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Fourth meeting of the Compliance Committee
Athens, Greece, 5 and 6 July 2011

REPORT OF THE FOURTH MEETING OF THE COMPLIANCE COMMITTEE

Introduction

1. The Compliance Committee held its 4th meeting in the offices of the Coordinating Unit in Athens (Greece) on 5 and 6 July 2011.

Participation

2. The following regular and alternate members of the Committee participated in the meeting: Mr. Hawash Shahin, Ms. Daniela Addis, Mr. Nicos Georgiades, Mr. Osman Atilla Arikan, Mr. Louis Vella, Mr. Larbi Sbai, Ms. Selma Cengic and Mr. Novak Cadjenovic.

3. The Coordinating Unit was represented by Ms. Maria Luisa Mejias, Executive Secretary and Coordinator of the Barcelona Convention, and Mr. Didier Guiffault, Legal Adviser.

4. The list of participants is attached as **Annex I** to the present report.

Agenda item 1: Opening of the meeting

5. Ms. Maria Luisa Mejias, Executive Secretary and Coordinator of the Barcelona Convention, opened the meeting and welcomed the new members elected at the 16th Meeting of the Contracting Parties in 2009. She introduced Mr. Didier Guiffault, Doctor of Law, official in the French Ministry responsible for ecology, former Chair of the Compliance Committee, who had joined the MAP Coordinating Unit as Legal Adviser.

6. Ms. Maria Luisa Mejias first of all emphasized that the Compliance Committee was a new body in the Barcelona institutional system, created by Decision IG.17/2 adopted by the 15th Meeting of the Contracting Parties. The procedural phase having been completed, the Committee would have to deal with important work that was entering upon a more substantive stage, particularly as all the Protocols had come into force. She recalled that the Compliance Committee's role was not a punitive one but, on the contrary, it played a facilitating role for the Contracting Parties, helping them to implement the provisions of the Barcelona Convention and its Protocols. Consequently, it was important for the new Committee gradually to establish its credibility vis-à-vis all the Barcelona Convention's actors in a constructive manner. She also stressed that among the Committee's most important tools were the national biennial reports sent in by the Contracting Parties on implementation of the Barcelona Convention and its Protocols. However, few reports had been submitted so far and it had to be asked how the Committee could best help those Contracting Parties at fault to meet their reporting commitments. The Coordinator underlined the importance of the Committee's power of initiative which, through recommendations, could contribute towards improving implementation of the Barcelona Convention and its Protocols, both in relation to general or individual issues. She also laid stress on the importance of relations between the Committee and the Secretariat and, more broadly, on the form of the relationship to be established by the Committee with the Regional Activity Centres (RACs), through the Secretariat. In conclusion, the Coordinator pointed out that there were many important issues on the meeting's agenda and she was certain that, with the legal expertise of the members at the meeting, the Committee would be able to meet the various challenges.

7. Mr. Didier Guiffault, Legal Adviser to the Coordinating Unit, expressed to members of the Committee his satisfaction at being able to place his legal expertise at the service of MAP. He did not see his new role within the Secretariat as a break with his former responsibilities as Chair of the Compliance Committee, but quite the contrary as a continuation because it was true that the ambition shared by the Committee and its Secretariat was to ensure that the Committee occupied its rightful place in the Barcelona

institutional system. He added that, with the adoption of its Rules of Procedure in 2009, the Compliance Committee was henceforward ready to operate and, in close cooperation with the Secretariat and coordinating fully with the Contracting Parties, to make a constructive contribution to the effective implementation of the Barcelona Convention and its Protocols, in a climate of trust. In that connection, he assured the Committee's future Chair that he could count on his whole-hearted support and his experience in order to achieve that objective.

Agenda item 2: Election of the Chair and Vice-Chairs

8. Following consultations conducted by the Secretariat, the Compliance Committee, pursuant to Article 6 of its Rules of Procedure, elected Mr. Larbi Sbai as Chair and Mr. Nicos Georgiades and Mr. Osman Atilla Arikan as Vice-Chairs for a term of two years.

9. Mr. Sbai thanked the members of the Committee for their confidence and expressed the hope that he would be up to the task facing him in view of the Committee's heavy programme of work. He underlined the importance of completing its work in consultation and in a spirit of mutual cooperation and respect. He pointed out that the Committee had a very sensitive task and that its action would require a great deal of tact and diplomacy so he counted on the Secretariat's support for the Committee's work.

10. The Chair introduced the solemn written oath which had to be signed by new members, in accordance with Rule 13 of the Rules of Procedure. Subsequently, the Secretariat distributed the document to the six new members for their signature and they were given copies of the solemn oath signed.

11. The Chair proposed that the Secretariat be appointed rapporteur of the meeting and the Secretariat agreed to the proposal.

Agenda item 3: Adoption of the provisional agenda and organization of work

12. The meeting adopted the agenda and annotated agenda contained in documents UNEP(DEPI)/MED Compliance Committee 4/1 and 4/2, respectively. The agenda is attached as **Annex II** to the present report.

13. One member congratulated the new Chair on his election and thanked the Coordinating Unit for the assistance given to the Committee. This member pointed out that Rule 9 of the Rules of Procedure provided that the provisional agenda and the annotated agenda for each meeting, the draft report of the previous meeting and other working and supporting documents should be sent out at least six weeks prior to the Committee's meeting. She expected that the Rule would be observed for the next meeting, also requesting the Secretariat to circulate the working documents on Word format other than PDF.

14. The same member also asked whether, as the two members nominated by Greece and Croatia no longer sat on the Committee, Rule 10 of the Rules of Procedure would apply. The Secretariat replied in the affirmative, indicating that when a member of the Committee resigned, it was up to the Contracting Parties to appoint a new candidate. The Secretariat referred, in particular, to Rule 10.3 of the Committee's Rules of Procedure, which provided that when a member or alternate member resigned or was otherwise unable to complete the assigned term, the Committee requested the Secretariat to initiate the replacement procedure in order to ensure the election of a new regular or alternate member for the remainder of the term. The Secretariat pointed out that the terms of the two members in question expired in 2011 and it would contact them in order to envisage the measures to be taken.

