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Fifth meeting of the Compliance Committee

Athens, Greece, 10-11 November 2011

DRAFT COMPLIANCE COMMITTEE ACTIVITY REPORT FOR THE SEVENTEENTH MEETING OF THE CONTRACTING PARTIES

UNEP/MAP
Athens, 2011

I. Introduction

1. In decision IG 17/2, the 15th meeting of the Contracting Parties to the Barcelona Convention and its Protocols, held at Almeria in January 2008, approved the Procedures and Mechanisms aiming to assist the Contracting Parties in complying with their obligations under the Barcelona Convention and its Protocols. The Contracting Parties' meeting, by the same decision, resolved to create a Compliance Committee and decided on its membership. The Compliance Committee's Rules of Procedure, which specify the procedures it follows, were approved in Decision IG 19/ 1 of the 16th meeting of the Contracting Parties in 2009. This meeting assigned the following goals to the Committee for the 2010-2011 biennium: evaluate any appeals by the Contracting Parties; analyze broader non-compliance issues brought up by reports submitted by the Contracting Parties during the 2006-2007 and 2008-2009 terms; prepare the draft of a guide leaflet, in English, Arabic and French, for the use of the Contracting Parties and the general public on the subject of the Committee's Compliance Procedures and Mechanisms, and finally, submit to the meeting of the Contracting Parties a report on its activity, including facts noted, conclusions drawn and difficulties encountered, as well as any suggestions for changes to the Rules of Procedure, pursuant to Article 32 of the same.

1.1 Committee Meetings

2. The Compliance Committee is composed of seven full members and seven alternate members, elected by the Meeting of the Contracting 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. Since the 16th meeting of the Contracting Parties in 2009, the Committee has met twice: on 5-6 July, 2011, and on 10-11 November, 2011. The Compliance Committee requests that two meetings a year be organized by the Secretariat so that the Committee can successfully complete its Programme of Work for the 2012-2013 biennium. It also stresses the need that the minimum procedural quorum of seven full members and seven alternate members be present at each of its meeting. It is important to ensure that this quorum be met to avoid the Committee's work being quite simply brought to a standstill. The Committee reiterates, in this context, that only persons elected by the Contracting Parties' meeting as full or alternate members are to take part in these meetings; any other parties present, such as observers, cannot be counted toward the meetings' quorum.

1.2 Activities of the Committee

4. The Committee places great value on the Contracting Parties' full understanding that the compliance mechanism, as emphasized in paragraph 1 of the Compliance Procedures and Mechanisms, specifically assigns a facilitating role to the Committee. Indeed, it is crucial that the Contracting Parties see and understand that the Compliance Committee's function is exclusively to provide advice and assistance to Concerned Parties. This understanding fosters a necessary and constructive climate of trust between the Committee and the Contracting Parties. The principal task assigned to the Committee is to help with the implementation of, 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 is expected to develop close and constructive cooperation among all Contracting Parties and, duly, to provide them with all necessary advice and assistance in overcoming obstacles hindering the application of the provisions of the Barcelona Convention and its Protocols.

1.3 Referrals to the Compliance Committee

5. The Compliance Committee is authorized to intervene in three situations. Firstly, it can be called upon to address an appeal made by a Contracting Party when said Contracting Party realizes that despite its best efforts, the Contracting Party will be unable to completely fulfill its obligations under the Barcelona Convention and its Protocols. Secondly, the Committee can intervene at the request of one

Contracting Party which is affected by another Contracting Party's non-compliance. Finally, the Committee can intervene at the Secretariat's request to address potential difficulties that could be encountered by a Contracting Party in meeting its obligations under the Barcelona Convention and its Protocols. In addition, the Committee can be called upon to provide its opinion on broader compliance-related matters, issues regarding the application of the Convention and its Protocols, or any other subject requested by the Contracting Parties.

2. Compliance Committee's activity during the 2010-2011 biennium

6. In decision IG 19/ 1, the 16th meeting of the Contracting Parties requested that the Compliance Committee prepare a report on its activity to be presented at the seventeenth meeting, containing its findings and conclusions. During the Biennium that is drawing to a close, the Committee has addressed the following issues:

2.1 Appeals referred to the Committee by the Contracting Parties due to cases of non-compliance

7. No such non-compliance cases were submitted to the Compliance Committee. The Committee, however, wishes to reiterate that the evaluation of the national reports submitted by the Contracting Parties under Article 26 of the Barcelona Convention constitutes an essential component in monitoring the application of the Convention and its Protocols by the Contracting Parties, and that failing to comply with the reporting obligation would place a Contracting Party in a situation of non-compliance.

2.2 Questions submitted to the Compliance Committee by the Secretariat

8. No questions were submitted by the Secretariat to the Compliance Committee pursuant to paragraph 23 of the Compliance Procedures and Mechanisms, regarding difficulties encountered by the Contracting Parties in meeting their obligations under the Barcelona Convention and its procedures, based on the 2008-2009 reports. The Committee wishes to stress that the reporting form represents an irreplaceable method that allows the Secretariat to ensure that the Contracting Parties have incorporated the substance of the Barcelona Convention and its Protocols into their national legislation, and/or followed its directives. It is based on these reports that the Secretariat can identify any problems posed by the application of each disposition of the Convention and its Protocols. In a constructive dialogue, the Secretariat and the concerned Contracting Parties find the ways and means to resolve these difficulties. This effort is closely connected to the Compliance Committee's role as a facilitator, which is to help the Parties meet their commitments and obligations under the Barcelona Convention and its Protocols, and to succeed in complying to it.

2.3 Analysis of general non-compliance questions

9. While there is no need to wait until the next biennial term for the submission of any cases of non-compliance by a Contracting Party, the Committee reiterates its proposal that paragraph 17, section b) of the Procedures and Mechanisms take effect immediately. Section b) of this paragraph allows the Committee, at the request of the meeting of Contracting Parties, to take on general questions relating compliance, such as consistent non-compliance problems, including issues pertaining to report submission, based on the reports mentioned in article 26 of the Convention, and any other report submitted by the Contracting Parties. The Committee, following a general review of non-compliance questions, could offer recommendations and proposals to facilitate the application of, and compliance with, the Barcelona Convention and its Protocols. By becoming involved in the process of offering an analysis and feedback starting now, the Committee will be able to provide guidance which the Contracting Parties will be the first to benefit from.

