



United Nations Environment Programme

EP

UNEP(DEPI)/MED IG.20/7
12 January 2012
ENGLISH
Original: FRENCH



MEDITERRANEAN ACTION PLAN

17th Ordinary Meeting of the Contracting Parties to
the Convention for the Protection of the Marine Environment
and the Coastal Region of the Mediterranean and its Protocols

Paris (France), 8-10 February 2012

ACTIVITY REPORT FOR THE COMPLIANCE COMMITTEE FOR THE 17TH MEETING OF THE CONTRACTING PARTIES

UNEP/MAP
Athens, 2012

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; analyse 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.

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 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.

Activities of the Committee

4. The Committee places great value on the Contracting Parties' full understanding that the compliance mechanism, as emphasised 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. 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.

Referrals to the Compliance Committee

5. The Compliance Committee is authorised to intervene in three situations. Firstly, it can be called upon to address an appeal made by a Contracting Party when said Contracting Party realises that despite its best efforts, the Contracting Party will be unable to completely fulfil its obligations under the Barcelona Convention and its Protocols.

6. 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.

7. 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.

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

8. 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:

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

9. As was the case in the previous biennium, no such non-compliance cases were submitted to the Compliance Committee during 2010-2011. 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. In this regard, the Committee invites the Contracting Parties to refer to the annexed Table.

Questions submitted to the Compliance Committee by the Secretariat.

10. 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. The Committee wishes to stress that the reporting form represents an appropriate method for allowing the Secretariat to ensure that the Contracting Parties have incorporated and/or applied the provisions of the Barcelona Convention and its Protocols into their domestic legislation. 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.

Analysis of general non-compliance questions

11. 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. This paragraph effectively allows the Committee, at the request of the meeting of Contracting Parties, to take on general questions relating compliance, including issues pertaining to report submission, and any other report submitted by the Contracting Parties. During the 18th Meeting of Contracting Parties, the Committee may offer recommendations and

propositions in order to facilitate the application of, and compliance with, the Barcelona Convention and its Protocols.

Evaluation of the national reports submitted by the Contracting Parties pursuant to article 26 of the Barcelona Convention

12. Pursuant to article 26 of the Barcelona Convention, the Contracting Parties are responsible for reporting to the Secretariat the steps that they took in applying the Barcelona 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 12 January 2012, only 16 Contracting Parties out of 22 had submitted their national report to the Secretariat.

13. It is a matter of concern that certain Contracting Parties did not submit their report for Biennium 2008-2009. In this regard, the Committee wishes to reiterate 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 emphasised that a repeated neglect of this obligation could place the Party at fault in a state of non-compliance.

14. 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, established by the Contracting Parties themselves, for the credibility and effectiveness of the Compliance Mechanism.

15. 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 is particularly concerned with the goal that the reports of the Contracting Parties 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.

16. However, some positive developments should be emphasised: the Committee notes that more reports were submitted for Biennium 2008-2009 using the new standardised 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.

17. 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.

18. 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.

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

19. 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 14th 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.

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

Preparation and approval of the Compliance Committee's report

21. 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.

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

III – Proposed changes to the IG Decisions.

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

23. Paragraph 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. However, one should note that Paragraph 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.

24. 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, and largely to ensure a basic level of continuity, the Compliance Committee suggests the Contracting Parties consider the possibility of an amendment to Rule 6 of the Compliance Procedures and Mechanisms, which would allow for a maximum of two consecutive terms.

25. 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 17th Meeting of the Contracting Parties will be tasked with the partial renewal of the membership 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)
- . **Contracting parties from the European Union**
 - 2 full members (Greece, Cyprus)
 - 2 auxiliary members (Italy, Malta)
- . **Group 3 - Other Contracting parties**
 - 2 full members (Bosnia-Herzegovina, Turkey)
 - 2 auxiliary members (Croatia, Montenegro)

26. 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.)

27. 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. 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.

28. 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. Certain Contracting Parties are encountering very real difficulties 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.

29. 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

Kyoto Protocol contain a similar restriction: all allow their respective Compliance Committee members to serve two consecutive terms.

30. 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.