15. The meeting agreed that there was a quorum of 7 members, the Italian alternate member serving as member ad interim, in place of the Greek member (in accordance with Rule 11.4 of Decision IG 19/1); and the Maltese alternate member serving as member, in place of the Egyptian member (in accordance with Rule 11.3 of Decision IG 19/1).

Agenda item 4: Preparation of a draft leaflet on compliance procedures and mechanisms within the framework of the Barcelona Convention and its Protocols

16. The Secretariat recalled that the principle of publishing a draft leaflet as a guide had been decided at the 2nd meeting of the Compliance Committee in March 2009. The draft had been adopted by the 16th Meeting of the Contracting Parties and formed part of the Committee's work programme for the 2010-2011 biennium. The draft leaflet had two components: firstly, a leaflet as a guide for Contracting Parties; and secondly, a leaflet as a guide for the general public. At that meeting, the Committee had decided to give priority to preparing a leaflet for the Contracting Parties, to be published in Arabic, English and French.

17. The Secretariat emphasized that the purpose of the draft was to make the Committee's activities and modes of functioning more visible, defining its exact role within the Barcelona institutional system, especially in facilitating and assisting implementation of the Barcelona Convention and its Protocols by the Contracting Parties. The draft leaflet before the Committee was an amended version of the original draft. The new draft was more concise, didactic and user-friendly, based on the major axes laid down in the Procedures and mechanisms on compliance.

18. With a view to its adoption by the 17th Meeting of the Contracting Parties, the Secretariat proposed to the Committee that an intersessional working group be asked to incorporate the amendments and additional text needed.

19. The meeting made some amendments to the draft leaflet: One member proposed that a heading be added to paragraph 1 referring to Decisions IG.17/2 and IG.19/1, which defined the statutory bases for the Compliance Committee. In particular, she proposed to refer as a chapeau the incipit of Document 4/6. Moreover, she proposed that the word "limited" in paragraph 3 be replaced by the word "operational". The Chair proposed the word "composite". The meeting decided to adopt the word "operational".

20. One member, supported by two other members, proposed that there should be no reference to differences among countries in paragraph 2 and elsewhere and that the words "in particular developing countries" be deleted. The meeting approved the proposal.

21. One member wondered whether non-governmental organizations (NGOs) were entitled to bring matters to the Committee's attention. The Chair replied that there was no provision for such a procedure in Decision IG.17/2. In that connection, he indicated that MAP worked closely with NGOs, which had an opportunity to express their views at Meetings of the Contracting Parties. In his view, the Decision had to be observed and in the "start-up" phase of implementation of the compliance mechanism, it was not for the time being appropriate for the Committee to be open to other participants.

22. One member wondered whether a leaflet as a guide for the public was either useful or justified as the public did not have the possibility of referring matters to the Committee. If the public did not have such a right, he did not see to whom the leaflet could be addressed. This member recommended that the focus be on the preparation of a leaflet as a guide for the Contracting Parties.

23. One member proposed to the Committee that, in order to be consistent with the words “alternate members”, the word “regular” should be added before the word “members”. The Committee accepted the proposal.

24. The Chair returned to the question of participation by civil society in the compliance mechanism. He reiterated the ways in which issues could be referred to the Committee, namely, self-trigger, Party to Party trigger and, lastly, referral by the Secretariat. The Committee could not ignore those strict rules for referral, although the debate had not been closed and the Committee could return to the question at a later stage.

25. One member pointed out that, if NGOs were allowed to refer matters to the Committee, the latter ran the risk of being overwhelmed by a large number of referrals, which would place a heavy burden of work on members of the Committee.

26. One member considered it likely that the Compliance Committee would never receive a referral from a Contracting Party and that was one of the major weaknesses in evaluating the reporting procedure.

27. One member considered that the preparation of two separate leaflets as guides was a good idea. The leaflet for the public would allow the latter to gain a better understanding of the tools of the Barcelona Convention. This member suggested that the question of participation by the public be the subject of a recommendation by the Committee to the Meeting of the Contracting Parties.

28. The Chair saw no objection because he considered that the Committee was fully empowered to propose amendments to the provisions on Procedures and mechanisms on compliance, in the form of recommendations, particularly as regards the possibility that NGOs refer matters to the Compliance Committee, but it was the responsibility of the Contracting Parties to amend Decision IG.17/2 if necessary.

29. The Secretariat emphasized that the question of referral to the Committee by an NGO remained open. On the basis of paragraphs 32 and 35 of the Procedures and mechanisms, the Committee could recommend such a proposal to the Meeting of Contracting Parties in order to enhance the effectiveness of the compliance mechanism.

30. One member spoke in favour of the principle of two leaflets.

31. In the section entitled “Why refer a matter to the Committee?”, one member proposed that the words “and the difficulties faced cannot be overcome” be added to the 3rd case.

32. One member wondered how the Committee would take a decision when there was no consensus.

33. One member drew attention to a contradiction between paragraph 16 of Decision IG.17/2 and the draft leaflet. He also questioned the reference in paragraph 2 of the section “How does the Committee intervene?” to six members present and voting needed for decisions by the Committee if consensus could not be reached. Paragraph 16 of the Procedures and mechanisms on compliance did not make reference to such a figure. In reply, the Secretariat explained that it only appeared to be a contradiction because the number of six members voting did indeed appear in Rule 21 of Decision IG.19/1 containing the Committee’s Rules of Procedure. Another member, in order to facilitate the work, asked the Secretariat to summarize the characteristics and differences between Decision IG.17/2 on Procedures and mechanisms on compliance and IG.19/1 on Rules of Procedure, adopted in 2008 and 2009, respectively, to be circulated as supporting documents, as well as the

reports of previous Committee's meetings. This member also proposed that the Rules of Procedure for Meetings of the Parties to the Barcelona Convention be placed on the MAP's website.