2.4 Examination of the national reports submitted by the Contracting Parties following article 26 of the Barcelona Convention

10. Following article 26 of the Barcelona Convention, the Contracting Parties are responsible for reporting to the Secretariat the steps that they took in applying the Convention or its Protocols, whether legal, administrative, or otherwise. During its fourth meeting, the Committee received an evaluation, conducted by the Secretariat, of the national reports submitted for biennial term 2008-2009, which underlined certain deficiencies in the reporting process for which the Contracting Parties are responsible. As of 19 September, 2011, only 12 Contracting Parties out of 22 had submitted their national report to the Secretariat. It is a matter of extreme concern that certain Contracting Parties did not submit their report for Biennium 2008-2009 on the application of the Convention and its Protocols. The Committee considers this situation unsatisfactory, and reiterates that the Contracting Parties' complying with this obligation is a basic requirement for the credibility and effectiveness of the Compliance Mechanism. The committee also forcefully emphasized that a repeated neglect of this obligation could place the Party at fault in a state of non-compliance.

11. The Committee considers that a diligent and full exercise of its own functions is directly tied to the Contracting Parties' complying with their obligation to submit their reports to the Secretariat. For this reason, it stresses the primary importance, for all the Contracting Parties, of meeting their obligation to report in a timely fashion. Complying with this obligation, provided for in article 26 of the Convention, is a basic requirement for the credibility and effectiveness of the Compliance Mechanism established by Decision IG 17/2.

12. Another concern of the Committee is directly tied to the wide disparities between the submitted reports, which relate to which reporting format was used to submit the report, but are also due to differences in the nature, quantity and presentation of the submitted data. The Committee's aim is that the reports be documented in a consistent way, especially in their technical sections, so that the Committee can undertake a relevant evaluation of the obligations under the Barcelona Convention and its Protocols.

13. However, some positive developments should be emphasized: the Committee notes that more reports were submitted for Biennium 2008-2009 using the new standardized reporting format. Likewise, the Contracting Parties' increasing use of the on-line reporting system has made possible a comparative approach to the information provided, as well as a quantitative analysis of the data.

14. Most of the reports list recurring difficulties, mainly tied to gaps in legal or administrative frameworks, limited technical and financial capacities, insufficient human resources, and operating deficits, as well as a lack of cooperation between sectors. All these constraints hinder the completion of the reporting process on certain Protocols. The Secretariat is open to seeking the means to overcome these difficulties alongside any Contracting Party that requests it, so that the reporting obligation can be carried out under favourable conditions. The Compliance Committee, in view of this, encourages the Contracting Parties, on encountering difficulties in preparing their report, to contact the Secretariat, which can provide any necessary technical help.

15. Several initiatives to improve the reporting requirement had been proposed by the Secretariat during the third meeting of the Compliance Committee. These proposals remain relevant and, naturally, enjoy the full support of the Compliance Committee. They suggest drawing up guidelines to help the Parties improve the relevance of the data supporting the report, and identifying certain difficulties arising from a misunderstanding of the questions asked. In addition, the proposals seek to bring the reporting system more in line with other comparable reporting systems already in place. An ongoing conversation with the Contracting Parties to identify difficulties and find solutions would also contribute to making the reporting obligation less onerous.

2.5 Preparation of a guide leaflet on the compliance procedures and mechanisms

16. The initial proposal to publish a guide leaflet on the compliance procedures and mechanisms

was decided by the second meeting of the Compliance Committee in March 2009. This proposal was approved by the Fourteenth Meeting of the Contracting Parties and is one of the tasks assigned to the Committee during the 2010-2011 Biennium. This draft guide leaflet is twofold: it comprises both a guide leaflet written with the Contracting Parties in mind, and a guide leaflet aimed at the general public. These two leaflet drafts were considered and approved during the fifth meeting of the Committee. They are to be published in French, English, and Arabic. These two guide leaflets aim to improve the visibility of the Committee's tasks and procedures and to outline its precise role in the Barcelona Convention's institutional system, especially its responsibility in assisting the Contracting Parties with the application of the Barcelona Convention and its Protocols. These two draft guide leaflets are submitted, as informational documents, for the consideration of the 18th meeting of Contracting Parties.

17. The Compliance Committee's Programme of Work is submitted to the eighteenth meeting of Contracting Parties for their approval.

2.6 Preparation and approval of the Compliance Committee's draft report

18. Pursuant to paragraph 31 of the Compliance Procedures and Mechanisms for the Barcelona Convention and its Protocols, the Compliance Committee is responsible for editing a report on its activity and submitting it to the Contracting Parties' meeting for examination and approval. During its fifth meeting, the Committee examined the draft activity report prepared by the Committee President for the 2010-2011 biennial term. The findings, measures and recommendations were approved as a whole, by consensus, during the fifth meeting.

19. This Compliance Committee report is hereby submitted to the 17th meeting of the Contracting Parties for its consideration.

3. Proposed changes to the IG Decisions. 17/2 and IG. 19/1

3.1 Proposed change to Rule 6 of Decision IG.17/1 concerning the Compliance procedures and mechanisms regarding repeated terms served by members of the Compliance Committee

20. Rule 5 of the Compliance procedures and mechanisms approved by the IG Decision 17/ 2 specifies that at each subsequent meeting, the Contracting Parties are to elect new members and auxiliary members, for a full term, to replace the members whose terms are ending. This full term is set to four years. Rule 6 of these Procedures and Mechanisms introduces an important restriction regarding the policies for renewing the terms of Committee members, by asserting that full and auxiliary members cannot serve on the Committee for two consecutive terms. This clearly implies that a Committee member whose term is expiring is not eligible for a second consecutive term; he or she must wait for a biennium to pass before applying to serve again.