31. 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 17th Meeting of Contracting parties for their consideration.

32. 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.

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

33. 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 15th meeting of the Contracting Parties of the Barcelona Convention and its Protocols.

34. The Rules of Procedure aim to specify the procedural policies for the Compliance committee along guidelines laid out in above-mentioned Decision IG. 17/2. 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.

35. At the Fourth meeting of the Compliance Committee, held in Athens on 5-6 July, 2011, the Committee President announced his intention to make certain changes to the substance and form of the Rules of Procedure for consideration. These proposed amendments were submitted at the fifth meeting of the Compliance Committee, on 10-11 November 2011.

36. 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 changes to the actual functioning policies of the Committee; of particular note are 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, as well as a change in the definition of the quorum required for the Committee's meetings.

37. At its Fifth Meeting, the Committee requested the Secretariat to amend the French version so it matches the contents of the English version. It also decided to report the review of substantive amendments to its Rules of Procedure to a later meeting.

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

38. 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, in particular, 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.

39. The programme of work for Biennium 2012-2013, 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) Analysing of general non-compliance issues, following the Compliance Procedures and Mechanisms, brought up by the Contracting Parties' national reports;
- d) Analysing any thematic issues requested by the Meeting of the Contracting Parties, pursuant to Paragraph 17 c of the Compliance Procedures and Mechanisms;
- e) Analysis of any proposals aimed at strengthening the role of the Compliance Committee with respect to the Barcelona Convention and related Protocols;
- f) Review of possible difficulties in interpreting provisions of the Protocol, to be brought to the attention of the Conference of Parties;
- g) Preparing and approving of the Committee's report and recommendations for submission to the 18th meeting of the Contracting Parties.

IV- Proposals for the amendment of the Barcelona Convention

40. During its fourth meeting in June 2011, the Compliance Committee was tasked with considering a proposal by its Chair, whose aim would be to introduce into the Barcelona Convention a new article regarding the functioning of the Compliance Committee. The Committee has unanimously supported this proposal, underscoring the full importance of formal recognition of the Committee in the institutional system of the Barcelona convention.

V- Partial renewal of the Compliance Committee's membership.

41. The 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.

42. The current roster 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), likewise 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).

43. Pursuant to Decision IG17/2, regarding Compliance Procedures and Mechanisms for the Barcelona Convention and its Protocols, 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 2015 Meeting of Contracting Parties.

44. Following the deliberations held by 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

V.- Proposed draft decision

45. 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:

46. This draft decision encompasses mainly the adoption of the Committee's Programme of Work for the 2012-2013 Biennium. In this respect, and to ensure that obligations contained in the Barcelona Convention and its Protocols are fully enforced, it addresses the crucial need for collaboration between the Committee and the different MAP components, to support Contracting Parties to meet their commitments. This draft decision also proposes that the Conference of Parties approves an amendment of Paragraph 6 of the Compliance Procedures and Mechanism, allowing a member to apply for an immediate second mandate. This draft decision also brings to the review of the Parties a proposal to partially renew the members and deputy members of the Committee for a four-year mandate.

ANNEX

**National reports submitted pursuant to Article 26 of the Barcelona Convention
as of 11 January 2012**

No	Contracting Parties	Biennium 2002-2003	Biennium 2004-2005	Biennium 2006-2007	Biennium 2008-2009
1	Albania	•	•	•	
2	Algeria	•	•		•
3	Bosnia and Herzegovina	•	•	•	•
4	Cyprus	•			•
5	Croatia	•	•	•	•
6	EU	•	•	•	•
7	Égypt		•		•
8	Spain	•	•	•	•
9	France	•	•	•	•
10	Greece	•	•	•	•
11	Israel	•	•	•	•
12	Italy	•	•		•
13	Lebanon				
14	Libya	•		•	
15	Malta		•		
16	Morocco	•	•	•	•
17	Monaco	•	•	•	•
18	Montenegro	•		•	
19	Slovenia	•	•	•	
20	Syria	•	•	•	•
21	Tunisia	•			•
22	Turkey	•	•	•	•
Total submitted reports in a biennium		19	17	15	16