34. The Chair supported the proposal made by the member to circulate the Decisions and to include a specific paragraph on the role of the Secretariat in the draft leaflet. The Secretariat also supported the proposal, underlining the need to recall the special nature of the power of initiative given to the Secretariat in paragraph 23 of Decision IG.17/2.

35. With regard to paragraph c of the bullet "A transparent and participatory procedure", one member proposed to add the words "in accordance with the Rules of Procedure set out in Decision IG.17/2, and in particular the principle of due process". The Committee accepted the proposal.

36. With regard to the section in the draft leaflet on "What measures can the Committee take?", members of the Committee wondered about the meaning of the words "advice and assistance". One member considered that the Committee should not and could not provide direct assistance. In another member's view, the reference to assistance should be accompanied by examples. A third member proposed alternative wording: "facilitate interpretation of the provisions of the Barcelona Convention and its Protocols". The Secretariat pointed out that the words "provide advice" and "facilitate assistance" appeared in paragraph 32 of the Procedures and mechanisms on compliance. The Chair expressed support to the Secretariat, indicating that the Committee's competence in matters of advice and assistance had been recognized in Decision IG.17/2 and therefore should not be removed.

37. One member considered it advisable not to include everything in the leaflet, otherwise it would become too complex.

38. One member requested the deletion of the reference to developing countries in the last paragraph in the section "What measures can the Meeting of Contracting Parties take?" and elsewhere. The Committee adopted the proposal.

39. The Committee decided to add a new paragraph on the role of the Secretariat as regards the Compliance Committee.

40. The Chair proposed that the Committee set up a subgroup to prepare a first draft of the leaflet. He requested the Secretariat to have the draft leaflet for the Contracting Parties translated into the four official languages of the Barcelona Convention. The two draft leaflets would be sent to members of the Committee as soon as possible and discussed at its next meeting.

Agenda item 5: Proposed minimum measures to achieve compliance with the Barcelona Convention and its Protocols – Consideration of general non-compliance issues

41. The Secretariat introduced working document UNEP(DEPI)MED Compliance Committee 4/4, which related to item (d) of the Committee's work programme. The agenda item was to a large extent linked to agenda item 6, which dealt with the status of compliance by the Contracting Parties with the reporting requirement in Article 26 of the Barcelona Convention. The basic question was to determine what were the objective criteria to enable verification of whether or not a Contracting Party had met its commitments under the Barcelona Convention and its Protocols. The Secretariat mentioned the study conducted by

the consultant Gerhardt Loibl (document UNEP(DEPI)/MED Compliance Committee 3/3). The study was enlightening because it underlined two aspects of compliance: it distinguished between formal compliance, on the one hand, i.e. the identification of the legal measures taken by a Party in its internal legislation for the purpose of implementing a particular provision of the Barcelona Convention or its Protocols, and substantive compliance, on the other, which concerned the practical application of a provision to specific cases.

42. The main conclusion reached in the study was that the Committee should essentially focus in the first instance on formal compliance with provisions. Accordingly, the consultant had identified which articles in the Protocols called for the implementation of specific legislative or administrative measures needed for compliance with those Protocols. At its 3rd meeting, the Committee had approved the study's conclusions, underlining the interest of its operational method.

43. So far, the Secretariat had received eight reports (Morocco, the Syrian Arab Republic, Turkey, Egypt, Bosnia & Herzegovina, Greece, Italy and Croatia). By applying the criterion of formal compliance, in those eight reports the Secretariat had identified a certain number of cases of formal non-compliance by Contracting Parties relating to the implementation of several articles of the Protocols calling for specific legislative or administrative measures in their internal legislation, identified as such by the consultant in his study.

44. The Secretariat considered the situation to be a matter of concern. It was in fact clear that failure by Contracting Parties to take the formal measures needed for implementation in their internal legislation was indisputably a case of non-compliance. The Secretariat stressed that the purpose of the exercise, however, was not to award good or bad points to Contracting Parties but to understand the reasons why some of them had not formally adopted the legislative and administrative measures needed to implement the provisions in the particular Protocols.

45. An examination of the reports gave a preliminary indication of the problems likely to prevent or delay the effective adoption of measures for the formal implementation of articles in Protocols. In its assessment, the Secretariat had noted the following problems: inappropriate administrative procedures, insufficient financial resources and technical capacity, and lastly ill-adapted administrative management.

46. This finding led the Secretariat to make three remarks: firstly, the Contracting Parties mostly referred to the cumulative nature of the various problems. It would thus be interesting if the Committee could obtain a precise idea of the problems and, if possible, list them in order of importance. Secondly, the Secretariat considered that the persistence of the problems raised by the Contracting Parties was problematic in the medium term. Under those circumstances, the content of each of the problems should be carefully examined in order to provide a satisfactory solution. The Secretariat would therefore like the Committee to address that question and, through the Secretariat, ask Contracting Parties to explain in more detail the type of problems encountered. For this purpose, the Secretariat informed the Committee that it was ready to apply paragraph 23 of the Procedures and mechanisms on compliance and approach the Contracting Party concerned, identifying together with it the solutions that could be envisaged to enable the problems to be overcome.

47. The Chair endorsed the Secretariat's remarks. He indicated that in most cases the reason for the absence of a report was lack of resources and not unwillingness on the part of the Contracting Party. He referred, in particular, to insufficient financial resources, which represented a substantial handicap for developing countries. He also pointed out that some technical protocols raised problems of implementation for the Contracting Parties. That was why he considered it to be extremely useful to invite those in charge of the RACs and to ask them to identify the reasons why a particular Protocol was not being implemented, or was not

being properly implemented. The Chair returned to the question of the reporting obligation. For the 2004-2005 biennium, 16 Contracting Parties had submitted their reports, but for the 2008-2009 biennium only 8 Contracting Parties had done so. He said that if the Committee did not receive reports from all the Contracting Parties, he did not see how it could seriously do its work.