21. Over the lifetime of the Compliance Procedures and Mechanisms, it has become apparent that this ban on double consecutive terms is overly restrictive, and hampers the proper carrying out of the Committee's work. For this reason, the President of the Compliance Committee supports the proposed amendment to Rule 6 of the Compliance Procedures and Mechanisms, and has resolved to submit it to the members of the Committee at its next meeting for their consideration.

22. While emphasizing the need for all 22 Contracting Parties to be able to attend Compliance Committee meetings, it is appropriate to point out that the current roster of 14 members (7 full members and 7 auxiliary members) does allow for 14 Contracting Parties to be "represented" at the Committee. The seventeenth Meeting of the Contracting Parties will be tasked with the partial restaffing of the Compliance Committee, pursuant to decision IG 17/2. The committee's current roster is distributed as follows:

- **Group 1 - Contracting Parties of the South and East of the Mediterranean**
 - 3 full members (Egypt, Syria and Morocco)
 - 3 auxiliary members (Libya, Tunisia, Algeria)
- **Group 2 - Contracting Parties from the European Union**
 - 2 full members (Greece, Cyprus)
 - 2 auxiliary members (Italy, Malta)
- **Other Contracting Parties**
 - 2 full members (Bosnia-Herzegovina, Turkey)
 - 2 auxiliary members (Croatia, Montenegro)

23. This roster takes into account the 2009 election of 3 full members to a 4-year term by the 16th Meeting of the Contracting Parties (Morocco, Cyprus, and Bosnia-Herzegovina) as well as 3 auxiliary members, also to a 4-year term (Tunisia, Malta, and Montenegro). Terms for all the other full and auxiliary members of the Compliance Committee elected in 2007 by the 15th Meeting of Contracting Parties to a 4-year term will expire at the 17th meeting of the Contracting Parties. This is the case for 4 full members (Egypt, Syria, Greece, and Turkey) and 3 auxiliary members (Libya, Italy, and Croatia.)

24. Pursuant to Decision IG17/2, the 17th Meeting of Contracting Parties must therefore elect eight new members, (four full members and four auxiliary members) whose term will expire at the time of the 19th Meeting of Contracting Parties. This election must take into account that, pursuant to Decision IG 17/2, every regional group is entitled in turn to two additional members (one full and one auxiliary). Therefore, as 4 years have elapsed, Regional Group I will once more be assigned 4 members, while Regional Group II will go from 4 to 6 members.

25. Furthermore, it has become clear that the pool of legal and technical experts qualified to sit on the Committee is not as extensive as one might expect. In preparation for the replacement of eight Committee members during the 17th meeting of the Contracting Parties, the Secretariat contacted the MAP Focal Points for the three aforementioned Regional Groups, as of 30 June 2011, requesting them to begin the consultations necessary to designate the eight candidates to be proposed at the 17th meeting of the Contracting Parties. However, as of now, the Secretariat has only received a single candidacy proposal from a Contracting Party, although a second Contracting Party made it known that it was considering proposing a candidate. This situation demonstrates the very real difficulties certain Contracting Parties are encountering in attempting to find an expert qualified to be a Committee member. In this context, the fact that an outgoing Committee member is prevented from reapplying to a second consecutive term, for purely procedural reasons, constitutes an obvious hindrance to the Committee, which regardless only meets once a year under normal circumstances.

26. Furthermore, the Compliance Committee notes that the restriction in Rule 6 of the Compliance Procedures and Mechanisms is entirely without parallel among other Compliance Mechanisms currently in place. For instance, none of the renewal policies for the Aarhus convention, the Espoo convention, the Cartagena Biosecurity Protocol or the Tokyo Protocol contain a similar restriction: all allow their respective Compliance Committee members to serve two consecutive terms.

27. Finally, the Compliance Committee points out that the Legal and Technical Group of Experts on the negotiation of Compliance procedures and mechanisms, in its meeting of 23-25 May, 2007 in Istanbul, Turkey, condoned the possibility for members to seek a second consecutive term. The Group of Experts had found that allowing for two consecutive terms represented a reasonable compromise between ensuring enough continuity in the operations of the Committee and promoting a regular turnover in its membership. The Group of Experts, in its draft, had advocated instead a policy of allowing outgoing members to be re-elected for a second consecutive term, after which they would have to wait four years before being considered for re-election again. The new suggested policy text therefore allowed for legal or technical experts to be re-elected to the Committee after at least a four-year period, thus enabling the Committee to benefit from their expertise again.

28. The Compliance Committee points out that Rule 35 of the Compliance Procedures and Mechanisms allows the Contracting Parties meeting to regularly re-evaluate the implementation of the Compliance mechanism and to take any appropriate actions as required. Based on this article, the

Compliance Committee proposes that an addition be made to Rule 6 of the draft decision for the Compliance Committee, with a view towards submitting this amendment at the seventeenth Meeting of Contracting parties for their consideration; and wishes to provide notice to the Bureau of the opportunity of amending Rule 6 to remove the ban on double consecutive terms.

29. The Compliance Committee wishes to point out to the Bureau that such an amendment would not have to infringe on the policy regarding fair geographic distribution, or that concerning the rotation of members within the Committee. Taking this into account, it is appropriate that Contracting Parties be able to conduct the consultations needed so that members who so desire are able to serve out a second term, while at the same time allowing new members to join the Committee.

3.2 *Proposed amendment to Decision IG. 19/1 concerning the Rules of Procedure for the Compliance Committee*

30. In Decision IG. 19/ 1, the 16th meeting of the Contracting Parties has approved the Rules of Procedure for the Compliance Committee. The approval of these Rules of Procedure complete the institutional procedure set out in Decision IG. 17/ 2 approved by the fifteenth meeting of the Contracting Parties of the Barcelona Convention and its Protocols.

