordance with Article 32.