48. One member asked which Contracting Parties had submitted their reports. In order to obtain the fullest possible picture of compliance with the reporting obligation, the Chair asked the Secretariat to draw up a table of the status of compliance with the obligation by the Contracting Parties for the previous four bienniums. Another member asked that a copy of the letter sent by the Coordinator on 9 May 2011 be made available to the members of the Committee. The Secretariat circulated the letter. The Chair indicated that, if there was a downward trend in the curve showing compliance with the reporting obligation that needed to be mentioned in the Committee's report to the Meeting of the Contracting Parties. One member supported the suggestion, pointing out that the Committee needed statistics on compliance with the reporting obligation and the table responded positively to the need for information.

49. One member asked whether the Coordinator's letter of 9 May 2011 had been sent in accordance with paragraph 23 of the Procedures and mechanisms. If that was not the case, she asked when the paragraph would be applied. She emphasized in that respect that the Committee should without delay use the tools given to it in order to work on issues of non-compliance. In reply, the Chair said that progress had to be made step by step, gradually. He therefore proposed that the Ministers in charge of the Focal Points be informed, and subsequently the Ministers of Foreign Affairs, in order to make them aware of the need to implement Article 26 of the Barcelona Convention.

50. The same member reiterated that, if a Party did not comply with its reporting obligation, the Secretariat was authorized to send a letter to the Contracting Party concerned in order to enquire into the problems it was encountering.

51. The Secretariat emphasized that Decision IG.19/1 already authorized the Committee to deal with cases of non-compliance and that paragraph 23 of Decision IG.17/2 authorized the Secretariat to approach a Contracting Party at fault in order to identify the problems it was facing and to find solutions to resolve cases of non-compliance. The Secretariat therefore considered that the Committee had the relevant procedural tools to intervene without having to seek the "blessing" of the Meeting of the Contracting Parties beforehand.

52. The Secretariat briefly introduced document UNEP(DEPI)MED Compliance Committee 3/3, which drew a distinction between formal compliance and substantive compliance with the obligations in the Barcelona Convention. The Chair said that the usefulness of the document was not called into question and it could serve as a guide for the Committee's future work. In the light of the conclusions of the study, it was now a question of outlining the next steps. He therefore proposed to identify which technical Protocol could be considered as the "poor relation" compared to the other Protocols, which could serve as examples. He mentioned the Land-based Sources Protocol or the Incineration-Dumping Protocol, which were difficult to implement and could serve as test cases.

53. One member supported the proposal on assistance from the RACs. He suggested that the RACs conduct a comprehensive assessment of the most "mature" Protocols. The Chair recalled that the RACs were an essential component of the Barcelona system and it was in the Committee's interest to call on them and discuss matters with such bodies working in the field. He stressed the need for the Committee to develop a listening mindset, not only vis-à-vis the RACs but also the Contracting Parties and the Secretariat, without

losing sight of the margins of its mandate regarding the questions with which it had to deal. He asked that representatives of the RACs and MED POL be invited to the Committee's next meeting and that, with a view to the meeting, document UNEP(DEPI)/MED Compliance Committee 3/3 be sent to them for their reaction and contribution. The Secretariat said that, in utilizing the expertise of the RACs to identify problems of implementation of certain Protocols, the Committee would be giving itself the practical means to respond to the demands of Contracting Parties.

54. One member, supported by another member, proposed that the RACs concerned make written comments on working document UNEP(DEPI)/MED Compliance Committee 3/3, focusing in particular on identifying weaknesses in the implementation of the Protocols.

55. The Secretariat explained the table showing the status of implementation of the reporting obligations for the past three biennium. In general, it showed a deterioration in compliance with the obligations in as much as there had been 17 reports for the 2004-2005 biennium, 15 for the 2006-2007 biennium, and 8 so far for the 2008-2009 biennium, although for the latter biennium other reports should reach the Secretariat before the Committee's next meeting. The Secretariat said that an analysis of the table highlighted contrasting results: six Contracting Parties had sent in their reports for the three biennium, three Contracting Parties had not sent in any reports, three Contracting Parties had sent one report, and the remainder (nine Contracting Parties) had only submitted two reports for the past three biennium.

56. One member thanked the Secretariat for the table, but asked that its format be changed, adding a fourth column in order to have a comprehensive picture of the status of the reporting obligation for all Contracting Parties. He would also like to see an evaluation of the reporting situation for each Protocol, together with a more detailed analysis of the situation from the formal compliance standpoint.

57. One member asked what was meant by "clear information" given by the Contracting Parties, as stated in document UNEP(DEPI)/MED Compliance Committee 4/5. She also noted that several Contracting Parties had not submitted a report for the 2006-2007 biennium and asked whether the Committee was empowered to seek explanations for the reasons that had led Contracting Parties not to submit a report for that biennium.

58. One member said that many of the obligations in the Protocols had already been transposed into Contracting Parties' national legislation. The Chair pointed out that, in the reporting format, there was a reference to all the Protocols. Regarding the table, he asked the Secretariat to verify whether there was a first 2003-2004 biennium, and if that was the case to include it in the table.

59. The Secretariat said that it was fully in favour of the proposals made to improve the format of the table. He wished to know whether the table would be attached to the report of the Compliance Committee to be submitted to the next Meeting of the Contracting Parties. One member supported by another member, thought it opportune to delay a decision on the question until the Committee's next meeting. The Chair spoke in favour of the suggestion. The first member proposed that the table be attached to the letter to be sent by the Coordinator to Ministers responsible for the Focal Points of the Contracting Parties. The Committee also agreed to that proposal.

60. The Chair asked the Secretariat to prepare a table summarizing the status of signatures and ratifications of the Barcelona Convention and its Protocols by the Contracting Parties. The Secretariat said that it had such a document, updated to 13 May 2011 and circulated it to members of the Committee.