31. The Rules of Procedure aim to specify the procedural policies for the Compliance committee along guidelines laid out in Decision IG. 17/2 mentioned above. The Rules of Procedure specify, respectively: the Committee's agenda; the status of full and auxiliary members of the Committee; the sharing and evaluation of information; the general public's access to documents and information; the conduct of the Committee's tasks; voting procedures; and general policies concerning referrals to the Committee.

32. At the Fourth meeting of the Compliance Committee, held in Athens on 5-6 July, 2011, the Committee President announced his intention to amend the Rules of Procedure. These proposed amendments will be submitted at the next Compliance Committee meeting on 10-11 November 2011, for consideration.

33. These proposed amendments to the Rules of Procedure consist largely of formal wording changes which should notably improve the French version of the Rules of Procedure. However, other proposed amendments involve actual changes to the functioning policies of the Committee; of particular note is a proposed change in the six week deadline for the dispatch of working documents to the Committee, which would restrict said deadline to a month. before the Committee is to meet.

34. Following article 32 of the Committee's Rules of Procedure, the Secretariat has submitted these proposed amendments to the Compliance Committee's seventeenth meeting for the Bureau's consideration.

3.3 *Proposed programme of work for the Compliance Committee for the 2012-2013 biennium*

35. In its fourth meeting, the Compliance Committee decided on a programme of work that follows naturally from its previous 2010-2011 biennium programme of work. Namely, it revisits several issues that form the kernel of the Compliance Committee's role, to wit: the examination of possible questions referred to it by the Secretariat, the consideration of broad questions, pursuant to Paragraph 17.c of the Compliance Procedures and Mechanisms, and the preparation and approval of the Committee's report and recommendations.

36. The programme of work for Biennium 2012-2013, then, comprises the following :

- a. Evaluating any issues referred to the Committee by the Contracting Parties, pursuant to Paragraphs 18 and 19 of the Compliance Procedures and Mechanisms;
- b. Evaluating any issues submitted by the Secretariat, pursuant to Paragraph 23 of the

- Compliance Procedures and Mechanisms, relating to possible difficulties in the application of the Barcelona Convention and its Protocols;
- c. Analysis of general non-compliance issues, following the Compliance Procedures and Mechanisms, brought up by the Contracting Parties' national reports;
 - d. Analysis of any thematic issues requested by the Meeting of the Contracting Parties, pursuant to Paragraph 17 c of the Compliance Procedures and Mechanisms;
 - e. Preparation and approval of the Committee's report and recommendations for submission to the 18th meeting of the Contracting Parties.

4. Partial renewal of the Compliance Committee's membership.

37. The 17th meeting of Contracting Parties is tasked with the partial renewal of the Compliance Committee's membership, following Decision IG 17/2 approved by the 15th meeting of the Contracting Parties.

38. The current make-up of the Compliance Committee takes into account the 2009 election by the 16th Meeting of the Contracting Parties of three full members (Morocco, Cyprus and Bosnia-Herzegovina) to a four-year term, as well as 3 auxiliary members (Tunisia, Malta, and Montenegro), also for a four-year term. Terms for all the other full and auxiliary members of the Compliance Committee elected in 2007 by the 15th meeting of the Contracting Parties to a 4-year term will expire at the seventeenth meeting of the Contracting Parties. This is the case for 4 full members (Egypt, Syria, Greece, and Turkey) and 3 auxiliary members (Libya, Italy, and Croatia).

39. Pursuant to Decision IG17/2, the 17th Meeting of Contracting Parties must therefore elect eight new members, (four full members and four auxiliary members) whose term will expire at the time of the 19th Meeting of Contracting Parties in 2015.

40. Following the deliberations of each of the three regional groups, the following eight candidates for Compliance Committee membership are proposed to be voted on at the 17th meeting of Contracting Parties:

Group 1 – Contracting Parties of the South and East of the Mediterranean

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Group 2 – Contracting Parties of the European Union:

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Group 3 – Other Contracting Parties

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5. Proposed draft decision

41. The 17th meeting of Contracting Parties could choose to approve a draft decision pertaining to the Compliance Committee's programme of work for the upcoming 2012-2013 biennium and the partial renewal of its membership, and worded as follows:

Draft Decision IG. 20/1

pertaining to the Compliance Committee: amendment to the Compliance Procedures and Amendments, as well as to the Rules of Procedure, programme of work for Biennium 2012-2013 and partial renewal of membership

The 17th 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 in 2008, by which they approved the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols, hereinafter “the Compliance Procedures and Mechanisms”, and particularly paragraphs 4, 5, 6, 7 and 8 of the aforementioned,

Also recalling decision IG 19/ 1 of the 16th meeting of the Contracting Parties, by which they approved the Rules of Procedure for the Compliance Committee,

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, for the 2010-2011 biennium,

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 under the Barcelona Convention and its Protocols,

Noting with satisfaction the Compliance Committee's implementation, during its two meetings, of its programme of work for the period covered by the report,

Having considered the proposed programme of work for the Compliance Committee covering the 2012-2013 biennium,

Strongly emphasizing the importance for Contracting Parties to comply with their obligations regarding the timely submission of reports on the measures taken to implement the Barcelona Convention and its Protocols during the period 2010-2011, as well as decisions by the Meeting of the Contracting Parties, and for this purpose to use the new standardized reporting format now available online,

Noting the Compliance Committee's decision, favourably received by the Bureau of the Contracting Parties, to propose a change in Rule 6 of the Compliance Procedures and Mechanisms, approved in Decision IG.17/2, in order to allow Committee members to seek a second consecutive term on the Committee,

Further noting the Compliance Committee's decision to propose changes to its Rules of Procedure, approved in Decision IG, 19/ 2,

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;

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;

Requests MEDPOL and other Regional Activity Centres to cooperate with the Compliance Committee by providing it with all relevant information to assist it in carrying out its activities,

Requests the Compliance Committee, pursuant to paragraph 17, section b), of the Compliance Procedures and Mechanisms, to examine repeated non-compliance problems in general;

Notes with satisfaction the two guide leaflets on the subject of Compliance Procedures and Mechanisms approved in Decision IG, which are included in document UNEP (DEPI) MED WG 363/ Inf 16, created by the Compliance committee, and aimed respectively at the Contracting Parties and at the public at large; 17/2,

Requests the Compliance Committee, pursuant to paragraph 31 of the Procedures and Mechanisms on Compliance, to submit a report on its activities to the 18th Meeting of the Contracting Parties, making particular note of any difficulties encountered in the application of the Barcelona Convention and its Protocols;

Elects to the Compliance Committee the new full and auxiliary members listed in Annex I of this decision, pursuant to Decision IG 17/2 regarding the Compliance Procedures and Mechanisms for the Barcelona Convention and its Protocols;

Approves the Compliance Committee's proposal to modify Rule 6 of Decision IG; 17/ 2 on the subject of the Compliance Procedures and Mechanism, the wording of which is set out in Annex II to this decision;

Approves the proposed amendments agreed upon by the Compliance Committee to its Rules of Procedure, the wording of which is set out in Annex III to this decision;

Approves the programme of work for the Compliance Committee for biennium 2012-2013, which is set out in Annex IV to this decision.

Annex I

**New full and auxiliary members of the Compliance Committee elected
by the 17th Meeting of the Contracting Parties**

Group I – Contracting Parties of the South and East of the Mediterranean

- Mr./Ms., elected as full member for a term of four years
- Mr./Ms., elected as auxiliary member for a term of four years

Group II - Contracting Parties which are European Union members

- Mr./Ms., elected as full member for a term of four years
- Mr./Ms., elected as full member for a term of four years
- Mr./Ms., elected as auxiliary member for a term of four years
- Mr./Ms., elected as auxiliary member for a term of four years

Group III – Other Contracting Parties

- Mr./Ms., elected as full member for a term of four years
- Mr./Ms., elected as auxiliary member for a term of four years

Annex II

Decision IG 17/2 regarding Compliance Procedures and Mechanisms for the Barcelona Convention and its Protocols.

I. Compliance Committee

6. Full and auxiliary members may not serve on the Committee for more than two consecutive terms.

ANNEX III

DRAFT RULES OF PROCEDURE FOR THE COMPLIANCE COMMITTEE UNDER THE BARCELONA CONVENTION AND ITS RELATED PROTOCOLS

PURPOSES

RULE 1

Within the framework of the implementation of the procedures and mechanisms on compliance under the Barcelona Convention and its Protocols, hereinafter called "compliance procedures and mechanisms", contained in the annex to decision IG 17/2 on compliance procedures and mechanisms, hereinafter called decision IG 17/2, as adopted by the 15th Meeting of the Contracting Parties, these rules of procedure shall apply to any meeting of the Compliance Committee, hereinafter called "the Committee", under the Convention and its related Protocols.

RULE 2

The Rules of Procedure for Meetings and Conferences of the Contracting Parties to the Barcelona Convention and its related Protocols shall apply *mutatis mutandis* to any meeting of the Committee unless otherwise stipulated in the rules set out herein and in decision IG 17/2, and provided that rules 18 and 19 on representation and credentials of the Rules of Procedure for Meetings and Conferences of the Contracting Parties do not apply.

DEFINITIONS

RULE 3

For the purposes of these rules:

1. "*Convention and its related Protocols*" means the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention) adopted in 1976 and amended in 1995 and its related Protocols: Protocol Concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and other Harmful Substances in Cases of Emergency (Emergency Protocol), Barcelona, 1976; Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea (Prevention and Emergency Protocol), Malta, 2002; Protocol for the Prevention of Pollution in the Mediterranean Sea by Dumping from Ships and Aircraft (Dumping Protocol), Barcelona, 1976; amendments to the Dumping Protocol, recorded as Protocol for the Prevention and Elimination of Pollution in the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea, Barcelona, 1995; Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources (LBS Protocol), Athens, 1980; amendments to the LBS Protocol, recorded as Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities, Syracuse, 1996; Protocol concerning Mediterranean Specially Protected Areas (SPA Protocol), Geneva, 1982; Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean (SPA and Biodiversity Protocol), Barcelona, 1995; Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil (Offshore Protocol), Madrid, 1994; Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal (Hazardous Wastes Protocol), Izmir, 1996; Protocol on Integrated Coastal Zone Management in the Mediterranean (ICZM Protocol), Madrid, 2008.

2. "*Compliance procedures and mechanisms*" means the procedures and mechanisms on compliance under the Barcelona Convention and its related Protocols adopted by the 15th Meeting of the Contracting Parties and set out in the annex to decision IG 17/2.
3. "*Contracting Parties*" means Contracting Parties to the Convention and its related Protocols, including the amended versions, if any, for which the Convention and the related Protocols and their respective amendments are in force.
4. "*Party concerned*" means a Party in respect of which a question of compliance is raised as set out in section V of the compliance procedures and mechanisms.
5. "*Committee*" means the Compliance Committee established by section II, paragraph 2, of the compliance procedures and mechanisms and by decision IG 17/2 of the 15th Meeting of the Contracting Parties.
6. "*Member*" means a member of the Committee elected under section II, paragraph 3, of the compliance procedures and mechanisms.
7. "*Alternate member*" means an alternate member elected under section II, paragraph 3, of the compliance procedures and mechanisms.
8. "*Chairperson*" means the Chairperson of the Committee elected in accordance with rule 6 of the present rules of procedure.
9. "*Vice-Chairpersons*" means the Vice-Chairpersons of the Committee elected in accordance with rule 6 of the present rules of procedure.
10. "*Secretariat*" means the Coordinating Unit that is designated by the Executive Director of the United Nations Environment Programme (UNEP) as responsible for the administration of the Mediterranean Action Plan (MAP), referred to in paragraph 38 of the compliance procedures and mechanisms.
11. "*Representative*" means a person designated by the Party concerned to represent it during the consideration of a question of non-compliance.
12. "*The public*" means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organizations or groups.
13. "*Bureau*" means the Bureau of the Contracting Parties referred to in article 19 of the Convention.
14. "*Observers*" means the organizations referred to in article 20 of the Convention and those included in the list of MAP partners as approved by the Meeting of the Contracting Parties.
15. "Submission" means...