61. One member asked what the Committee intended to do with regard to the Contracting Parties that had not submitted any report. She drew attention to a problem of information in the reporting format, particularly in Parts 4, 5 and 6, which concerned the implementation of legislation, an area that involved many ministries. She suggested that the RACs assist in consideration of ways of improving the quality of reports. In the Chair's view, the main question was effectively the credibility of the reports and the way in which they were prepared. It was necessary to verify whether the provisions in the Barcelona Convention and its Protocols were sufficiently dynamic to incite Contracting Parties to comply with their reporting obligation. He proposed that the Committee take up that issue at its next meeting and, for that purpose, members be given copies of the national reports.

62. Regarding the proposal to send a stronger individual letter to make Contracting Parties at fault aware of their reporting obligation, the Committee considered that the Secretariat should send it, bearing in mind that there are at least three different situations: (i) Parties which have never transmitted reports (1 Party) or that have transmitted only one (3 Parties); (ii) Parties which have not transmitted the Report for the 2008-2009 biennium but which have transmitted the previous Report for the 2006-2007 biennium (9 Parties); (iii) Parties which have transmitted the Report for the 2008-2009 biennium, but in which are identified cases of formal non-compliance by Contracting Parties relating to the implementation of several articles of the Protocols calling for specific legislative or administrative measures in their internal legislation. Consideration should also be paid to the level of completeness of the reports submitted. The Chair requested that the letter make reference to the Committee's work and that copies be given to all the Committee's members. The Secretariat said that it would make the necessary arrangements to send the letter to the Contracting Parties as soon as possible.

Agenda item 6: Status of implementation of Article 26 of the Barcelona Convention and its Protocols during the 2008-2009 biennium

63. The Chair recalled that, pursuant to Decision IG.17/2, the most interesting referrals would be those by one or more Contracting Parties. A second option is referral to the Committee by the Secretariat on the basis of national reports. It was the Secretariat's role to provide the Committee with the elements of information or assessment that had to be examined such as advice or points of view, the Committee remaining independent to decide, in the last resort, on the basis of the national reports. He emphasized that Article 26 had been added to the Barcelona Convention in 1995, and that it only gradually became a habit to report. Nevertheless, the Compliance Committee was an independent creation of the Contracting Parties and they must henceforward assume their responsibilities. It was true that it took some time for habits to change so the Chair called for patience, but perseverance as well.

64. One member wanted to know whether the letter to be sent by the Secretariat to Ministers would be pursuant to paragraph 23 of Decision IG.17/2, which provided for such a notification. She asked whether the Committee envisaged fulfilling the mandate given to it by the 16th Meeting of the Contracting Parties in Decision IG.19/1 to examine cases of non-compliance.

65. The Secretariat recalled the tenor of paragraph 23 of Decision IG.17/2 and indicated that the reminder to be sent by the Secretariat could validly be considered a notification to the Contracting Party within the meaning of the paragraph.

66. One member considered that sending the notification letter immediately was premature and it would be better to await the next meeting of the Committee before deciding

to move further ahead. The Chair said it was necessary to assess the consequences of such a notification before taking any decision and also proposed that the matter be deferred until the Committee's next meeting. He asked that the reminder be sent by the Secretariat the following week and that it mention the Committee's work at the present meeting.

67. The Secretariat welcomed the Committee's decision to postpone sending a notification letter to the Contracting Parties for the time being. Nevertheless, he believed that sending such a letter could not be deferred too long if the serious situation regarding reporting persisted or worsened. It was still important to wait, but when the time came the Secretariat would assume its responsibilities to the full, applying paragraph 23 of the Procedures and mechanisms on compliance appropriately.

Agenda item 7: Preparation of the Compliance Committee's programme of work for the 2012-2013 biennium

68. The Secretariat introduced the draft programme of work for 2012-2013, which continued along the same lines as the previous programme of work for the 2010-2011 biennium. It maintains several activities which constituted the hard core of the Compliance Committee's functions, namely, consideration of any referrals by Contracting Parties; possible matters referred to the Committee by the Secretariat; and, lastly, preparation and adoption of the Committee's report and recommendations. Another component of the programme was the preparation of a draft leaflet as a guide for the public. It was the second stage of the draft leaflet project adopted at the Committee's 2nd meeting and would complement the leaflet intended for the Contracting Parties.

69. The Secretariat referred to a last point concerning the examination of thematic issues, which the Contracting Parties could request the Compliance Committee to undertake pursuant to paragraph 17(c) of the Procedures and mechanisms on compliance. The Secretariat considered that, at the Committee's apprenticeship or running-in stage, it could make constructive use of paragraphs 17(b) and (c) of the Procedures and mechanisms in a dual sense. Firstly, as suggested in its report to the 16th Meeting of the Contracting Parties, the Committee could, on the basis of paragraph 17(b), seek the agreement of the Contracting Parties to undertake enquiries among those Contracting Parties that were facing problems in preparing their reports in order to ensure that they did not place themselves in a situation of formal non-compliance. The Secretariat suggested that, pursuant to the paragraph, the Committee approach the Meeting of the Parties to undertake an in-depth examination of the issue, in coordination with the Parties and the Secretariat. Secondly, the Secretariat referred to paragraph 17(c), which allowed the Committee to obtain the Contracting Parties' agreement to consider any horizontal thematic issue concerning the implementation of the Convention and the Protocols. As an example, the Secretariat suggested that, on the basis of that paragraph, the Committee could submit to the 17th Meeting of the Contracting Parties a proposal to study the establishment of specially protected marine areas in the Mediterranean (SPAMIs).

70. One member said that he could easily accept examining thematic issues, but it appeared a delicate matter to ask the Committee to take the initiative of selecting any thematic issue before the RACs expressed their views. He also pointed out that, of the six items in the draft programme of work, three were theoretical and the Committee should rather focus on examining compliance and reporting procedures.

71. The Chair expressed considerable reticence regarding the idea that the Committee request the Meeting of the Parties to entrust it with dealing with the question of SPAMIs. It was a case of "putting the horse before the cart". Only the Meeting of the Contracting Parties could provide the appropriate follow-up to bullet 5.

72. One member considered that the question of the SPAMIs was only one example among many and she saw no problem in keeping or removing bullet 5 from the draft programme of work. In her view, the essential question was to determine whether the Committee really wanted to refer this matter to the Meeting of the Contracting Parties or not. In the short term, she suggested that bullet 5 be retained and that the question be taken up again at the Committee's next meeting. Another member endorsed the proposal and the Chair asked the Committee to retain bullet 5.

73. The Secretariat considered that the Committee was close to a provisional consensus on keeping bullet 5. It indicated that it would be up to the Committee to take a final decision on the matter. If the Committee decided to maintain the bullet, in its report on its activities it should suggest what might be the issues which the Meeting of the Contracting Parties could ask it to examine.

74. One member, supported by two other members, proposed that all references to the dates of the biennium be deleted from bullets 2 and 4. The Secretariat was not, a priori, contrary to the deletion, but pointed out that it would result in the Committee examining national reports for biennium prior to 2010-2011. This member also proposed replacing the words "... on the problems related to implementing the Convention and its Protocols" by "on possible difficulties". The Committee agreed to the proposals.

Agenda item 8: Any other business

75. The Chair submitted for the members' consideration a proposal to introduce an amendment to the Barcelona Convention in the form of an additional article intended to define the role and functions of the Compliance Committee. In support of the proposal, the Chair pointed out that the introduction of a new article into the Barcelona Convention specifically dealing with the Committee would enable it to be given the place it warranted in the Barcelona institutional system, on the same footing as other bodies such as the Bureau or the Secretariat of the Barcelona Convention.

76. One member, supported by another member, considered the proposal to be an interesting one in principle but that it required in-depth examination. In that connection, he regretted that the matter appeared under "Any other business". Accordingly, he proposed that it be discussed as the main item at the Committee's next meeting.

77. One member queried the justification for such a proposal at a time when the Committee had not yet really started to work and shown its added value.. While expressing a reservation on the proposal, he agreed that it should be considered at the Committee's next meeting. Supported by two other members, this member requested that a relevant written proposal is prepared and circulated before the next meeting.

78. The Secretariat expressed a reservation on the proposal, emphasizing that the Barcelona Convention was a framework agreement that did not refer in detail to such complex mechanisms as the submission of reports (Article 26) of the Convention or compliance (Article 27). On the latter point, the Secretariat recalled that Article 27 specified that the Meeting of the Contracting Parties recommended the necessary steps to bring about full compliance with the Convention and the Protocols. For the Secretariat, Decisions IG.17/2 and IG.19/1 clearly met that requirement by defining all aspects of the structure and methods for the functioning of the Procedures and mechanisms on compliance. The Secretariat therefore recommended that the proposal be studied extremely carefully because, in addition to its symbolic scope, it also appeared to be premature. The

Secretariat nevertheless agreed to prepare a working document for examination at the Committee's next meeting.

79. The Chair noted that members of the Committee accepted the principle of considering the proposal, which would be the subject of in-depth discussion at the next meeting on the basis of the working document.

80. The Chair put another proposal for amendment to the members of the Committee concerning the Committee's Rules of Procedure. He said that he would subsequently transmit his proposals on the content of the amendment to members of the Committee. The Secretariat took note of the proposal and, in that connection, recalled that, pursuant to Rule 32 of the Committee's Rules of Procedure, all amendments to the Rules had to be adopted by the Compliance Committee by consensus and transmitted to the Bureau for examination and adoption, subject to approval by the Meeting of the Contracting Parties. The Secretariat asked whether the proposals to amend the Rules of Procedure would be examined at the Committee's next meeting. The Chair replied in the affirmative.

Agenda item 9: Adoption of conclusions and decisions

81. At the invitation of the Chair, the Secretariat verbally summarized for the Coordinator the conclusions and decisions adopted by the Compliance Committee at the conclusion of its meeting. The Secretariat recalled the conclusions and decisions, which are attached as **Annex III** to the present report. The draft conclusions and decisions would be sent to members of the Committee for examination. The draft report of the meeting would also be sent to members for subsequent final adoption.

82. The Coordinator thanked the members of the Committee for the intensive and constructive discussions that had taken place over the two days. She recalled that the Compliance Committee was an important body in the Barcelona institutional system. She said that compliance by the Contracting Parties with the obligation to submit reports remained a matter of great concern when one saw that so far only one third of the Contracting Parties had sent in their reports for the 2008-2009 biennium. She underlined the strict obligation of Contracting Parties to assume their responsibilities vis-à-vis the Committee as far as the submission of reports was concerned. She welcomed the fact that the Committee had taken the initiative to suggest inviting the Directors of the RACs and MED POL to its next meeting in order to provide concrete responses to the technical problems of implementation encountered by the Contracting Parties in respect of the Protocols. In response to a request from the Chair, she confirmed that the 5th meeting of the Compliance Committee would be held before the 17th Meeting of the Contracting Parties.