PLACE, DATES AND NOTICE OF MEETINGS

RULE 4

1. The Committee shall normally meet once a year. It may decide to hold additional meetings subject to workload requirements arising from submissions by concerned Contracting Parties and referrals by the Secretariat and subject to availability of resources.
2. Unless it decides otherwise, the Committee shall normally meet at the seat of the Coordinating Unit.

3. At each meeting, the Committee shall decide on the place, dates and duration of its next meeting.

RULE 5

Notice of Committee meetings shall be sent by the Secretariat to the members and alternate members and any representative, as the case may be, with a copy to the MAP Focal Points of all Contracting Parties, at least three months before the opening of the meeting.

RULE 5bis

Before a meeting of the Committee can be held, a quorum shall first be determined in order to ensure that the meeting's decisions are valid.

Rule 17 mentions this, but it is preferable to place it here in the text as rule 6 already mentions elections and in order to hold an election, the criteria determined must first be met.

OFFICERS

RULE 6

The Committee shall elect a Chairperson and two Vice-Chairpersons for a term of two years. No officers shall serve for more than two consecutive terms.

Pursuant to the definition in paragraph 13 of rule 3 above, "Bureau" means the Bureau of the Contracting Parties, but this is not the case here

Rule 6 concerns the Chairperson and two Vice-Chairpersons of the Compliance Committee, which compose the Committee's Bureau.

RULE 7

1. In addition to exercising the powers conferred upon him or her elsewhere in these rules, the Chairperson shall:

Remark: Before chairing a meeting, the Chairperson convenes the meeting. Add a subparagraph at the beginning and renumber the other subparagraphs accordingly.

- (a) Preside over the meeting;
- (b) Declare the opening and closure of the meeting;
- (c) Ensure the observance of these rules;
- (d) Accord the right to speak;
- (e) Put questions to the vote and announce decisions;

Replace "Put questions to the vote" by "Put any questions requiring a decision to the vote ..".

- (f) Rule on any points of order;
- (g) Subject to these rules, have complete control over the proceedings and maintain order.

2. The Chairperson may also propose:

- (a) The closure of the list of speakers;
- (b) A limitation on the time to be allowed to speakers and on the number of interventions on an issue;
- (c) The adjournment or closure of debate on an issue;

- (d) The suspension or adjournment of the meeting.

Add a subparagraph (e) giving the Chairperson the possibility of convening an ad hoc committee

AGENDA

RULE 8

1. In agreement with the Chairperson, the Secretariat shall draft the provisional agenda for each meeting of the Committee. The agenda of the Committee shall include items arising from its functions as specified in section IV of the compliance procedures and mechanisms and other matters related thereto.
2. The Committee, when adopting its agenda, may decide to add urgent and important items and to delete, defer or amend items.

RULE 9

The provisional agenda and the annotated agenda for each meeting, the draft report of the previous meeting and other working and supporting documents shall be circulated by the Secretariat to members and alternate members at least six weeks before the opening of the meeting.

In practice, the time limit of six weeks appears to us to be somewhat long.
Replace it by one month.
At the end of this rule, to make it clearer, add "of the Committee".

MEMBERS AND ALTERNATE MEMBERS

RULE 10

1. The term of office of a member or alternate member shall commence at the end of an ordinary Meeting of the Contracting Parties immediately following his or her election and run until the end of the Meeting of the Contracting Parties two or four years thereafter, as applicable.
2. If a member or alternate member of the Committee resigns or is otherwise unable to complete his or her term of office, the Party which nominated that member or alternate member shall nominate a replacement to serve for the remainder of that member's or alternate member's mandate, subject to endorsement by the Bureau of the Contracting Parties.
3. When a member or alternate member resigns or is otherwise unable to complete the assigned term, the Committee shall request the Secretariat to start the replacement procedures in order to ensure, in accordance with paragraph 2 above, the election of a new member or alternate member for the remainder of the term.

RULE 11

1. In accordance with these rules of procedure, the Chairperson, through the Secretariat, shall invite members and alternate members to attend Committee meetings.
2. Alternate members are entitled to take part in the proceedings of the Committee without the right to vote. An alternate member may cast a vote only if serving as a member.
3. During the absence of a member from all or part of a meeting, his or her alternate shall serve as the member.

4. When a member resigns or is otherwise unable to complete the assigned term or the functions of a member, his or her alternate shall serve as a member ad interim.
5. Any other participant in the Committee's meetings shall attend as an observer.

RULE 12

1. Each member of the Committee shall, with respect to any matter that is under consideration by the Committee, avoid direct or indirect conflicts of interest. Any matter that may constitute a conflict of interest shall be brought to the attention of the Secretariat as soon as possible, which shall forthwith notify the members of the Committee. The concerned member shall not participate in the elaboration and adoption of findings, measures and recommendations of the Committee in relation to such a matter.
2. If the Committee considers that a material violation of the requirements of independence and impartiality expected of a member or alternate member of the Committee has occurred, it may decide to recommend, through the Secretariat to the Bureau of the Meeting of the Contracting Parties, to revoke the membership of any member or alternate member concerned, after having given the member or alternate member the opportunity to be heard.
3. All decisions of the Committee taken under this rule shall be noted in the annual report of the Committee to the Meeting of the Contracting Parties.

RULE 13

Each member or alternate member of the Committee shall take the following written oath:

“ I solemnly declare that I shall perform my duties as member of the Committee objectively, independently and impartially, acting in the interest of the Barcelona Convention, and shall not disclose any confidential information coming to my knowledge by reason of my duties in the Committee, and I shall disclose to the Committee any personal interest in any matter submitted to the Committee for consideration which may constitute a conflict of interest.”