Agenda item 10: Closure of the meeting

83. Following the customary exchange of courtesies, the Chair declared the meeting closed at 4.10 p.m.

ANNEX I

LIST OF PARTICIPANTS

Membres titulaires	Membres suppléants
<p>Mr Larbi Sbai Conseiller du Secrétaire Général du Département de la Pêche Maritime Ave. Belhassan El Ouazzani Rabat Morocco Tel : 212 537 688260 Mobile : 212 661 895656 Fax : 212 537 688299 Email : sbai@mpm.gov.ma</p>	<p>Ms Daniela Addis Legal Adviser Ministry of Environment Via C. Colombo 44 00147 Rome Italy Tel: +39 0 .572 23 404 E-mail: Addis.Daniela@minambiente.it</p>
<p>Mr Hawash Shahin Professeur à la Faculté de Droit Département de Droit International Université de Damas Damascus Syrie Tel.:+ 963 11 323 4655 Fax: +963 11 321 3939 Mob.: +963 944 270142 E-mail: hawash@scs-net.org</p>	<p>Mr Louis Vella Malta E-mail: louis.cvella@gmail.com</p>
<p>Mr Nicos Georgiades Environmental Consultant 28 Zannetou 1100 Nicosia Cyprus Tel (mobile): 357-99-479028 Fax: 357-22-780385 E-mail: nicosgeorgiades@cytanet.com.cy</p>	<p>Mr. Novak Cadjenovic Adviser Ministry of Spatial Planning and Environment Rimski trg 46 81000 Podgorica Montenegro Tel: +382 20 228512 Mob: +382 68404527 Fax: +382 20 234131 / 228511 Email: novak.cadjenovic@gov.me</p>
<p>Mr Osman Atilla Arikan Associate Professor Istanbul Technical University Environmental Engineering Department Istanbul Turkey Tel: +90 212 285 3787 Email: arikan@itu.edu.tr</p>	
<p>Ms Selma Cengic Executive Director Hydro-Engineering Institute S. Tomica 1 71000 Sarajevo Bosnia and Herzegovina Tel: + 387-33-207949 Fax: + 387-33-207949 E-mail: selma.cengic@heis.com.ba</p>	

**PNUE/UNITE DE COORDINATION DU PLAN
D'ACTION POUR LA MEDITERRANEE (PAM)
UNEP/COORDINATING UNIT FOR THE
MEDITERRANEAN ACTION PLAN (MAP)**

Ms Maria Luisa Silva Mejias

MAP Coordinator
Tel: +30-210-7273100 (switchboard)
Tel: +30-210-7273126 (direct)
Fax: +30-210-7253196/7
E-mail: @unepmap.gr

Mr Didier Guiffault

Legal Officer
Tel: +30-210-7273142
Fax: +30-210-7253196/7
E-mail: Didier.guiffault@unepmap.gr

P.O. Box 18019
48, Vassileos Konstantinou Av.
116 10 Athens
Greece

ANNEX II

AGENDA

1. Opening of the Meeting
2. Election of the Chair and Vice-Chairs
3. Adoption of the provisional agenda and organization of work
4. Preparation of a draft leaflet on compliance procedures and mechanisms within the framework of the Barcelona Convention and its Protocols
5. Proposed minimum measures to achieve compliance with the Barcelona Convention and its Protocols
6. Status of implementation of Article 26 of the Barcelona Convention during the 2008-2009 biennium
7. Preparation of the programme of work of the Compliance Committee for the 2012-2013 biennium
8. Any other business
9. Adoption of conclusions and decisions
10. Closure of the meeting

ANNEX III

Fourth meeting of the Compliance Committee

(5 and 6 July 2011)

DRAFT CONCLUSIONS AND DECISIONS

1. Organization of the Compliance Committee's work

The 4th Meeting of the Compliance Committee:

- (a) Requests the Secretariat to convene two regular meetings of the Compliance Committee each year.
- (b) According to Decision IG 17/2, para 38, further requests the Coordinating Unit to serve as the Secretariat of the Committee, in particular to serve as Rapporteur of the meetings of the Committee and to prepare draft reports on each of the Compliance Committee's meetings to be adopted by the Committee with eventual amendments.
- (c) According to Decision IG 19/1, Rule 16 and in order to comply with the request of the 15th and 16th Meeting of the Contracting Parties to consider matters of compliance which are recurring in general manner, such as compliance problems with reporting requirements under the Barcelona Convention and its Protocols, through the Secretariat invites, where appropriate, in the Committee's meetings representatives of the Contracting Parties concerned, as well as experts of the MAP components, namely RACs and MED POL experts.
- (d) Further requests the Secretariat to change the name plates for the Compliance Committee's regular and alternate members, replacing the name of the Contracting Party from which the member comes by the name of the member concerned.

2. Draft leaflet as a guide for the Contracting Parties

The Committee considered the draft leaflet prepared as a guide for the Contracting Parties presented by the Secretariat and agreed on the following changes.

- (a) In the introductory paragraph in the bullet "Why a Compliance Committee?", include a presentation of the decisions establishing the Compliance Committee (Decision IG.17/2 on Procedures and mechanisms on compliance and Decision IG.19/1 on the Rules of Procedure), following which the Compliance Committee became an official subsidiary body of the Barcelona Convention and its Protocols and of the Meeting of Contracting Parties. Replace the phrase "First and foremost, to assist the Contracting Parties and to help them to implement the provisions in the Barcelona Convention and its Protocols. The Compliance Committee plays a facilitating role" by the following phrase "The Compliance Committee provides advice and assistance to

Contracting Parties to implement and apply the provisions of the Barcelona Convention and its Protocols”..

- (b) In subparagraph (c) in the bullet “Main features of the compliance mechanism”, delete the words “particularly developing countries”. In the bullet “What measures can the Committee take?” delete the words “particularly if it is a developing country” in the first paragraph. In the bullet “What measures can the meetings of the Contracting Parties take?” delete the words “particularly in the case of a developing country” in the last paragraph.
- (c) In the bullet “Who are the members of the Compliance Committee?”, replace the word “limited” by the word “operational” and add the word “regular” before members.
- (d) In the bullet “Why refer a matter to the Committee?”, in the 3rd case specify that the Secretariat can only refer a matter to the Committee if the difficulty faced by the Contracting Party “cannot be overcome”.
- (e) Only applies to the French text.
- (f) In paragraph c of the bullet “A transparent and participatory procedure”, add the words “in accordance with the Rules of Procedure set out in Decision IG.17/2, and in particular the principle of due process”.
- (g) Add a new paragraph on the role of the Secretariat of the Compliance Committee.
- (h) On the web site on compliance, add the Rules of Procedure for Meetings and Conferences of the Contracting Parties to the Barcelona Convention and its Protocols to the section on general information.
- (i) Publish the leaflet in the four official languages of the Barcelona Convention.