DISTRIBUTION AND CONSIDERATION OF INFORMATION

RULE 14

1. The information received in accordance with paragraphs 18-19 of section V on 'Procedure' shall be distributed by the Secretariat to the members and alternate members of the Committee.
2. Any submission received in accordance with paragraph 18(a) of section V of the compliance procedures and mechanisms shall be transmitted by the Secretariat to the members of the Committee and their alternates as soon as possible but no later than thirty days of receipt of the submission.
3. A submission received in accordance with paragraph 18(b) of the compliance procedures and mechanisms and any issues raised by the Secretariat as provided for in paragraph 23 of the compliance procedures and mechanisms shall be transmitted by the Secretariat to the members of the Committee and their alternates as soon as possible but no later than 30 days after the six-month timeframes provided for in the above-mentioned paragraphs have expired.
4. Any information to be considered by the Committee shall, as soon as possible but no later than two weeks after receipt, be made available to the Party concerned.

PUBLIC ACCESS TO DOCUMENTS AND INFORMATION

RULE 15

The provisional agenda, reports of meetings, official documents and, subject to rule 14 above and paragraph 30 of section V of the compliance procedures and mechanisms, any other non-confidential information documents shall be made available to the public.

PARTICIPATION IN PROCEEDINGS OF THE COMMITTEE

RULE 16

1. Unless the Committee or the Party whose compliance is in question decides otherwise, the meetings of the Committee will be open to other Contracting Parties and to observers as provided for under paragraph 13 of the compliance procedures and mechanisms.

2. In accordance with the provisions of paragraphs 18, 27 and 29 of the compliance procedures and mechanisms, the Party concerned is entitled to participate in the Committee's proceedings and make comments thereon. It may furthermore, in accordance with the criteria adopted by the Committee and at the request of the latter, take part in the preparation of its findings, measures and recommendations. The Party concerned shall be given an opportunity to comment in writing on the findings, measures and recommendations of the Committee. Any such comments shall be forwarded with the report of the Committee to the Meeting of the Contracting Parties.

3. The Committee may invite experts to provide expert advice through the Secretariat. In that case it shall:

- (a) Define the question on which expert opinion is sought;
- (b) Identify the expert(s) to be consulted, on the basis of a roster of experts prepared and regularly updated by the Secretariat;
- (c) Lay down the procedures to be followed.

4. Experts may also be invited by the Committee to be present during the formulation of its findings, measures or recommendations.

5. Secretariat officials may be also invited by the Committee to attend the Committee's deliberations in order to assist in the drafting of its findings, measures or recommendations.

CONDUCT OF BUSINESS

RULE 17

In conformity with Rule 11, seven members of the Committee shall constitute a quorum. For the purpose of the quorum, the replacement of members by alternates shall take into consideration equitable geographic representation, consistently with the composition of the Committee as set out in the third paragraph of decision IG 17/2.

RULE 18

1. With respect to a notification or document sent by the Secretariat to a Contracting Party, the date of receipt shall be deemed to be the date indicated in a written confirmation from the Party or the date indicated in a written confirmation of receipt by the expedited delivery courier, whichever comes first.
2. With respect to a submission, request or other document intended for the Committee, the date of receipt by the Committee shall be deemed to be the first business day after receipt by the Secretariat.

RULE 19

1. Electronic means of communication may be used by the members of the Committee for the purpose of conducting informal consultations on issues under consideration and decision-making on matters of procedure. Electronic means of communication shall not be used for making decisions on matters of substance related in particular to the preparation of findings, measures and recommendations by the Committee.
2. The Committee may use electronic means of communication for transmission, distribution and storage of documentation, without prejudice to normal means of circulation of the documentation, as the case may be.

VOTING

RULE 20

Each member of the Committee shall have one vote. If a regular member is replaced by an alternate member, the latter shall also have one vote.

RULE 21

1. The Committee shall make every effort to reach agreement by consensus on its findings, measures and recommendations. If all efforts to reach consensus have been exhausted, the Committee shall as a last resort adopt its findings, measures and recommendations by at least six members present and voting.
2. For the purpose of these rules, "members present and voting" means members present at the session at which voting takes place and casting an affirmative or negative vote. Members who abstain from voting shall be considered as not voting.

SECRETARIAT

RULE 22

1. The Secretariat shall make all necessary arrangements to ensure the proper conduct of meetings of the Committee and provide it with services as required.
2. In addition, the Secretariat shall perform any other function assigned to it by the Committee with respect to the work of the Committee.

LANGUAGES

RULE 23

The working languages of the Committee shall be the official languages of the meetings or conferences of the Contracting Parties.

RULE 24

1. The submissions from the Party concerned, the response and the information referred to in section V of the compliance procedures and mechanisms shall be provided in one of the four official languages of the Meetings of the Conference of the Contracting Parties to the Convention and its related Protocols. The Secretariat shall make arrangements to translate them into English and/or French if they are submitted in the other official languages of the Meeting of the Contracting Parties to the Convention and its related Protocols.
2. Any representative taking part in the Committee proceedings and/or meetings may speak in a language other than the working languages of the Committee if the Party provides for interpretation.
3. Final findings, measures and recommendations shall be made available in all official languages of the Meetings of the Contracting Parties to the Convention and its related Protocols.

GENERAL PROCEDURES FOR SUBMISSIONS

RULE 25

The time frame for submissions is as follows:

1. For cases concerning a submission by a Contracting Party in respect of its own actual or potential situation of non-compliance: at the latest six (6) weeks before the opening of the ordinary meeting of the Committee.
2. For cases concerning a submission by a Contracting Party in respect of another Party's situation of non-compliance: at the latest four (4) months before the opening of the ordinary meeting of the Committee allowing the Contracting Party whose compliance is in question at least three months to consider and prepare its response.
3. The time frames for cases concerning a submission by a Contracting Party in respect of another Contracting Party's situation of non-compliance also apply to issues raised by the Secretariat.
4. All the above time frames are indicative and may be extended according to the necessities warranted by the circumstances of the matter at hand and in accordance with the Committee's rules of procedure, in particular due process. In this respect, Contracting Parties may submit additional documentation, comments and written observations to be considered by the Committee.