The meeting agreed to set up a drafting subcommittee (Ms Daniella Addis, Mr Nicos Georgiadis, Mr Louis Vella) to finalize the draft leaflet as a guide for the Contracting Parties in time for its next meeting, and to prepare a draft leaflet as a guide for the public.

3. Draft leaflet as a guide for the public

The meeting agreed to set up an intersessional working group (Ms Daniella Addis, Mr Nicos Georgiadis, Mr Louis Vella) to prepare a draft leaflet as a guide for the public, to be considered at the 5th meeting of the Compliance Committee.

4. Consideration of general non-compliance issues. Evaluation of minimum measures

In view of the small number of reports (8) received by the Secretariat from Contracting Parties pursuant to Article 26 of the Barcelona Convention to this date, and considering that no case concerning any Party had yet been brought in front of the Committee which had therefore not yet dealt with any case of noncompliance, the Compliance Committee was

unable to address the general question of compliance in relation to reports for the 2008-2009 biennium.

On the basis of the conclusions in document UNEP(DEPI)MED Compliance Committee 3/3 entitled "Proposal on minimum measures to achieve compliance with the Barcelona Convention and its Protocols", the Committee did, however, agree on the following:

- (a) To request the Secretariat to draw up a table of the status of implementation of the reporting obligations pursuant to Article 26 of the Barcelona Convention by all Contracting Parties, and to attach this table to the reminder letter mentioned below.
- (b) To request the Secretariat to send individual letters to each of the Ministers to which the Focal Point of the Contracting Party that has not yet sent in its report for the 2008-2009 biennium is answerable, to provide the Committee with a copy, and subsequently to bring the matter to the attention of the Ministries of Foreign Affairs of the Contracting Parties concerned, bearing in mind that there are at least three different situations: (i) Parties which have never transmitted reports (1 Party) or that have transmitted only one (3 Parties); (ii) Parties which have not transmitted the Report for the 2008-2009 biennium but which have transmitted the previous Report for the 2006-2007 biennium (9 Parties); (iii) Parties which have transmitted the Report for the 2008-2009 biennium, but in which are identified cases of formal non-compliance by Contracting Parties relating to the implementation of several articles of the Protocols calling for specific legislative or administrative measures in their internal legislation. Consideration should also be paid to the level of completeness of the reports submitted.
- (c) To suggest to the Secretariat to invite a representative of the Regional Activity Centres (RACs) and of MED POL to the Committee's next meeting to present the problems encountered by Contracting Parties in the practical implementation of the Convention's Protocols.
- (d) To request the Secretariat to send to the representatives of the RACs and MED POL working document UNEP(DEPI)MED Compliance Committee 3/3 to be revised and developed for the above-mentioned meeting with the Committee.
- (e) To request the Secretariat to transmit to the members of the Committee copies of the national reports and to prepare a summary of all the reports received, including their strengths and weaknesses, for consideration at the 5th meeting of the Compliance Committee.
- (f) To request the Secretariat, according to Decision IG 19/1, Rule 9, to circulate the provisional agenda and the annotated agenda for each meeting, the draft report of the previous meeting and other working and supporting documents, on Word format in addition to PDF, at least six weeks before the opening of the meeting
- (g) To request the Secretariat to use all possible means to make Contracting Parties aware of the need to submit their reports within the prescribed time limit.

- (h) To request that the 5th meeting of the Compliance Committee be held before the 17th Meeting of the Contracting Parties.

5. Work programme of the Compliance Committee for the 2012-2013 biennium

The Compliance Committee agreed to pursue the following activities during the 2012-2013 biennium:

- (a) Consideration of any matters referred to the Committee by the Contracting Parties in accordance with paragraphs 18 and 19 of the Procedures and mechanisms on compliance.
- (b) Consideration of matters referred to the Committee by the Secretariat, in accordance with paragraph 23 of the Procedures and mechanisms on compliance, regarding possible difficulties in implementing the Barcelona Convention and its Protocols;
- (c) Preparation of a draft leaflet as a guide for the public in Arabic, English and French;
- (d) Examination of general non-compliance issues in the implementation of the procedures and mechanisms on compliance based on the reports submitted by the Contracting Parties;
- (e) Examination of thematic issues requested by the Meeting of Contracting Parties;
- (f) Preparation and adoption of the Compliance Committee's report and recommendations for transmission to the 17th Meeting of the Contracting Parties.

The meeting recommended that:

- (g) The above work programme, together with the budget needed for its implementation, be submitted to the next meeting of MAP Focal Points for adoption.

6. Preparation of the report to the 17th Meeting of the Contracting Parties on the activities of the Compliance Committee

- (a) The meeting decided that the Committee should hold a second meeting before the 17th Meeting of the Contracting Parties, at a date to be proposed by the Secretariat, so that it can formally adopt its report before the next Meeting of the Contracting Parties.
- (b) The report by the Chair of the Compliance Committee will be drawn up sufficiently in advance in the four official languages of the Barcelona Convention, under the guidance of the Chair and in close consultation with the regular and alternate members of the Compliance Committee.
- (c) The report on the Compliance Committee's activities relating to the measures recommended, pursuant to Section VIII, of the Procedures and mechanisms

on compliance, will be submitted directly to the 17th Meeting of the Contracting Parties.

7. Other matters

- (a) The meeting discussed a proposal from the Chair concerning an amendment to the Barcelona Convention introducing a new article on the role and functioning of the Compliance Committee. The meeting requested the Secretariat to prepare a working document on this proposal for consideration at the next meeting of the Compliance Committee.
- (b) The meeting discussed whether or not amendments to the Compliance Committee's Rules of Procedure were needed. Proposals to this effect will be made by the Committee's Chair and considered at the Committee's next meeting.