RULE 26

1. A submission by any Contracting Party raising a question of non-compliance with respect to itself shall set out:
 - (a) The name of the Contracting Party making the submission;

- (b) A statement identifying the question of non-compliance, supported by substantiating information setting out the matter of concern relating to the question of non-compliance;
- (c) Its legal basis and the relevant provisions of the Barcelona Convention and its related Protocols and decision IG 17/2 that form the basis for raising the question of non-compliance;
- (d) Any provisions of the decisions of the Meeting of the Contracting Parties and the reports of the Secretariat that are applicable to the question of non-compliance.

2. The submission shall also include the list of all documents annexed to the submission.

RULE 27

1. A submission by any Contracting Party raising a question of non-compliance with respect to another Party shall set out:

- (a) The name of the Contracting Party making the submission;
- (b) A statement identifying the question of non-compliance, supported by substantiating information setting out the matter of concern relating to the question of non-compliance;
- (c) The name of the Party concerned;
- (d) Its legal basis and the relevant provisions of the Barcelona Convention and its related Protocols and decision IG 17/2 that form the basis for raising the question of non-compliance;
- (e) Any provisions of the decisions of the meetings of the Contracting Parties and the reports of the Secretariat that are applicable to the question of non-compliance.

2. The submission should also include the list of all documents annexed to the submission.

RULE 28

The Secretariat shall make the submission and any supporting information, submitted under rule 15 above, including any expertise reports, available to the representative designated by the concerned Party.

RULE 29

Within the framework of general procedures for submissions as provided for under rule 26 above, comments and written observations by the Party concerned in accordance with the provisions of section V of the compliance procedures and mechanisms on the Committee's preliminary and final findings, measures and recommendations shall include:

- (a) A statement of the position of the Party concerned on the information, findings, measures and recommendations or question of non-compliance under consideration;
- (b) An identification of any information provided by the Party that it requests should not be made available to the public in accordance with paragraph 30 of section V of the compliance procedures and mechanisms;
- (c) A list of all documents annexed to the submission or comment.

RULE 30

1. Any submission, comment and/or written observations under rules 13 and 29 above shall be signed by the MAP Focal Point or the representative of the Contracting Party and be delivered to the Secretariat in hard copy and by electronic means of communication.
2. Any relevant documents in support of the submission, comment or written observations shall be annexed to it.

RULE 31

1. Findings, measures or recommendations shall contain, *mutatis mutandis*:
 - (a) The name of the Party concerned;
 - (b) A statement identifying the question of non-compliance addressed;
 - (c) The legal basis and the relevant provisions of the Barcelona Convention and its related Protocols and decision IG 17/2 and other relevant decisions of the Meetings of the Contracting Parties that form the basis of the preliminary findings, measures and recommendations and their final versions;
 - (d) A description of the information considered in the deliberations and confirmation that gives the Party concerned was given an opportunity to comment in writing on all information considered;
 - (e) A summary of the proceedings, including an indication of whether its preliminary finding or any part of it as specified is confirmed;
 - (f) The substantive decision on the question of non-compliance, including the consequences applied, if any;
 - (g) The background, conclusions and reasons for the findings, measures and recommendations;
 - (h) The place and date of the findings, measures and recommendations;
 - (i) The names of the members who participated in the consideration of the question of non-compliance and in the elaboration and adoption of the findings, measures and recommendations.
 - (j) The written comments in writing on the findings, measures and recommendations submitted within 45 days of their receipt by the Party concerned shall be circulated by the Secretariat to the members and alternate members of Committee and shall be included in the Committee's biannual report to the Meeting of the Contracting Parties.

AMENDMENTS TO THE RULES OF PROCEDURE

RULE 32

Any amendment to these rules of procedure is adopted by consensus by the Committee and submitted for consideration and adoption by the Bureau, subject to endorsement by the Meeting of the Contracting Parties.

OVERRIDING AUTHORITY OF THE CONVENTION AND ITS RELATED PROTOCOLS AND DECISION IG 17/2

RULE 33

In the event of a conflict between any provision in these rules and any provision in the Convention and its related Protocols or decision IG 17/2, the provisions of the Convention and its Protocols or, as the case may be, decision IG 17/2 shall prevail.

Annex IV

Programme of Work for the Compliance Committee for the 2012-2013 Biennium, approved at the Fifth meeting of the Compliance Committee

Athens, Greece, November 2011

The Compliance Committee is to carry out the following tasks during the 2012-2013 biennium according to the following procedures:

- a) The calling of two regular meetings of the Compliance Committee per year;
- b) The attendance at Compliance Committee meetings of the full and auxiliary members of the Compliance Committee, of the representatives of Parties Concerned, and, where appropriate, of any observers, pursuant to the Rules of Procedure;
- c) The furnishing of advice, and, where appropriate, assistance to Concerned Parties, pursuant to paragraph 32, sections a) and b) of the Compliance Procedures and Mechanisms.

The Compliance Committee is to address the following issues:

- a) evaluation of any referrals submitted to the Committee by Contracting Parties pursuant to articles 18 et 19 of the Compliance Procedures and Mechanisms;
- b) evaluation of any questions submitted to the Committee by the Secretariat pursuant to paragraph 23 of the Compliance Procedures and Mechanisms of the Barcelona Convention and its Protocols;
- c) analysis of general non-compliance issues, following the Compliance Procedures and Mechanisms, brought up by the Contracting Parties' national reports during the 2008-2009 biennium;
- d) analysis of broader issues requested by the meeting of the Contracting Parties pursuant to Paragraph 17 c of the Compliance Procedures and Mechanisms,
- e) Preparation and approval of the Committee's report and recommendations for submission to the 18th meeting of the Contracting Parties.